IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.10.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

CMA.No.2890 of 2010

Manjula ...Appellant/Petitioner

vs.

1.Kesavan
2.Divisional Manager,
United India Insurance Co. Ltd.,
No.46, Katpadi road,
Vellore.

3.Subramani Chettiar ... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 28.11.2005 passed in MCOP.No.216 of 2004 on the file of the Motor Accident Claims Tribunal / Chief Judicial Magistrate, Thiruvannamalai.

For Appellant : Mr.F.Terry Chellaraja

For Respondents : Mrs.I.Malar for R2
No appearance R1 & R3

J U D G M E N T

The appellant is the claimant in MCOP.No.216 of 2004 on the file of the Motor Accident Claims Tribunal / Chief Judicial Magistrate, Thiruvannamalai. She filed the said claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.3,00,000/- for the death of her husband Murugados in a road accident on 24.10.2001.

2. The case of the claimant in nutshell is as follows:
On 24.10.2001, the deceased Murugados was riding his two wheeler TVS 50 on Thiruvannamalai - Thandarampattu road and at about 10.15 am, he parked his two wheeler and wanted to ease himself. At that time, a speeding van bearing Registration No.TN 25 A 8397 belonging to the first respondent and insured with the United India Insurance Company Limited, hit him, as a result of which, he sustained fatal injuries and died on the spot. According to the claimant, the rash and negligent driving of the driver of the van belonging to the first respondent was the cause of the accident and that since

the said vehicle was insured with the second respondent, the owner and the insurer are jointly and severally liable to pay compensation.

3. The owner of the van remained absent before the Tribunal and therefore, he was set exparte. The second and third respondents contested the claim petition. The learned Chief Judicial Magistrate / Motor Accident Claims Tribunal, Thiruvannamalai after analysing the evidence on record, awarded a compensation of Rs.2,11,864/- together with interest at the rate of 7.5% per annum to the claimant. Not satisfied with the quantum of compensation awarded by the Tribunal, the claimant has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

4. Heard Mr.F.Terry, learned counsel appearing for the appellant / claimant. Heard Mrs.I.Malar, learned counsel appearing for the second respondent. No appearance on behalf of the respondents 1 and 3.

5. In the instant case, the deceased Murugados was aged 32 years on the date of the accident. The contention of the claimant is that her husband was a mason, earning a sum of Rs.3,000/- per month. Since no evidence was adduced to substantiate the income of the deceased, the Tribunal fixed the notional income as Rs.1,600/- per month and adopted multiplier 16 after deducting 1/3rd towards the personal expenses of the deceased. Since the accident took place in the year 2001 and it is contended that the deceased was a mason, a sum of Rs.3,000/- is fixed as notional monthly income of the deceased. As per the decision laid down in National Insurance Co. vs Pranay sethi and others reported in 2017 (2) TNMAC 601 (SC), 40% should be added towards the future prospects of the deceased and 1/3rd of the deceased's income is deducted towards his personal expenses. As the age of the deceased was 32 years on the date of the accident, the proper multiplier to be adopted in the instant case is 16 as per the decision rendered in Sarlavarma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121. The "loss of dependency" is calculated as follows:

Calculation

Notional Income = Rs.3,000/-
40% Future Prospects = Rs.1,200/-
Total = Rs.3,000/- + Rs.1,200/- = Rs.4,200/-
After 1/3 deduction = Rs.2,800/-

Loss of dependency

= Rs.2,800/- x 12 x 16
= Rs.5,37,600/-

6. Apart from the above said amount, the claimant is

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 of the Supreme Court of India 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.5,37,600/-
2.	Loss of estate	Rs.15,000/-
3.	Loss of consortium	Rs.40,000/-
4.	Funeral expenses	Rs.15,000/-
Total		Rs.6,07,600/-

Thus the compensation awarded by the Tribunal is enhanced from Rs.2,11,864/- to Rs.6,07,600/- which would carry interest at the rate of 7.5% per annum.

7. In the result,

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

(ii) The quantum of compensation awarded by the Tribunal is enhanced from Rs.2,11,864/- to Rs.6,07,600/-.

(iii) The appellant / claimant is 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 / United India Insurance Company Limited is directed to deposit the enhanced compensation amount i.e., Rs.6,07,600/- (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.216 of 2004 on the file of the Motor Accident Claims Tribunal / Chief Judicial Magistrate, Thiruvannamalai within a period of four weeks from the date of receipt of a copy of this order.

(v) On such deposit being made, the appellant / claimant is at liberty to withdraw the same after following due process of law.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mbi

To

The Chief Judicial Magistrate,
The Motor Accidents Claims Tribunal,
Thiruvannamalai.

Copy to:
The Section Officer,
VR Section,
High Court, Madras.

+1cc to Mrs.M.Malar, Advocate SR.87810
+1cc to Mrs.I.Malar, Advocate SR.87192

CMA.No.2890 of 2010

EV(CO)
CB(06/11/2020)