IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.10.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

CMA.Nos.954 of 2009 & 1522 of 2015
and
MP.No.1 of 2009

The National Insurance Co. Ltd.,
First Floor, 638,
Cuddalore main road,
P.B.No.7, Attur Salem - 636 102.

...Appellant in CMA.No.954 of 2009/2nd Respondent

1.R.Bharathi
2.Minor A.Harish
(Rep. by his next friend and mother
1st petitioner)

...Appellants in CMA.No.1522 of 2015/Petitioner

vs.

1.R.Bharathi
2.Minor A.Harish
(Rep. by his next friend and mother
1st petitioner) ..1st & 2nd Respondents/Petitioners
3.R.Kandasamy
.. 3rd Respondents in CMA No.954 of 2009/1st Respondent

1.The National Insurance Co. Ltd.,
First Floor, 638,
Cuddalore main road,
P.B.No.7, Attur Salem - 636 102.
2.R.Kandasamy
... Respondents in CMA No.1522 of 2015/Respondents

COMMON PRAYER: Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 15.10.2008 passed in MCOP.No.1746 of 2006 on the file of the Motor Accident Claims Tribunal / Principal District Judge, Salem.

CMA.No.954 of 2009
For Appellant : Mr.S.Arunkumar

For Respondents : Mr.R.Nalliyappan for R1 and R2
No appearance for R3

CMA.No.1522 of 2015

For Appellants : Mr.R.Nalliyappan

For Respondents : Mr.S.Arunkumar for R1
R2 - Giving UP

COMMON JUDGMENT

The National Insurance Company, the second respondent in MCOP.No.1746 of 2006 on the file of the Motor Accident Claims Tribunal / Principal District Judge, Salem has filed the appeal in CMA.No.954 of 2009 questioning the quantum of compensation awarded by the Tribunal and the claimants in the said claim petition have filed CMA.No.1522 of 2015 seeking for enhancement of compensation.

2. The parties are referred to as per their ranking before the Tribunal and at appropriate places their ranks in the present Civil Miscellaneous Appeal would also be indicated.

3. The case of the claimants in nutshell is as follows:

On 29.03.2006, the deceased Arivu, husband of the first claimant and father of the second claimant was driving his Hero Honda Splender two wheeler bearing Registration No. TN 30 E 4830 along Hasthampatti road. At about 01.30 pm, a speeding lorry bearing Registration No. TN 28 B 6669 belonging to the first respondent and insured with the second respondent, hit the two wheeler, as a result of which, the deceased Arivu sustained injuries all over his body. Immediately, he was rushed to the Government Hospital, Salem. However, he succumbed to injuries on the same day.

4. According to the claimants, the rash and negligent driving of the driver of the lorry belonging to the first respondent was the cause of the accident 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.

5. The owner of the lorry remained absent before the Tribunal and therefore, he was set exparte. The second respondent / National Insurance Company contested the claim petition on all the grounds available to the insured. The learned Principal District Judge / Motor Accident Claims Tribunal, salem after analysing the evidence on record, awarded a compensation of Rs.8,15,000/- together with interest at the rate of 7.5% per annum to the claimants. Both the claimants and the Insurance Company have questioned the quantum of compensation awarded by the Tribunal.

6. Mr.R.Nalliyappan, learned counsel appearing for the claimants contended that though the deceased was running a pharmacy, the Tribunal fixed the monthly income of the deceased as Rs.6,000/- per month and did not add any amount towards future prospects of the deceased. He further contended that very meagre amounts were awarded under other heads and therefore prayed for enhancement of compensation.

7. Per contra, Mr.S.Arunkumar, learned counsel appearing for the National Insurance Company contended that the claimants did not adduce any evidence to show that the pharmacy run by the deceased was closed subsequent to his death and therefore, the Tribunal was wrong in fixing the income of the deceased as Rs.6,000/- per month and only a sum of Rs.4,500/- should be taken up as notional monthly income of the deceased. He therefore, prayed for scaling down the compensation.

8. In the instant case, the deceased was aged 36 years on the date of the accident and was survived by his wife and a minor son. It is admitted case of both the parties that he was running a pharmacy. However, no documentary evidence was adduced to prove the actual income of the deceased. The notional income fixed by the Tribunal at Rs.6,000/- per month cannot be found fault with. However, the Tribunal did not add any amount towards future prospects of the deceased, especially, when the deceased was 36 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 (SC), 40% should be added towards future prospects of the deceased. Since there are two dependents, 1/3rd of his income should be deducted towards his personal expenses. The proper multiplier to be adopted in the instant case is 15 as per the decision rendered in Sarlavarma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121, since the age of the deceased was 36 years on the date of the accident.

Calculation

Notional Income = Rs.6,000/-
40% Future Prospects = Rs.2,400/-
Total = Rs.6,000/- + Rs.2,400/- = Rs.8,400/-
After 1/3 deduction = Rs.5,600/-

Loss of dependency

= Rs.5,600/- x 12 x 15
= Rs.10,08,000/-

9. Apart from the above said amount, the 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.10,08,000/-
2.	Loss of estate	Rs.15,000/-
3.	Loss of consortium	Rs.40,000/-
4.	Funeral expenses	Rs.15,000/-
Total		Rs.10,78,000/-

Thus, the compensation awarded by the Tribunal is enhanced from Rs.8,15,000/- to Rs.10,78,000/- which would carry interest at the rate of 7.5% per annum.

10. In the result,

(i) CMA.No.954 of 2009 is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

(ii) CMA.No.1522 of 2015 is allowed. No costs.

(iii) The quantum of compensation awarded by the Tribunal is enhanced from Rs.8,15,000/- to Rs.10,78,000/-.

(iv) The claimants are directed to pay court fee for the enhanced compensation amount, if any, within a period of three weeks from the date of this order and the Registry is directed to draft the decree only after receipt of the Court fee.

(v) The National Insurance Company is directed to deposit the enhanced compensation amount i.e., Rs.10,78,000/- (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.1746 of 2006 on the file of the Motor Accident Claims Tribunal / Principal District Judge, Salem within a period of four weeks from the date of receipt of a copy of this order.

(vi) On such deposit being made, the claimants are at liberty to withdraw the same as per the order 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(CS)

//True copy//

Sub Assistant Registrar

mbi

To

The Motor Accidents Claims Tribunal,
The Principal District Judge,
Salem.

Copy To

The Section Officer,
VR Section,
High Court, Madras

+1cc to Mr.R.Nalliyappan, Advocate SR.No.86807

+1cc to Mr.S.Arunkumar, Advocate SR.No.87438

CMA.Nos.954 of 2009
& 1522 of 2015
& MP.No.1 of 2009

VG I(CO)
GMY(13/03/2020)