

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.01.2019

CORAM:

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

C.M.A.No.3368 of 2010

1. Mariyamma
2. Daicy

...Appellants

..Vs..

1. E.Mahalingam
2. The New India Assurance Co., Ltd.,
No.45, Moore Street,
Chennai-600 001.

.... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment dated 01.03.2010, passed in M.C.O.P.No.2520 of 2003, on the file of the V Fast Track Court at Chennai.

For Appellants : Mr.P.Raja
For Respondents : Mr.S.Jayasankar for R2
No appearance for R1

JUDGMENT

The appellants are the claimants in M.C.O.P.No.2520 of 2003, on the file of the Motor Accidents Claims Tribunal, Additional District and Sessions Court, Chennai. They filed a claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.5,00,000/- for the death of one Sibi Kuriakose, son of the first claimant and brother of the second claimant.

2.The brief case of the appellants/claimants is as follows:

On 13.11.2001, the deceased Sibi Kuriakose was travelling as a pillion rider in a motorcycle bearing Registration No. TN 22 M 8467 along Old Mahabalipuram Road near Annai Fathima Orphanage. At about 18.50 hours, a speeding motorcycle bearing Registration No. TN 07 M 8093 belonging to the first respondent and insured with the second respondent hit the motorcycle, in which the deceased was travelling, as a result of which, the deceased fell down and died on the spot. According to the appellants/claimants, the rash and negligent driving of the rider of the motorcycle bearing Registration No. TN 07 M 8093

was the cause of the accident and that, since, the said vehicle was insured with the second respondent, the New India Assurance Company, both of them are jointly and severally liable to pay compensation to them.

3.The first respondent remained absent before the tribunal and therefore, he was set ex-parte. The second respondent, the New India Assurance Company contested the claim petition. The learned Additional District and Sessions Judge, Chennai after analysing the evidence on record, dismissed the claim petition by observing that (i) the name of Sunny (P.W.1), who is the brother of the deceased Sibi Kuriakose is not found place in the legal heirship certificate, (Ex.P4) dated 28.03.2008, (ii) in the affidavit filed by Sunny (P.W.1), the deceased is mentioned as his son which is not correct, (iii) there are corrections in the affidavit filed by Sunny (P.W.1) and (iv) the appellants/claimants did not adduce any evidence to show that they were dependents of Sibi Kuriakose.

4.Mr.P.Raja, learned counsel appearing for the appellants/claimants would contend that since the legal heirship certificate (Ex.P4) clearly shows that the first claimant is the mother of Sibi Kuriakose, the tribunal was wrong in dismissing the entire claim petition. He would further contend that the second claimant was an unmarried sister and was depending on the income of the deceased and therefore, she was shown as a party in the claim petition.

5.It is pertinent to point out that there is no dispute in regard to the manner of the accident and infact, the tribunal has held that the rider of the motorcycle bearing Registration No. TN 07 M 8093 was rash and negligent in riding his vehicle. However, the tribunal placed reliance on the spelling mistake found in the name of P.W.1 in the Legal Heirship certificate (Ex.P4) and also the non-examination of the claimants before the tribunal. The specific contention of the appellants/claimants is that they are Malayali Christians and the name of P.W.1 would be written as Sonny and therefore, there cannot be no doubt that the deceased was the son of the first claimant and brother of the second claimant. There is a force in the contentions of the learned counsel appearing for the appellants/ claimants and the tribunal was wrong in dismissing the entire claim petition filed by the claimants, merely, based on the typographical error found in the affidavit filed by P.W.1 and for the non-examination of the claimants.

6.The contention of the appellants/claimants is that the deceased was running a business in a partnership firm in the name and style of "Monarch Stainless Fabtech", earning a sum of Rs.15,000/- per month. In order to substantiate their

contention that the deceased was earning a sum of Rs.15,000/- per month, they mainly relied on the Firm Registration Certificate (Ex.P3), Form 16 A (Ex.P6), Lease Agreement (Ex.P5) and Statement of accounts issued by Bank of India (Ex.P7).

7.A perusal of Form 16 A (Ex.P6) shows that the annual turnover of the company is Rs.17,99,006/-. The appellants/claimants have not produced the deed of partnership firm to show the number of partners involved in the business and the Statement of accounts (Ex.P7) does not show much light on the income of the deceased. Therefore, the notional income of the deceased is fixed as Rs.6,500/- per month. The deceased died as a bachelor and he was aged 26 years on the date of the accident and therefore, 40% should be added towards the future prospects of the deceased, as per the decision laid down in National Insurance Co. vs Pranay sethi and others reported in 2017 (2) TNMAC 601. The proper multiplier to be adopted in the instant case is 17 as per the decision rendered in Sarlavarma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121. Since the deceased died as a bachelor, 50% has to be deducted towards his personal income.

Calculation:

Notional Income = Rs.6,500/-
40% Future Prospects = Rs.2,600/-
Total = Rs.6,500/- + Rs.2,600 = Rs.9,100/-

Loss of Income
= Rs.9,100 /- x 17 x 12 x 1/2 deduction
= Rs.18,56,400/- x 1/2 deduction
= Rs.9,28,200/-

Apart from the above amount, the appellants/claimants are entitled to a sum of Rs.40,000/-, Rs.15,000/- and Rs.15,000/- towards loss of love and affection, loss of estate and funeral expenses. The award passed under various heads is extracted hereunder:

S.No.	Head	Amount granted
1.	Loss of income	Rs.9,28,200/-
2.	Loss of estate	Rs. 15,000/-
3.	Loss of love and affection	Rs. 40,000/-
4.	Funeral expenses	Rs. 15,000/-
Total		Rs.9,98,200/-

Thus, the appellants/claimants are entitled to a sum of

Rs.9,98,200/- together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

8. In the result,

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

(ii) The order passed by the tribunal in M.C.O.P.No.2520 of 2003, on the file of the Additional District Judge (V Fast Track Court), Chennai is set aside.

(iii) The second respondent, New India Assurance Company is directed to deposit the entire compensation of Rs.9,98,200/- 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.2520 of 2003, on the file of the Additional District and Sessions Court, V Fast Track Court, Chennai within four weeks from the date of receipt of a copy of this order.

(iv) On such deposit being made by the second respondent, the appellants/claimants are at liberty to withdraw the same as per the apportionment given below after following due process of law.

(a) The first appellant/first claimant is entitled to a sum of Rs.7,98,200/- with accrued interests and costs.

(b) The second appellant/second claimant is entitled to a sum of Rs.2,00,000/-.

(v) The appellants/claimants are directed to pay the court fee for the enhanced compensation, if any, and the Registry is directed to draft the decree only after the payment of court fee.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

The Motor Accidents Claims Tribunal,
Additional District and Sessions Court,
V Fast Track Court, Chennai

+1cc to Mr.S.Jayasankar, Advocate, S.R.No.5557

+1cc to Mr.A.H.Srikanth, Advocate, S.R.No.3267

C.M.A.No.3368 of 2010

KAN(CO)
CS/16/07/2019