

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.09.2019

CORAM:

THE HONOURABLE MRS. JUSTICE. R.HEMALATHA

CMA.No.1735 of 2009

1. Susila
2. Muthaiah
3. Kamatchi
4. Minor Surendar ... Petitioners/Appellants
rep by his Mother & Natural
Guardian 1st Appellant

Vs.

1. V.Santhosh
2. M/s. IFFCO-TOKIO Gen. Ins. Co., Ltd.,
No.19, 1st and 2nd floor,
North Usman Road, T.Nagar, Chennai.
... Respondents/Respondents

This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988 against the order dated 30.09.2008 passed in MCOP No.329 of 2007 by the Principal District Judge/ Motor Accident Claims Tribunal Perambalur.

For Appellants : Mr.S.Kamadevan

For Respondents : Mr.N.Vijayaraghavan (for R2)

No appearance for R1

J U D G M E N T

The appellants are the claimants in MCOP No.329 of 2007 on the file of the Principal District Judge/ Motor Accident Claims Tribunal, Perambalur.

2. The appellants/claimants filed the above said claim petition seeking compensation of Rs.7,00,000/- for the death of one Suresh, husband of the first appellant, son of the 2nd and 3rd appellants and father of the 4th appellant.

3. The case of the appellants is that on 18.02.2007, the deceased Suresh was travelling as a pillion rider in a motor cycle bearing registration No. TN-48 A-3132 on Tirchy-Chennai Road. When they were nearing Assisipuram, Padalur, a mini lorry bearing registration No.32-7727 came with a high

speed on the opposite direction and hit the two wheeler, as a result of which the deceased was thrown out of the motor cycle and sustained multiple injuries. Immediately he was rushed to Government hospital at Trichy and thereafter he was admitted as an inpatient in KMC hospital, Trichi. However, he succumbed to injuries on 23.02.2007. According to the claimants, the rash and negligent driving of the mini lorry belonging to the first respondent was the cause of the accident and that since the first respondent insured his vehicle with the 2nd respondent, both of them are jointly and severally liable to pay compensation to them.

4. The Tribunal, after analysing the evidence on record, awarded a compensation of Rs.4,50,000/- together with interest at the rate of 7.5% p.a. from the date of claim petition till the date of deposit. Not satisfied with the quantum of compensation awarded by the Tribunal, the claimants have filed the present appeal.

5. Mr.S.Kamadevan, learned counsel appearing for the appellants contended that though the deceased was an appraiser of gold, working for Trichirappalli District Central Co-operative Bank Limited, Padalur, and a certificate (Ex.P4) to that effect was also filed showing his salary as Rs.6,000/- per month, the Tribunal had fixed the monthly income of the deceased only as Rs.3,000/-. He also contended that very meagre amounts were awarded towards "Funeral Expenses" and "Loss of Consortium ". He therefore prayed for enhancement of compensation.

6. No appearance on behalf of the first respondent.

7. The learned counsel appearing for the 2nd respondent contended that the Tribunal after considering the well laid principles of law which prevailed at the time of passing of the award, had awarded a sum of Rs.4,50,000/- to the claimants and the same need not be disturbed at this stage.

8. It is seen from the certificate (Ex.P4) issued by the District Central Co-operative Bank Limited, Padalur that the deceased received a sum of Rs.71,888/- towards commission for the period from 01.04.2006 to 31.01.2007. The person, who issued the certificate has not been examined on the side of the claimants. Therefore, the Tribunal fixed the notional income of the deceased as Rs.3,000/- per month. However, when it is stated that the deceased was an appraiser, the notional income of the deceased should have been fixed by the Tribunal at Rs.4,500/- per month considering the year of accident. Since the deceased was aged 30 years on the date of accident, the proper multiplier to be adopted in the instant case is '17', as per the decision in Sarla Verma and others Vs. Delhi Transport Corporation and another reported in (2009) 6 SCC

121. As per the decision of a Constitution Bench of the Honourable Supreme Court in National Insurance Company Vs. Pranay Sethi and others reported in 2017(2) TN MAC 601, future prospects at 40% should also be added to the income of the deceased (4500 +1800= 6300). There are 4 persons depending on the income of the deceased. Therefore, 1/4th should be deducted towards his personal expenses . Thus, Loss of dependency is calculated as follows.

