

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.10.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

CMA.No.1490 of 2011

1.Chandra
2.Vijayakumar

...Appellants/Claimants

.Vs.

1.Deepak Jain
2.The Divisional Manager,
National Insurance Company Ltd.,
No.19, Officer's Line,
Vellore.

... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 22.12.2007 passed in MCOP.No.402 of 2006 on the file of the Motor Accident Claims Tribunal / District Court, Thiruvannamalai.

For Appellants : Mrs.A.Subadra
for Mrs.M.Malar

For Respondents : Vacated - R1-Exparte
Mrs.R.Sreevidhya for R2

JUDGMENT

The appellants are the claimants in MCOP.No.402 of 2006 on the file of the Motor Accident Claims Tribunal / District Court, Thiruvannamalai. They filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.10,00,000/- for the death of one Thomas, son of the first claimant and brother of the second claimant in a road accident on 19.01.2006.

2. The case of the claimants is that on 19.01.2006, the deceased was riding a fish cart after loading pots filled with water and when he was on Medavakkam Road, at about 09.30 p.m, a speeding Maruthi Car bearing Registration No. TN 01 X 1795 hit his fish cart, as a result of which, he fell down and sustained injuries. Immediately, he was rushed to Government General Hospital, Chennai. However, he succumbed to injuries.

3. According to the claimants, the accident took place due to the rash and negligent driving of the driver of the Maruthi Car bearing Registration No. TN 01 X 1795 belonging to the first respondent, was the cause of the accident and that since the said Maruthi Car was insured with the second respondent, National Insurance Company Limited, the owner and the insurer of the Maruthi Car are jointly and severally liable to pay compensation.

4. The first respondent, owner of the Maruthi Car 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 District Judge, Thiruvannamalai after analysing the evidence on record, awarded a compensation of Rs.2,27,000/- together with interest at the rate of 7.5% per annum. 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. Mrs.M.Malar, learned counsel appearing for the appellants / claimants would contend that though the deceased was a cook by profession, earning a sum of Rs.6,000/- per month, the Tribunal fixed his monthly income only as Rs.2,500/- and that no amount was awarded towards future prospects. She therefore prayed for enhancement of compensation.

6. Per contra, Mrs.R.Sreevidhya, learned counsel appearing for the second respondent / National 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 order and therefore, the same need not be disturbed at this stage.

7. The Tribunal had fixed monthly income of the deceased as Rs.2,500/-, since no documentary evidence was adduced on the side of the claimants. However, in the claim petition it is contended that the deceased was a cook by profession and definitely he would have earned a sum of Rs.6,000/- per month. Therefore, the notional income of the deceased is fixed as Rs.6,000/-. A perusal of the orders passed by the Tribunal shows that no amount was awarded towards future prospects 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), if the deceased is less than 50 years, 40% should be added towards future prospects of the deceased. The deceased was aged 30 years on the date of accident and therefore 40% of his income should be added to his actual income. Since the deceased died as a bachelor, 50% should be deducted towards the personal expenses of the deceased and the proper multiplier to be adopted in the instant case is 17 as per the decision rendered in Sarlavarma and others vs. Delhi Transport

Corporation and another reported in (2009) 6 SCC 121.

Loss of income

$$[(Rs.6,000 + Rs.2,400 (Rs.6,000/- of 40\%) \times 12 \times 17 \times 50\% = Rs.8,56,800/-)]$$

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 love and affection and funeral expenses respectively. The award passed under various heads is extracted hereunder:

S.No.	Head	Amount granted
1.	Loss of income	Rs.8,56,800/-
2.	Loss of estate	Rs.15,000/-
3.	Loss of love and affection	Rs.40,000/-
4.	Funeral expenses	Rs.15,000/-
Total		Rs.9,26,800/-

9. Thus, the compensation awarded by the Tribunal is enhanced from Rs.2,27,000/- to Rs.9,26,800/-.

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.2,27,000/- to Rs.9,26,800/-.

(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 the receipt of Court fee.

(iv) The second respondent, National Insurance Company Limited is directed to deposit the enhanced compensation amount i.e., Rs.9,26,800 /- (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.402 of 2006 on the file of the Motor Accident Claims Tribunal / District Court, Thiruvannamalai within a period of four weeks from the date of receipt of a copy of this order.

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

Sd/-

Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

To

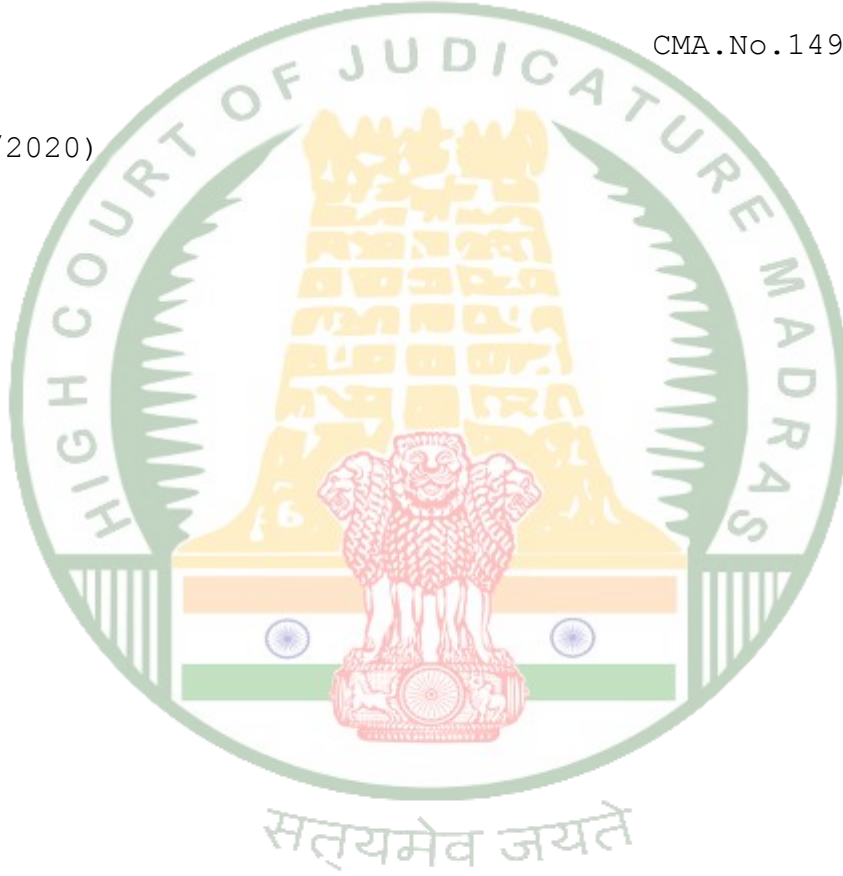
The Motor Accidents Claims Tribunal,
The District Judge,
Thiruvannamalai.

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The Section Officer,
VR Section, High Court, Madras

+lcc to M/s.M.Malar, Advocate SR.No.88636

CMA.No.1490 of 2011

CNR(CO)
GMY(03/02/2020)



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