

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.11.2019

CORAM:

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

C.M.A.NO.1237 OF 2013

AND

CMP.NO.19318 OF 2018

1.Chella Thangam
2.Mary Sudha
3.Subitha Mary
4.Christy

... Appellants

vs.

1.Srinivasan

2.Future Generali India Ltd.,
No.192, North Wing, 1st Floor,
Karumuthu Nilayam,
Anna Salai, Chennai - 600 002.

... Respondents

PRAYER:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment dated 15.02.2013 in M.C.O.P.No.445 of 2010 on the file of the Motor Accident Claims Tribunal / IV Additional District Judge, Ponneri.

For Appellants : Mr.K.Varadha Kamaraj

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.445 of 2010 on the file of the Motor Accident Claims Tribunal/IV Additional District Judge, Ponneri. They filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 and Rule 3 of MACT Rules seeking compensation of Rs.2,50,000/- for the death of one Sheeli, wife of the first claimant and mother of the claimants 2 to 4 in a road accident on 20.01.2010.

2. The case of the claimants in nutshell is as follows:

On 20.01.2010, the deceased Sheeli was travelling as a pillion rider in a Hero Honda Splendor Plus motorcycle bearing Registration No.TN 09 BC 0808 along Thiruvallur National Highways, Sengundram and at about 16.00 hours, a speeding Eicher Van bearing Registration No. TN 20 AF 8097, belonging to the first respondent and insured with the second respondent hit the motorcycle, as a result of which, the deceased Sheeli sustained fatal injuries and died on the spot.

3. According to the claimants, the accident took place due to the rash and negligent driving of the driver of the Eicher Van belonging to the first respondent and that since the said Eicher Van was insured with the second respondent, the owner and the insurer of the Eicher Van are jointly and severally liable to pay compensation.

4. The learned IV Additional District Judge / Motor Accident Claims Tribunal, Ponneri while awarding compensation of Rs.2,50,000/- together with interest at the rate of 7.5% per annum to the claimants, directed the Future Generali India Limited to pay the compensation to the claimants in the first instance and then recover the same from the owner of the Eicher Van, since the driver of the Eicher Van was not in possession of a valid driving licence on the date of the accident. Not being satisfied with the quantum of compensation awarded by the Tribunal, the claimants have filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

5. Heard Mr.K.Varadha Kamaraj, learned counsel appearing for the appellants and Mr.N.Vijayaraghavan, learned counsel appearing for the second respondent / Future Generali India Limited. No appearance on behalf of the first respondent.

6. In the claim petition, it is contended that the deceased was self employed, earning a sum of Rs.7,500/- per month. It is pertinent to point out that the accident took place in the year 2010 and in the facts and circumstances, the notional income fixed by the Tribunal at Rs.3,000/- per month is meagre and hence, a sum of Rs.7,500/- per month is taken up as the notional income of the deceased. The Tribunal did not also award any amount towards the future prospects of the deceased, especially, when the deceased was aged 52 years on the date of the accident. As per the decision of the Supreme Court of India in National Insurance Co. vs Pranay sethi and others reported in 2017 (2) TNMAC 601 (SC), 10% should be added towards future prospects of the deceased. Since there are four dependents, 1/4th of her income should be deducted towards her personal expenses. The proper multiplier to be adopted in the instant case is 11 as per the decision rendered in Sarlavarma and others vs. Delhi

Transport Corporation and another reported in (2009) 6 SCC 121.

Calculation

Notional Income = Rs.7,500/-
10% Future Prospects = Rs.750/-
Total = Rs.7,500/- + Rs.750/- = Rs.8,250/-
After 1/4 deduction = Rs.6,187/-

Loss of dependency

= Rs.6,187/- x 12 x 11
= Rs.8,16,684/-

7. Apart from the above said amount, the appellants / claimants are entitled to a sum of Rs.15,000/-, Rs.40,000/- and Rs.15,000/- towards "loss of estate", "loss of love and affection" and "funeral expenses" respectively, as per the decision rendered in National Insurance Co. vs Pranay sethi and others reported in 2017 (2) TNMAC 601 (SC). The award passed by this Court under various heads is extracted hereunder:

S.No.	Head	Amount granted by this court
1.	Loss of dependency	Rs.8,16,684/-
2.	Loss of estate	Rs. 15,000/-
3.	Loss of love and affection	Rs. 40,000/-
4.	Funeral expenses	Rs. 15,000/-
	Total	Rs.8,86,684/-

8. Thus, the compensation awarded by the Tribunal is enhanced from Rs.2,50,000/- to Rs.8,86,684/- which would carry interest at the rate of 7.5% per annum.

9. In the result,

(i) The Civil Miscellaneous Appeal is allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

(ii) The quantum of compensation awarded by the Tribunal is enhanced from Rs.2,50,000/- to Rs.8,86,684/-.

(iii) The appellants / claimants are directed to pay the court fee for the enhanced compensation amount, if any, within a period of three weeks from the date of this order and the Registry is directed to draft the decree only after receipt of the Court fee.

(iv) The second respondent / Future Generali India Limited is directed to deposit the enhanced compensation amount i.e., Rs.8,86,684/- (less the amount already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of MCOP.No.445

of 2010 on the file of the Motor Accident Claims Tribunal / IV Additional District Judge, Ponneri within a period of four weeks from the date of receipt of a copy of this order and then recover the same from the owner of the Eicher Van bearing Registration No. TN 20 AF 8097 on the same cause of action.

(v) On such deposit being made, the appellants / claimants are at liberty to withdraw the same as per the orders passed by the Tribunal after following due process of law. The ratio of apportionment made by the Tribunal shall be kept intact.

Sd/-
Assistant Registrar(Insp.Cell)

//True Copy//

Sub Assistant Registrar

mbi

To

1. The Motor Accidents Claims Tribunal,
The IV Additional District Judge,
Ponneri.
2. VR Section,
High Court of Madras.

+1cc to Mr.K.Varadha Kamaraj, Advocate, S.R.No.92913
+1cc to Mr.N.Vijayaraghavan, Advocate, S.R.No.93477

C.M.A.No.1237 of 2013
and
CMP.No.19318 of 2018

RR(CO)
CS/28/12/2020

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