IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 03.01.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

CMA.No.2476 of 2010

1. P.Ponnammal
2. P.Ramasamy ... Appellants/Claimants

Vs.

1. V.Sekar
2. S.Senthilkumar
3. The Oriental Insurance Company Limited
Arunagiri Complex,
No.25/C, Bye Pass Road, Hosur,
Krishnagiri District 635 109.
... Respondents/Respondents

This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the quantum of compensation awarded in M.C.O.P.No.437 of 2009 dt:05/04/2010 by the Principal District Judge, Motor Vehicle Accidents Claims Tribunal, Erode.

For Appellants : Mr.S.Kaithamalai Kumaran
For 3rd Respondent : Mr.Krishnamurthy
For Respondents 1 and 2 : No appearance

J U D G M E N T

The appellants are the claimants in MCOP No.437 of 2009 on the file of the Principal District Judge, Motor Vehicle Accident Claims Tribunal, Erode and they filed the said claim petition seeking compensation of Rs.7,50,000/- for the death of one Palanisamy, husband of the first claimant and father of the 2nd claimant.

2. The brief case of the appellants/claimants is as follows. On 13.02.2009, the deceased Palanisamy was riding his two wheeler bearing registration No. TN-33-D-7672 with his wife as pillion rider on Perundurai - Chennimalai Road. At about 3.45 p.m., when he was nearing Bharat Pertrol Bunk, a speeding lorry bearing registration No.TAA-7479 belonging to the 2nd respondent hit the two wheeler, as a result of which, the

deceased Palanisamy died on spot. According to the claimants, the deceased was aged about 56 years on the date of accident and was doing business by selling fire-wood earning a sum of Rs.10,000/- per month. It is further contended by them that the rash and negligent driving of the driver of the lorry was the cause of the accident and that since the 2nd respondent, owner of the lorry insured his vehicle with the 3rd respondent, the Oriental Insurance Company limited, both of them are jointly and severally liable to pay compensation to them.

3. The respondents filed their respective counters before the tribunal and contested the claim petition.

4. After analysing the evidence on record, the Principal District Judge, Motor Accident Claims Tribunal, Erode awarded a compensation of Rs.1,22,500/- together with interest at the rate of 7.5% per annum to the claimants. Not satisfied with the quantum of compensation awarded by the tribunal, the claimants have filed the present appeal for enhancement of compensation.

5. Mr.S.Kaithamalai Kumaran, learned counsel appearing for the appellants would contend that when the deceased was doing business by selling fire-wood and was earning a sum of Rs.7,500/- per month, the tribunal has fixed the monthly income of the deceased as Rs.1,500/- per month, which is very meagre. He would also contend that no amount was awarded towards " future prospects" and "loss of estate" and that a very meagre amount of Rs.5,000/- was awarded towards funeral expenses.

6. Per contra, Mr.Krishnamurthy, learned counsel appearing for the 3rd respondent, Insurance Company would contend that the tribunal has awarded a just compensation, based on the well established principles of law, which were vogue at the relevant that point of time when the orders were passed and therefore, the award passed by the tribunal need not be disturbed at this juncture.

7. The accident took place on 13.02.2009 and though it was contended by the claimants that the deceased was doing business by selling fire-wood and was earning a sum of Rs.7,500/- per month, the tribunal has fixed the income of the deceased as Rs.1,500/-. In the opinion of this court, this amount is too meagre. In the absence of proof of income, notional income of the deceased should have been fixed at Rs.4,500/- per month by the tribunal. As per the decision of the Constitution Bench of the Honourable Supreme Court of India in National Insurance Company Limited Vs. Pranay Sethi and others reported in 2017 (2) TNMAC 601, 10% should be added towards future prospects and hence the monthly income of the deceased is fixed at Rs.4,950/- (4500 + 450 = 4950). Since the

age of the deceased was 56 years on the date of accident, proper multiplier to be adopted in the instant case is 9, as per the decision in Sarala Verma and others Vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121. However, the tribunal has wrongly adopted the multiplier as '8'. After deducting 1/3 of income towards personal expenses of the deceased, loss of dependency is calculated as follows.

Calculation for Loss of dependency
= 4500 + 450 = 4950
= 4950 - 1650= 3300
= 3300 x 12 x 9 = Rs.3, 56,400/-

In addition to that, as per the decision rendered by the Constitution Bench of the Honourable Supreme Court in National Insurance Company Limited Vs. Pranay Sethi and others reported in 2017 (2) TNMAC 601, the claimants are entitled to Rs.40,000/- Rs.15,000, Rs.15,000/- and Rs.40,000/- towards "Love and affection, "Loss of Estate" and "Funeral Expenses" respectively. Thus, the claimants are entitled to a total compensation of Rs.4,26,400/- (3,56,400 + 40,000 + 15000 + 15000= 4,26,400) which is extracted here under.

Sl.No	Heads	Amount
1	Loss of dependency (3300x12x9)	3,56,400
2	Love and affection	40,000
3	Loss of Estate	15,000
4	Funeral Expenses	15,000
	Total	4,26,400

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

9. In the result,

i) The appeal is allowed. No costs. The compensation awarded by the tribunal is enhanced to Rs.4,26,400/- from Rs.1,22,500/-.

ii) The appellants/claimants are directed to pay necessary court fee for the enhanced compensation, within a period of two weeks from today and the Registry is directed to draft the decree, after receipt of necessary court fee.

iii) The insurance company is directed to deposit the enhanced compensation of Rs.4,26,400/- along with interest at the rate of 7.5% per annum, less the amount already deposited by them, within a period of 4 weeks from the date of receipt of a copy of this order.

iv) On such deposit being made by the 2nd and 3rd respondents, the claimants are entitled to withdraw the same, as per the apportionment made by the tribunal, after following due process of law.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

mst
To

1. The Principal District Judge,
Motor Accident Claims Tribunal,
Erode.

2.The Section Officer,
VR Section, High Court, Madras.

+1cc to Mr.M.Krishnamoorthy, Advocate, S.R.No.597

+1cc to Mr.S.Kaithamalai Kumaran, Advocate, S.R.No.969

CMA.No.2476 of 2010

RV(CO)
GSP(09/01/2019)