

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.09.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

CMA.No.3444 of 2009 and
M.P.No.1 of 2009

United India Insurance Company Limited,
No.1110, Mettur Road, II Floor,
Muthiya Complex, Erode-11. ... Appellant /3rd Respondent

Vs.

1. K.Baby
2. K.Parimala (died)
R2 died. Recorded as per the order dated 18.09.2019
made in CMA No.3444/2009 and as per memo
dated 18.09.2019
3. K.Vanitha
4. K.Kottaraivel ... Respondents 1 to 4/Petitioners 2 to 5
5. K.P.Karuppaiah(driver)
6. K.P.Murugan (Owner) ... Respondents 5 & 6/Respondents 1 & 2

(Respondents 5 & 6 remained Exparte in Lower Court and hence
Notice may be dispensed)

Prayer This Civil Miscellaneous Appeal has been filed
under Section 173 of the Motor Vehicles Act, 1988, against the
orders dated 27.07.2009 passed in M.C.O.P.No.769 of 2007 by the
Additional District Judge/ Motor Accident Claims Tribunal, Fast
Track Court No.1, Erode.

For Appellant : Mr. N.Vijayaraghavan

For Respondents: Mr.V.Ayyadurai (for R1, R3 and R4)
and Mr.P.Muthukumarasamy
R2- died
No appearance for R5 and R6 (Exparte)

J U D G M E N T

The United India Insurance Company Limited, Erode, the
3rd respondent in MCOP No.769 of 2007 on the file of the
Additional District Judge/ Motor Accident Claims Tribunal, Fast
Track Court No.1, Erode has filed the present appeal.

2. The respondents 1 to 4 and one Vasanthi/claimants filed the above said claim petition under Section 166 of the Motor Vehicles Act seeking compensation of Rs.15,00,000/- for the death of one Kittu @ Krishnamoorthy, husband of Vasanthi and father of the respondents No.1 to 4 in a road accident that took place on 17.05.2007. The case of the claimants is that when the deceased Kittu @ Krishnamoorthy was riding his two wheeler bearing Registration No.TN-33-7391 along APT Road, Erode, a speeding Van bearing registration No.TN-27-C-2929, belonging to the 6th respondent, hit the two wheeler, as a result of which he fell down and died on the spot. According to the claimants the rash and negligent driving of the driver of the van was the cause of accident and that since the owner of the van (6th respondent) insured his vehicle with the appellant, both of them are jointly and severally liable to pay compensation to them.

3. The Additional District Judge/ Motor Accident Claims Tribunal, Fast Track Court No.1, Erode, after analysing the evidence on record, awarded a compensation of Rs.8,00,000/- together with interest at the rate of 7.5% p.a. to the claimants. Aggrieved over the quantum of compensation awarded by the Tribunal, the Insurance Company has filed the present appeal.

4. Mr.N.Vijayaraghavan, learned counsel appearing for the appellant contended that the Tribunal had fixed the monthly income of the deceased as Rs.9,000/-, especially, when no proof of income was filed by the claimants. He further contended that the monthly income of the deceased should be reduced and accordingly the compensation awarded by the Tribunal should be scaled down.

5. Per contra, Mr.V.Ayyadurai, learned counsel appearing for the respondents 1 to 4/claimants contended that the deceased was doing real estate business and was actually earning a sum of Rs.15,000/- per month and that the Tribunal had fixed the notional income of the deceased as Rs.9,000/- per month. Therefore, he contended that the Award passed by the Tribunal need not be disturbed at this stage.

6. Though in the claim petition it is contended by the claimants that the deceased was doing real estate business and was earning a sum of Rs.15,000/- per month, no proof of income was filed by the claimants. The accident took place in the year 2007. Therefore, monthly income of the deceased is fixed at Rs.6,500/-. As per the decision of the Constitution Bench of the Hon'ble Supreme Court of India in National Insurance Company Limited Vs. Pranay Sethi and others reported in 2017 (2) TN MAC

609 (SC), 10% should be added towards future prospects. The deceased was aged 52 years on the date of accident and therefore, 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. There are 4 persons depending on the income of the deceased. Hence, 1/4 should be deducted towards personal income of the deceased. Thus, loss of dependency is calculated as follows.

Notional income -	- Rs.6500
Add: 10% future prospects (6500+650)	- Rs.7150
Deduction 1/4 (7150-1788)	- Rs.5362
Proper multiplier	- 11
Loss of dependency (5362 x 12 x 11)	- Rs.7,07,784

Apart from this amount, the claimants are also entitled to Rs.15,000/- towards "loss of estate", "funeral expenses" and "loss of love and affection" respectively, as per the decision in National Insurance Company Limited Vs. Pranay Sethi and others reported in 2017 (2) TN MAC 609 (SC) (cited supra). The revised compensation awarded under various heads is extracted hereunder.

Sl.No	Heads	Amount
1	Loss of dependency (5362 x 12 x 11)	7,07,784
2	Loss of estate	15,000
3	Funeral expenses	15,000
4	Loss of love and affection	40,000
	Total	7,77,784

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

7. In the result,

(i) The civil miscellaneous appeal is partly allowed. No costs. The connected miscellaneous petition is closed.

(ii) The compensation awarded by the tribunal is scaled down from Rs.8,00,000/- to Rs.7,77,784/-

(iii) The appellant/United India insurance company Limited is directed to deposit the revised compensation amount of Rs.7,77,784/- together with interest at the rate of 7.5% per

annum from the date of claim petition till the date of deposit (less the amount already deposited by them), within 4 weeks from the date of receipt of a copy of this order.

(iv) On such deposit being made by the appellant/United India insurance company Limited, the claimants /respondents 1, 3 and 4 are entitled to withdraw the same in equal apportionment, after following due process of law.

(v) The appellant/United India insurance company Limited is at liberty to withdraw the amount deposited by them over and above the compensation awarded by this court.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

mst

To

The Additional District Judge/ Motor Accident Claims
Tribunal,
Fast Track Court No.1, Erode.

+lcc to Mr.M.B.Gopalan, Advocate Sr.80826

+lcc to Mr.P.Muthukumaarasaamy, Advocate Sr.80094

सत्यमेव जयते

CMA.No.3444 of 2009 and
M.P.No.1 of 2009

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srg 20/02/2020

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