

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 28.11.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

CMA.No.3597 of 2010
and
MP.No.1 of 2010

United India Insurance Co. Ltd.,
Oriental Complex,
No.77, A.A.Street,
Salem-1.

...Appellant/3rd Respondent

vs.

1.A.Paramasivam
2.Palaniammal
3.Sakunthala
4.Marakkal
5.M.Deepan
6.P.Murugesan
7.N.Sivakozhundhu

...1 to 4 Respondents/ Petitioners

8.Bajaj Allianz General Insurance Co. Ltd.,
No.3/152, Jeeva Complex,
Trichy Road,
Namakkal-1.

... 5 to 8 Respondents/1,2,4,5 Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 26.04.2010 passed in MCOP.No.546 of 2008 on the file of the Motor Accident Claims Tribunal / Subordinate Court, Sankari.

For Appellant : Mr.S.Arunkumar

For Respondents: Mr.N.Manokaran for R1 to R4

No appearance for R5 to R8

J U D G M E N T

The United India Insurance Company, the third respondent in MCOP.No.546 of 2008 on the file of the Subordinate Court, Sankari has filed the present appeal. The respondents 1 to 4 / claimants filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.9,00,000/- for the death of one Ammasi, father of the first and second claimants, husband of the third claimant and son of the fourth claimant in a road accident on 29.06.2008.

2. The case of the claimant in nutshell is as follows:

On 29.06.2008, the deceased Ammasi was travelling as a pillion rider in a Bajaj CT 100 DX motorcycle bearing Registration No.TN 30 J 3318 along Thiruchengode Main Road, Narappansavadi Bus Stop and at about 10.30 am, a speeding Maruthi Zen Car bearing Registration No. TN 27 R 1500, hit the motorcycle, as a result of which, the deceased Ammasi was thrown away and sustained fatal injuries. He was immediately rushed to the Government Hospital at Sankari. However, he died in the Hospital on 18.07.2008. According to the claimants, the rash and negligent driving of the driver of the Maruthi Zen Car belonging to the Sixth respondent was the cause of the accident and that since the said Car was insured with the appellant / United India Insurance Company, the driver, the owner and the insurer of the lorry are jointly and severally liable to pay compensation.

3. The learned Subordinate Judge / Motor Accident Claims Tribunal, Sankari after analysing the evidence on record, awarded a compensation of Rs.7,02,551/- together with interest at the rate of 7.5% per annum and directed the respondents 5, 6 and the present appellant to pay compensation to the claimants jointly and severally. Questioning the quantum of compensation awarded by the Tribunal, United India Insurance Company has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

4. Heard Mr.S.Arunkumar, learned counsel appearing for the appellant and Mr.N.Manokaran, learned counsel appearing for the respondents 1 to 4. No appearance on behalf of the respondents 5 to 8.

5. In the claim petition, it is contended that the deceased was doing Textile business and was also an agriculturist, earning a sum of Rs.10,000/- per month. In the absence of income proof, the Tribunal fixed the notional income of the deceased as Rs.7,500/- per month, which cannot be found fault with. The Tribunal did not award any amount towards future prospects of the deceased, especially, when the deceased was aged 60 years on the date of the accident. 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, 10% should be added towards future prospects of the deceased. Since there are four dependents, 1/3rd of his income should be deducted towards his personal expenses. The proper multiplier to be adopted in the instant case is 9 as per the decision rendered in Sarlavarma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121.

Calculation

Notional Income = Rs.7,500/-

10% Future Prospects = Rs.750/-

Total = Rs.7,500/- + Rs.750/- = Rs.8,250/-

After 1/3rd deduction = Rs.5,500/-

Loss of dependency
= Rs.5,500/- x 12 x 9
= Rs.5,94,000/-

6. 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 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 by this Court under various heads is extracted hereunder:

S.No.	Head	Amount granted by this court
1.	Loss of dependency	Rs.5,94,000/-
2.	Loss of estate	Rs.15,000/-
3.	Loss of love and affection	Rs.40,000/-
4.	Funeral expenses	Rs.15,000/-
Total		Rs.6,64,000/-

7. In the result,

(i) The Civil Miscellaneous Appeal is allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

(ii) The quantum of compensation awarded by the Tribunal is scaled down from Rs.7,02,551/- to Rs.6,64,000/-, which would carry interest at the rate of 7.5% per annum.

(iii) The present appellant / United India Insurance Company is directed to deposit the compensation awarded by this Court i.e., Rs.6,64,000/- (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.546 of 2008 on the file of the Motor Accident Claims Tribunal / Subordinate Court, Sankari within a period of four weeks from the date of receipt of a copy of this order.

(iv) On such deposit being made, the respondents 1 to 4 / claimants are at liberty to withdraw the same as per the orders passed by the Tribunal after following due process of law. The apportionment made by the Tribunal shall be kept intact.

(v) The appellant / United India Insurance Company is entitled to withdraw the excess amount paid by them over and above the amount awarded by this Court.

Sd/-

Assistant Registrar(CCC)

//True Copy//

To

1.The Motor Accidents Claims Tribunal,
The Subordinate Court,
Sankari.

2.VR Section,
High Court of Madras,
Chennai.

+lcc to Mr.N.Manokaran , Advocate SR.No. 99659

+lcc to Mr.S.Arunkumar , Advocate SR.No. 99575

CMA.No.3597 of 2010

and

MP.No.1 of 2010

CA CO

A.SK(16/07/2020)



WEB COPY