IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.10.2019

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.3510 of 2010

1.Vijayalakshmi
2.Minor Gowtham
(2nd appellant Minor represented by
his Mother and next friend Vijayalakshmi)
... Appellants/Petitioners

vs.

1.Thangavel (Deceased)

2. The New India Assurance Co. Ltd.,
Divisional Office,
Premier Complex, Five Roads,
Salem-7.

3. Ramakrishnan ... Respondents/Respondents
(3rd Respondent remained exparte)

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and award dated 15.12.2009 made in M.C.O.P.No.1123 of 2007 on the file of the Motor Accidents Claims Tribunal / Principal I Additional District Judge, Salem.

For Appellants : Mr.K.Kuppusamy

For Respondents : Mrs.R.Srividhya for R2
No Appearance for R1 and R3

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JUDGMENT

The appellants are the claimants in M.C.O.P.No.1123 of 2007 on the file of the Motor Accidents Claims Tribunal / Principal I Additional District Judge, Salem. They filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.20,00,000/- for the death of one Mohan, husband of the 1st claimant, father of the 2nd claimant in a road accident on 05.04.2007.

2. The case of the claimants is that on 05.04.2007, the deceased Mohan was riding his motorcyle bearing

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Registration No.TN-30-C-9185 along peramanur main Road, near P.R.N.Hospital. At about 12.00 hours, a speeding lorry bearing Registration No.TN-27-1112 hit the motor cycle, as a result of which, the deceased Mohan fell down and sustained fatal injuries all over his body.

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-27-1112 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 learned Motor Accidents Claims Tribunal / Principal I Additional District Judge, Salem, after analysing the evidence on record, awarded a compensation of Rs.4,69,300/- 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.

5. Mr.K.Kuppusamy, learned counsel appearing for the appellants / claimants contended that the Tribunal did not award any compensation towards future prospects because the age of the deceased Mohan was 47 years at the time of accident and his minor son aged 7 years on the date of accident and therefore, he prayed for enhancement of compensation.

6. Per contra, Mrs.R.Srividhya learned counsel appearing for the 2nd respondent / Insurance Company contended that the Tribunal had awarded just compensation and therefore, the same need not be disturbed at this stage. No representation for the respondents 1 and 3.

7. In the instant case, it is contended that the deceased was owning a lathe machine workshop and was earning a sum of Rs.10,000/- per month. Since no income proof has been produced, the Tribunal fixed the notional income of the deceased as Rs.4,200/-. The accident took place on 05.04.2007 and considering the year of the accident, Rs.7,500/- be fixed as 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), 25% should be added towards future prospects of the deceased. Since there are two 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 13 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 47 years on the date of the accident.

Calculation

Notional Income = Rs.7,500/-

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25% Future Prospects = Rs.1,875/-
Total = Rs.7,500/- + Rs.1,875/- = Rs.9,375/-
After 1/3 deduction = Rs.6,250/-
Loss of dependency
= Rs.6,250/- x 12 x 13
= Rs.9,75,000/-

8. 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.9,75,000/- |
| 2. | Loss of estate | Rs.15,000/- |
| 3. | Loss of consortium | Rs.40,000/- |
| 4. | funeral expenses | Rs.15,000/- |
| | Total | Rs.10,45,000/- |

9. Thus, the compensation awarded by the Tribunal is enhanced from Rs.4,69,300/- to Rs.10,45,000/- which would carry interest at the rate of 7.5% per annum.

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.4,69,300/- to Rs.10,45,000/-

(iii) 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.

(iv) The 2nd respondent / Insurance Company is directed to deposit the enhanced compensation amount i.e., Rs.10,45,000/- (less the amount already deposited if any) 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.1123 of 2007 on the file of the Motor Accident Claims Tribunal / Principal I Additional District Judge, Salem, within a period of four weeks from the date of receipt of a copy of this Judgment.

(v) On such deposit being made, the appellants /

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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.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

Ssn

To

1. The Principal I Additional District Judge,
   Motor Accidents Claims Tribunal,
   Salem.

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

+1cc to Mr.K.Kuppusamy, Advocate, S.R.No. 90249
+1cc to Mr.R.Sreevidhya, Advocate, S.R.No. 91059

C.M.A.No.3510 of 2010

NRL(CO)
GN(26/08/2020)

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