Notional Income + 40% future prospects(4,500+1800)= 6,300

Less 1/4th towards personal expenses (6300-1575) = 4,725

Proper multiplier = 17

Loss of dependency (4,725x12x 17) = 9,63,900

In addition to that, the claimants are entitled to Rs.15,000, Rs.15,000/- and Rs.40,000/- towards "Loss of Estate", "Funeral Expenses" and "Loss of consortium" to first claimant. The revised compensation awarded under various heads is extracted hereunder.

Sl.No	Heads	Amount
1	Loss of dependency (4725x12x17)	9,63,900
2	Loss of consortium to the first claimant	40,000
3	Loss of Estate	15,000
4	Funeral Expenses	15,000
	Total	10,33,900

This amount would carry interest at the rate of 7.5% per annum from the date of claim petition.

9. In the result,

(i) The civil miscellaneous appeal is allowed. No costs.

(ii) The compensation awarded by the Tribunal is enhanced from 4,50,000 to 10,33,900/-.

(iii) The appellants/claimants are directed to pay necessary court fees for the enhanced compensation of Rs.10,33,900/-, within three weeks from the date of this order.

(iv) The 2nd respondent is directed to deposit the enhanced compensation amount of Rs.10,33,900/- together with interest at the rate of 7.5% p.a. from the date of claim petition till the date of deposit (less the amount already deposited by them), within 4 weeks from the date of receipt of a copy of this order.

(v) On such deposit being made by the 2nd respondent, the claimants/appellants are entitled to withdraw the same, after following due process of law and as per the apportionment made by the Tribunal.

Sd/-
Assistant Registrar(Admn II)

//True copy//

Sub Assistant Registrar

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To

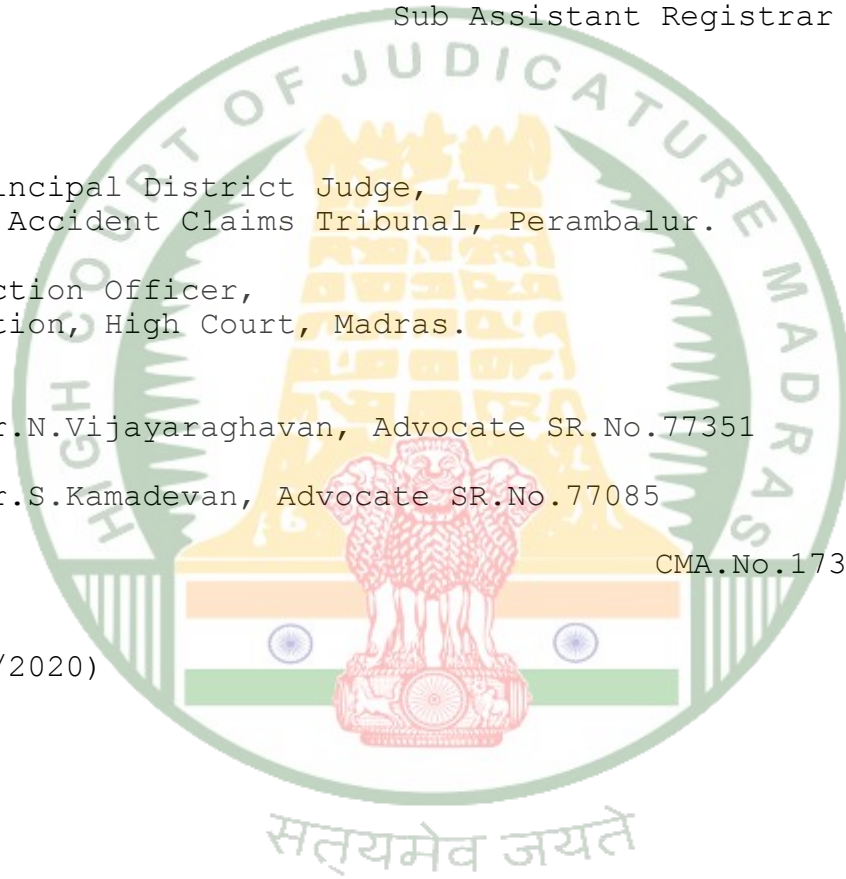
1. The Principal District Judge,
Motor Accident Claims Tribunal, Perambalur.
2. The Section Officer,
VR Section, High Court, Madras.

+1cc to Mr.N.Vijayaraghavan, Advocate SR.No.77351

+1cc to Mr.S.Kamadevan, Advocate SR.No.77085

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SKV(CO)
GMY(11/02/2020)



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