

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 31.10.2019
CORAM:
THE HONOURABLE MRS.JUSTICE R. HEMALATHA
C.M.A.No.3439 of 2010

1.Vendamani
2.Krishnan
3.Minor Rajaveni
(3rd appellant Minor represented by
her next friend and her Mother 1st
appellant) ... Appellants/petitioners

vs.

1.Kuppan
2. Velu
3. The Divisional Manager,
The New India Assurance Limited.,
No.1, Officer's Line,
Vellore.
4. The Divisional Manager,
The United India Assurance Limited,
No.46, Katpadi Road,
Vellore.
Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 03.03.2006 made in M.A.C.T.O.P.No.185 of 2004 on the file of the Motor Accidents Claims Tribunal/Chief Judicial Magistrate, Thiruvannamalai.

For Appellants : Mr.Terry Chellaraja

For respondents : Mr.K.Vinod for R3
Mr.D.Bhaskaran for R4
No Appearance for R2
Exparte for R1

JUDGMENT

The appellants are the claimants in M.C.O.P.No.185 of 2004 on the file of the Motor Accident Claims Tribunal / Chief Judicial Magistrate, Thiruvannamalai. They filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 and Rule 3 of MACT Rules seeking compensation of Rs.4,00,000/- for the death of one Rajendran, husband of the first claimant, father of the claimants 2 and 3 in a road accident on 21.07.2000.

2. The case of the claimants is that on 21.07.2000, the deceased Rajendran was travelling as a passenger in a Lorry bearing Registration No. TN H 2347 along Tirukkivilur road. At about 02.30 a.m., the driver of the lorry drove the vehicle rashly and negligently and hit a stationary lorry, as a result of which, the deceased Rajendran sustained fatal injuries and died on the way to the Hospital.

3. According to the claimants, the accident took place due to the rash and negligent driving of the driver of the Lorry bearing Registration No. TN H 2347 belonging to the first respondent and that since the said Lorry was insured with the second respondent, the owner and the insurer of the Lorry are jointly and severally liable to pay compensation.

4. The first respondent remained absent before the Tribunal and therefore, he was set ex-parte. The second respondent, the New India Assurance Company Limited., contested the claim petition on all the grounds available to the insured.

5. It is seen from the records that the learned Motor Accidents Claims Tribunal / cum Chief Judicial Magistrate's Court, Thiruvannamalai, after analysing the evidence on record, awarded a compensation of Rs.2,83,932/- together with interest at the rate of 7.5% 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.

6. Mr.Terry Chellaraja, learned counsel appearing for the appellants / claimants contended that though the claimants have specifically contended that the deceased was earning a sum of Rs.3,000/- per month as a Load man, the Tribunal has fixed the notional income of the deceased only as Rs.1,333/- per month. He further contended that 30% alone has been added towards future prospects of the deceased. He therefore prayed for enhancement of compensation.

7. Per contra, Mr.K.Vinod, learned counsel appearing for the 3rd respondent / Insurance Company Limited contended that the award passed by the Tribunal is based on the well laid principles of law which were in vogue at the time of passing of the orders and therefore, the same need not be disturbed at this stage.

8. The notional income fixed by the Tribunal at Rs.1,333/- per month is meagre and hence, a sum of Rs.3,000/- per month is taken up as the notional income of the deceased. 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), 40% should be added towards future prospects of the deceased. Since there are three dependents, 1/3rd of the income of the deceased should be deducted towards the personal expenses of the deceased. The proper multiplier to be adopted in the instant case is 18 as per the decision rendered in Sarlaverma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121, since the age of the deceased was 24 years on the date of the accident.

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 18

= Rs.6,04,800/-

9. 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.6,04,800/-
2.	Loss of estate	Rs.15,000/-
3.	Loss of consortium	Rs.40,000/-
4.	funeral expenses	Rs.15,000/-

S.No.	Head	Amount granted by this court
	Total	Rs.6,74,800/-

10. Thus, the compensation awarded by the Tribunal is enhanced from Rs.2,83,932/- to Rs.6,74,800/- which would carry interest at the rate of 7.5% per annum.

11. In the result,

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

(ii) The petition as against the respondents 2 and 4 are dismissed.

(iii) The compensation awarded by the Tribunal is enhanced from Rs.2,83,932/- to Rs.6,74,800/-.

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

(v) The respondents 1 and 3 are directed to deposit the enhanced compensation amount i.e., Rs.6,74,800/- (less the amount already deposited if any) jointly and severally 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.185 of 2004 on the file of the Motor Accident Claims Tribunal cum Chief Judicial Magistrate's Court, Thiruvannamalai, within a period of four weeks from the date of receipt of a copy of this Judgment.

(vi) Since the appeal was filed with a delay of 1397 days, the claimants are not entitled to get any interest for the said period.

(vii) On such deposit being made, the appellants / claimants are at liberty to withdraw the same as per the Award passed by the Tribunal after following due process of law. The apportionment granted by the Tribunal shall be kept intact.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

ssn

To

1. The Motor Accidents Claims Tribunal,
Chief Judicial Magistrate's Court,
Thiruvannamalai.

2. The Section Officer,
V.R.Section,
High Court of Madras,
Chennai.

+1 cc to M/s.M.Malar Advocate sr90287

+1 cc to Mr.K.Vinod Advocate sr90437

+1 cc to Mr.D.Bhaskaran Advocate sr90118

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