

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.10.2019

CORAM:

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

CMA.No.344 of 2010

Palanisamy

...Appellant/Petitioner

.Vs.

1.R.Ragunathan

2.The Branch Manager,
National Insurance Co. Ltd.,
81-D, Chetty Street,
Tiruchengode, Namakkal District.

3.T.Marappan

... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 22.04.2009 passed in MCOP.No.334 of 2008 on the file of the Motor Accident Claims Tribunal / Sub Court, Tiruchengode.

For Appellant : Mr.L.Muthusamy

For Respondents : No appearance for R1
Mr.S.Arunkumar for R2
Mr.V.Raghupathi for R3

JUDGMENT

The appellant is the claimant in MCOP.No.334 of 2008 on the file of the Motor Accident Claims Tribunal/Sub Court, Tiruchengode. He filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 and Rule 3 of MACT Rules seeking compensation of Rs.3,00,000/- for the death of one Thirumalai Goundar in a road accident on 18.06.2003.

2. The case of the claimant is that on 18.06.2003, the deceased Thirumalai Goundar was riding his bicycle along Kollapatty Street. At about 8.00 a.m, a speeding mini bus bearing Registration No.TN 28 R 1525 belonging to the 1st respondent and insured with the second respondent, hit him, as a result of which, he sustained injuries and died on the spot.

3. According to the claimant, the accident took place due to the rash and negligent driving of the driver of the mini bus bearing Registration No.TN 28 R 1525 belonging to the 1st respondent and that since the said mini bus was insured with the second respondent, both of them are jointly and severally liable to pay a sum of Rs.3,00,000/- to him.

4. The first respondent, owner of the mini bus remained absent before the Tribunal and therefore, he was set ex-parte. The second respondent, National Insurance Company Limited contested the claim petition. The learned Motor Accident Claims Tribunal / Subordinate Judge, Tiruchengode after analysing the evidence on record, awarded a compensation of Rs.25,000/- together with interest at the rate of 7.5% per annum from the date of the claim petition. 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.

5. Mr.L.Muthusamy, learned counsel appearing for the appellant / claimant would contend that the Tribunal awarded only a sum of Rs.25,000/- merely because the deceased was aged 80 years on the date of the accident. He also relied on the following decisions,

- (i) United India Insurance Co. Ltd., Cuddalore -vs- Kasiammal and 4 others reported in 1997 (III) CTC 346
- (iii) Govindasamy -vs- Ravi and others reported in (2003)1 M.L.J.253

and contended that every legal representative who suffers on account of the death of a person due to a motor vehicle accident should have a remedy for realisation of compensation.

6. In the instant case the claimant and the third respondent are the sons of the deceased. The Tribunal assumed that due to old age the deceased would not be earning anything. At this juncture, it is relevant to point out that the deceased was 80 years old and belonged to lower strata of the society where every person has to work for their livelihood. There is absolutely no evidence on the side of the respondents that the deceased was either bedridden or did not go for work. Therefore the notional monthly income of the deceased is fixed at Rs.3,000/- as he was an agricultural labourer.

7. Since the age of the deceased was 80 years on the date of the accident, the proper multiplier to be adopted in the instant case is 5 as per the decision rendered in Sarlavarma and others vs. Delhi Transport Corporation and another reported in (2009) 6

SCC 121 and 1/3rd should be deducted towards his personal expenses.

Calculation

$$(Rs.3,000/- \times 12 \times 5 \times 2/3 = Rs.1,20,000/-)$$

8. Apart from the above said amount, the appellant / claimant is entitled to a sum of Rs.15,000/-, Rs.40,000/- and Rs.15,000/- towards loss of estate, loss of love and affection 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 under various heads is extracted hereunder:

S.No.	Head	Amount granted
1.	Loss of dependency	Rs.1,20,000/-
2.	Loss of estate	Rs. 15,000/-
3.	Loss of love and affection	Rs. 40,000/-
4.	Funeral expenses	Rs. 15,000/-
Total		Rs.1,90,000/-

9. Thus, the compensation awarded by the Tribunal is enhanced from Rs.25,000/- to Rs.1,90,000/-.

10. In the result,

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

(ii) The compensation awarded by the Tribunal is enhanced from Rs.25,000/- to Rs.1,90,000/-.

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

(iv) The second respondent, National Insurance Company Limited is directed to deposit the enhanced compensation amount i.e., Rs.1,90,000/- (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.334 of 2008 on the file of the Motor Accident Claims Tribunal / Sub Court, Tiruchengode within a period of four weeks from the date of receipt of a copy of this order.

(v) On such deposit being made, the claimants and third respondent are at liberty to withdraw the same as per the apportionment granted before the Tribunal after following due process of law.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

mtl

To

The Subordinate Judge,
The Motor Accidents Claims Tribunal,
Tiruchengode.

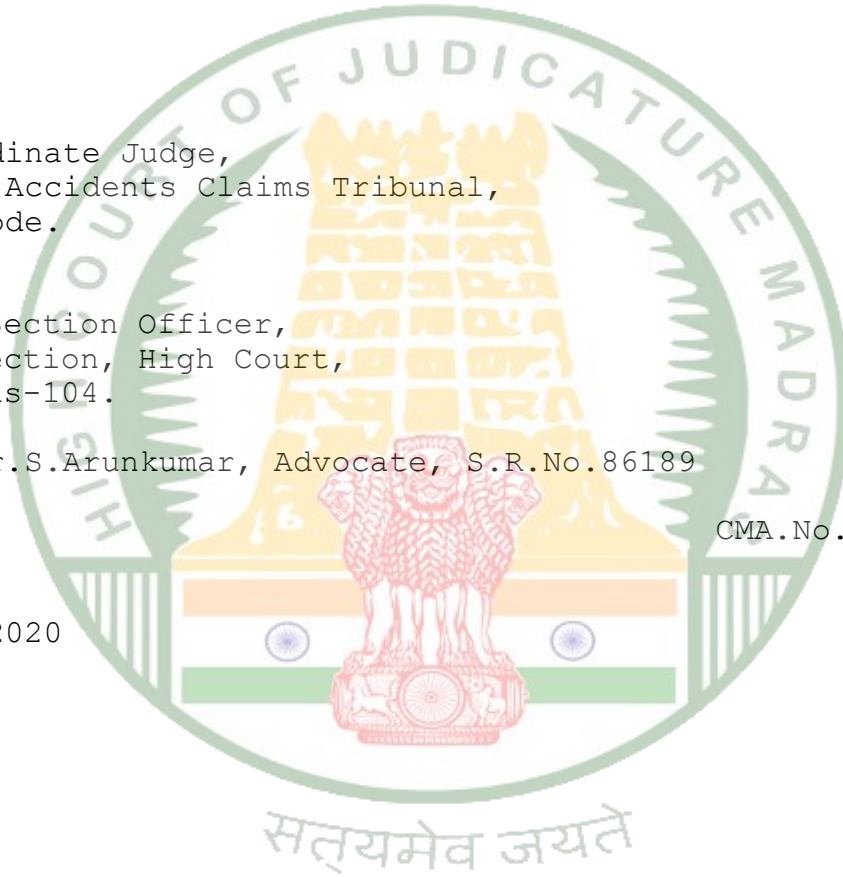
Copy To

The Section Officer,
VR Section, High Court,
Madras-104.

+1cc to Mr.S.Arunkumar, Advocate, S.R.No.86189

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EV(CO)
CS/07/01/2020



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