

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.09.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

CMA.No.967 of 2009

- 1.Kavitha
- 2.Minor R.Abinaya
- 3.Minor Aswin Balaji
- 4.C.Karuppusamy
- 5.K.Angammal

(Minors 2 and 3 are represented by
their next friend and mother Kavitha)

...Appellants/Petitioners

.Vs.

- 1.K.Senthil Kumar
- 2.Kaliyan Mooppanan
- 3.National Insurance Co. Ltd.,
Attur, Salem District.
- 4.K.Ramakrishnan
- 5.The New India Assurance Co. Ltd.,
Mettupalayam, Coimbatore.

... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 04.08.2008 passed in MCOP.No.182 of 2006 on the file of the Motor Accident Claims Tribunal / Fast Track Court No.III, Dharapuram.

For Appellants : Mr.P.Parthikannan
for Mr.S.Kaithamalai Kumaran

For Respondents : Mr.S.Arunkumar for R3
Mrs.Elveera Rani for R5
No appearance for R1, R2 and R4

JUDGMENT

The appellants are the claimants in MCOP.No.182 of 2006 on the file of the Motor Accidents Claims Tribunal / Fast Track Court No.III, Dharapuram. They filed the claim petition

under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.50,00,000/- for the death of one Murthy @ Rangasamy, husband of the first claimant, father of the claimants 2 and 3 and son of the claimants 4 and 5 in a road accident that took place on 21.03.2004.

2. The case of the claimants is that on 21.03.2004, when the deceased Murthy @ Rangasamy was travelling in his Tata Indica Car bearing Registration No. TN 40 B 7799, a speeding lorry bearing Registration No. TN 39 C 8199 belonging to the second respondent and insured with the third respondent / National Insurance Company Limited hit the Tata Indica Car, as a result of which, the deceased sustained fatal injuries and died on the spot.

3. According to the claimants, the deceased was aged 36 years on the date of the accident and was doing business earning a sum of Rs.75,000/- per month. It is also contended by them that the deceased was owning a mini bus and a lorry. The further contention of the claimants is that the rash and negligent driving of the driver of the lorry was the cause of the accident and that since the lorry was insured with the third respondent, both the owner and the insurer of the lorry are jointly and severally liable to pay compensation to them.

4. The fourth respondent is the owner of the Tata Indica car and the car was insured with the fifth respondent / New India Assurance Company Limited. The claimants have contended that the fourth and fifth respondents are only formal parties to the claim petition.

5. The first, second and fourth respondents remained absent before the Tribunal and therefore, they were set ex-parte. The third and fifth respondents contested the claim petition. The learned Judge, Fast Track Court No. III / Motor Accidents Claims Tribunal, Dharapuram after analysing the evidence on record, awarded a compensation of Rs.7,00,000/- to the claimants. Not 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.

6. Mr.P.Parthikannan, learned counsel appearing for the appellants/ claimants contended that when the claimants have specifically contended in their claim petition that the deceased had many successful business ventures and was earning well, the Tribunal had fixed the monthly income of the deceased only at Rs.5,000/-, which according to him is very meagre.

7. Per contra, Mr.S.Arunkumar, learned counsel appearing for the third respondent / National Insurance Company Limited contended that the claimants filed the income tax returns of the deceased for the assessment year 2003 - 2004, wherein, the annual income of the deceased is clearly

indicated as Rs.60,412/-. He would therefore contend that the Tribunal was right in fixing the monthly income of the deceased as Rs.5,000/-.

8. A perusal of the income tax returns (Ex.P18) shows that the deceased had shown his annual income as Rs.60,412/- for the assessment year 2003-2004 and therefore, the Tribunal had rightly fixed the monthly income of the deceased as Rs.5,000/-. Since there are five persons depending on the income of deceased, 1/4 is deducted towards the personal expenses of the deceased. As the age of the deceased was 36 years on the date of the accident, 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. As per the decision laid down 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. The "loss of dependency" is calculated as follows:

Calculation

Notional Income = Rs.5,000/-
40% Future Prospects = Rs.2,000/-
Total = Rs.5,000/- + Rs.2,000/- = Rs.7,000/-
After 1/4 deduction = Rs.5,250/-

Loss of dependency

= Rs. 5,250/- x 12 x 15
= Rs.9,45,000/-

9. 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. The award passed under various heads is extracted hereunder:

S.No.	Head	Amount granted
1.	Loss of dependency	Rs.9,45,000/-
2.	Loss of estate	Rs.15,000/-
3.	Loss of consortium	Rs.40,000/-
4.	Funeral expenses	Rs.15,000/-
Total		Rs.10,15,000/-

10. Thus, the quantum of compensation awarded by the Tribunal is enhanced from Rs.7,00,000/- to Rs.10,15,000/- which would carry interest at the rate of 7.5% per annum.

11. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed.

(ii) The quantum of compensation awarded by the Tribunal is enhanced from Rs.7,00,000/- to Rs.10,15,000/-.

(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 the receipt of the Court fee.

(iv) The third respondent, National Insurance Company Limited is directed to deposit the entire compensation amount i.e., Rs.10,15,000/- (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.182 of 2006 on the file of the Motor Accidents Claims Tribunal / Fast Track Court No.III, Dharapuram 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 apportionment made by the Tribunal shall be kept intact.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

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To

The Motor Accidents Claims Tribunal,
The Fast Tract Court No.III,
Dharapuram.

Copy To

The Section Officer,
V.R. Section, High Court,
Madras.(2 copies)

+1cc to Mr.Elveera Ravindran, Advocate, S.R.No. 79619

+1cc to Mr.S.Arunkumar, Advocate, S.R.No.79250

+1cc to Mr.A.K.Kumarasamy, Advocate, S.R.No. 79612

CMA.No.967 of 2009

PVS(CO)
GN(16/09/2020)