

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 06.11.2019

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA
C.M.A.No.1961 of 2009

1.Saranya
(1st appellant declared as Major
2nd appellant viz., Lakshmi discharged
from the guardianship vide Court order dated
15.09.2017 made in C.m.P.No.15400/2017
in C.M.A.No.1961/2009)

2.Lakshmi ... Appellants/ Petitioners
vs.

1.Pappayimmal

2.Ashok Kumar

3.The New India Assurance Company Limited,
E.V.N.Road, 1360 Amman Complex,
Erode - 11.

...Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173
of the Motor Vehicles Act, 1988 against the decree and
judgment dated 16.07.2004 in M.C.O.P.No.991 of 2002 on the
file of the Motor Accident Claims Tribunal / I Additional
District Court, Erode.

Appellants : Mr.V.S.Kesavan
R1 & R2 : No appearance
R3 : Mr.R.Neethe Perumal

J U D G M E N T

The appellants are the claimants in M.C.O.P.No.991 of
2002 on the file of the Motor Accident Claims Tribunal / I
Additional District Court, Erode. They filed the claim
petition under Section 166 of the Motor Vehicles Act, 1988
seeking compensation of Rs.4,00,000/- for the death of one
Thangavel, father of the first appellant, husband of the
second appellant and son of the first respondent in a road
accident on 09.04.2002.

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

On 09.04.2002, the deceased was riding his bicycle
along Ganapathypalayam Four Roads, Kannudaiyampalayam and at
about 11.30 p.m, when he was nearing S.K.V.Clinic, Erode

Road, a speeding van bearing Registration No. TAP 8188 hit him, as a result whereof, he sustained fatal injuries and died in the Hospital on 23.05.2002.

3. According to the claimants, the rash and negligent driving of the driver of the van bearing Registration No. TAP 8188 belonging to the second respondent was the cause of the accident and that since the said van was insured with the third respondent / New India Assurance Company Limited, the owner and the insurer of the van are jointly and severally liable to pay compensation.

4. The second respondent remained absent before the Tribunal and therefore, he was set ex-parte. The third respondent / New India Assurance Company Limited contested the claim petition on all the grounds available to the insured. The learned I Additional District Judge / Motor Accident Claims Tribunal, Erode after analysing the evidence on record, awarded a compensation of Rs.2,33,489/- together with interest at the rate of 9% per annum to the claimants. 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.V.S.Kesavan, learned counsel appearing for the appellants and Mr.R.Neethe Perumal, learned counsel appearing for the third respondent. No appearance on behalf of the first and second respondents.

6. In the claim petition, it is contended that the deceased was an agriculturist and a milk vendor, earning a sum of Rs.10,000/- per month. In the absence of income proof, the Tribunal fixed the notional income of the claimant as Rs.1,500/- per month. It is pertinent to point out that the accident took place in the year 2002 and in the facts and circumstances, this Court is of the opinion that fixing a sum of Rs.3,000/- as notional monthly income of the deceased would meet the ends of justice. The Tribunal did not also award any amount towards "future prospects" of the deceased, especially, when the deceased was aged 45 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, 25% should be added towards future prospects of the deceased. Since there are four dependents, 1/4th of the deceased's income should be deducted towards his personal expenses. The proper multiplier to be adopted in the instant case is 14 as per the decision rendered in Sarlavarma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121. The Tribunal has not awarded any amount towards medical expenses, especially when the deceased was hospitalised for more than a month and medical bills to the tune of Rs.40,000/- was adduced by the claimants.

Notional Income = Rs.3,000/-
25% Future Prospects = Rs.750/-
Total = Rs.3,000/- + Rs.750/- = Rs.3,750/-
After 1/4 deduction = Rs.2,812/-

Loss of dependency
= Rs.2,812/- x 12 x 14
= Rs.4,72,416/-

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 consortium" 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.4,72,416/-
2.	Loss of estate	Rs.15,000/-
3.	Loss of love and affection	Rs.40,000/-
4.	Funeral expenses	Rs.15,000/-
5.	Medical expenses	Rs.40,000/-
Total		Rs.5,82,416/-

8. Thus, the compensation awarded by the Tribunal is enhanced from Rs.2,33,489/- to Rs.5,82,416/- which would carry interest at the rate of 7.5% per annum.

9. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed.
No costs.

(ii) The quantum of compensation awarded by the Tribunal is enhanced from Rs.2,33,489/- to Rs.5,82,416/-

(iii) The appellants / claimants are directed to pay 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 and third respondent / New India Assurance Company Limited are directed to deposit the enhanced compensation amount i.e., Rs.5,82,416/- (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 M.C.O.P.No.991 of 2002 on the file of the Motor Accident Claims Tribunal / I Additional District Court, Erode within a period of four weeks from the date of receipt of a copy of this order.

(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(CCC)

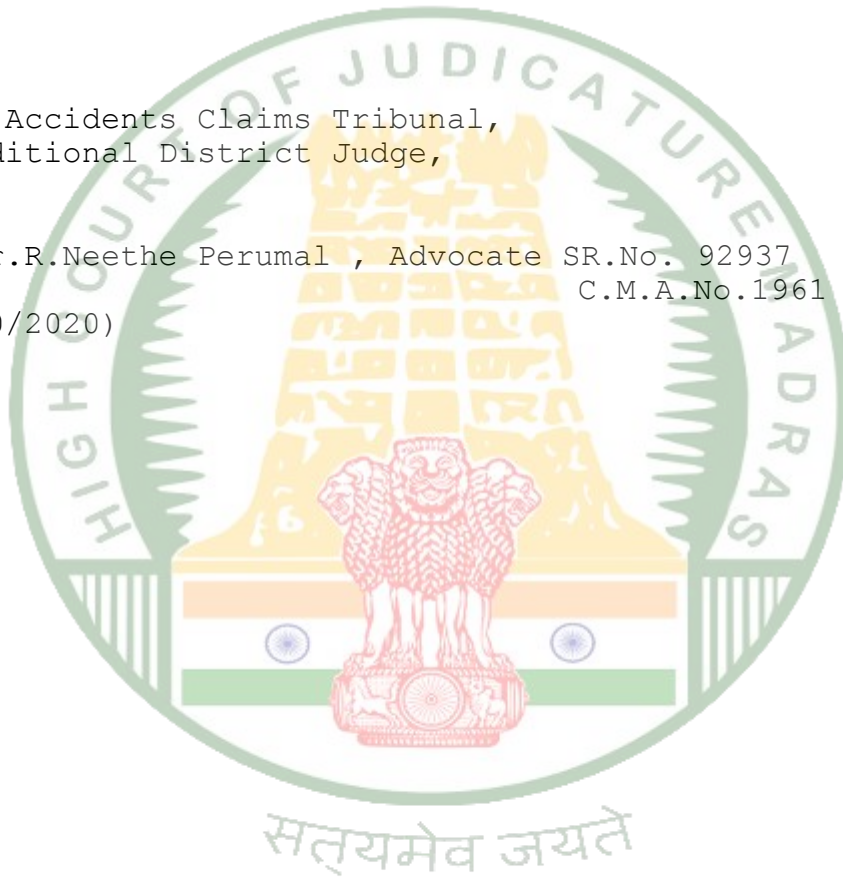
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Sub Assistant Registrar

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To
The Motor Accidents Claims Tribunal,
The I Additional District Judge,
Erode.

+1cc to Mr.R.Neethe Perumal , Advocate SR.No. 92937
C.M.A.No.1961 of 2009
A.SK(14/10/2020)



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