

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.11.2019

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.532 of 2010

1.A.Rajendran
2.Hari Shankar @ Saravanan
3.Jayasudhakar ... Appellants/Petitioners

vs.

1.C.Perumal Gounder
2.National Insurance Co. Ltd.,
Branch Office, 2nd Floor,
81, Chetty Street, Opp. Bus Stand,
Tiruchengode, Namakkal District.
... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment dated 24.06.2009 in M.C.O.P.No.246 of 2007 on the file of the Motor Accident Claims Tribunal / Chief Judicial Magistrate, Namakkal.

Appellants : Mr.C.Kulanthaivel
R1 : Given up
R2 : Mr.D.Bhaskaran

J U D G M E N T

The appellants are the claimants in M.C.O.P.No.246 of 2007 on the file of the Motor Accident Claims Tribunal / Chief Judicial Magistrate, Namakkal. 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 Chandrika, wife of the first claimant and mother of the claimants 2 and 3 in a road accident on 02.05.2006.

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

On 02.05.2006, the deceased and others were travelling in a maruthi omni van bearing Registration No. TN 27 K 0331 on Coimbatore - Salem National Highways Road and at about 00.40 a.m, a speeding lorry bearing Registration No. KA 01 AA 1219 hit the maruthi omni van, as a result whereof, the deceased sustained fatal injuries and died on the spot.

3. According to the claimants, the rash and negligent driving of the driver of the lorry bearing Registration No. KA 01 AA 1219 belonging to the first respondent was the cause of the accident and that since the said lorry was insured with the second respondent / National Insurance Company Limited, the owner and the insurer of the lorry are jointly and severally liable to pay compensation.

4. The first respondent remained absent before the Tribunal and therefore, he was set ex-parte. The second respondent / National Insurance Company Limited contested the claim petition on all the grounds available to the insured. The learned Chief Judicial Magistrate / Motor Accident Claims Tribunal, Namakkal after analysing the evidence on record, awarded a compensation of Rs.6,54,000/- 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. Heard Mr.C.Kulanthaivel, learned counsel appearing for the appellants and Mr.D.Bhaskaran, learned counsel appearing for the second respondent. No appearance on behalf of the first respondent.

6. In the claim petition, it is contended that the deceased was engaged in selling sarees, earning a sum of Rs.10,000/- per month. The Tribunal fixed the notional income of the deceased as Rs.6,000/- per month. It is seen from the Income Tax Returns and Tax Receipts (Ex.P9), that the deceased was earning a sum of Rs.1,05,500/- per annum and therefore the same is taken up for calculating loss of dependency. The Tribunal did not also award any amount towards "future prospects" of the deceased, especially, when the deceased was aged 45 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, 25% should be added towards future prospects of the deceased. Since there are three dependents, $\frac{1}{3}^{\text{rd}}$ of the deceased's income should be deducted towards her personal expenses. The proper multiplier to be adopted in the instant case is 13 as per the decision rendered in Sarlavarma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121.

Calculation

Annual Income = Rs.1,05,500/-
25% Future Prospects = Rs.26,375/-
Total = Rs.1,05,500/- + Rs.26,375/- = Rs.1,31,875/-
After $\frac{1}{3}$ deduction = Rs.87,917/-

Loss of dependency

= Rs.87,917/- x 13
= Rs.11,42,921/-

7. 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.11,42,921/-
2.	Loss of estate	Rs.15,000/-
3.	Loss of consortium	Rs.40,000/-
4.	Funeral expenses	Rs.15,000/-
Total		Rs.12,12,921/-

8. Thus, the compensation awarded by the Tribunal is enhanced from Rs.6,54,000/- to Rs.12,12,921/- which would carry interest at the rate of 7.5% per annum.

9. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed.
No costs.

(ii) The quantum of compensation awarded by the Tribunal is enhanced from Rs.6,54,000/- to Rs.12,12,921/-.

(iii) The appellants / 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.

(iv) The second respondent / National Insurance Company Limited is directed to deposit the enhanced compensation amount i.e., Rs.12,12,921/- (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 M.C.O.P.No.246 of 2007 on the file of the Motor Accident Claims Tribunal / Chief Judicial Magistrate, Namakkal 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

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mtl

To

The Motor Accidents Claims Tribunal,
The Chief Judicial Magistrate,
Namakkal.

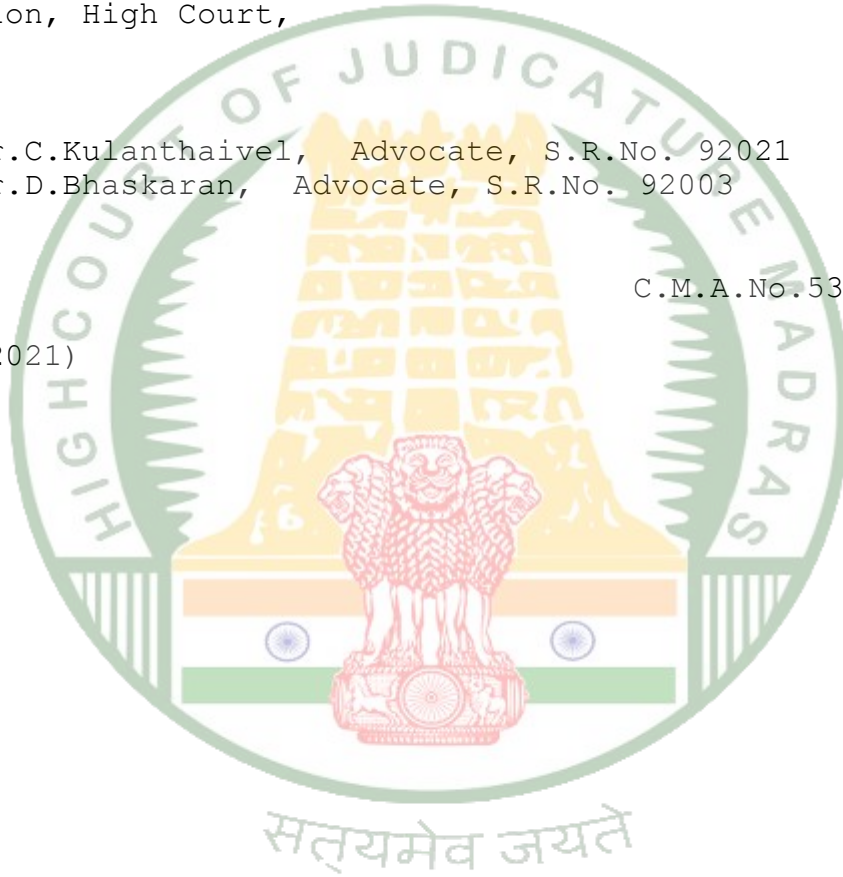
Copy To

The Section Officer,
V.R. Section, High Court,
Madras.

+1cc to Mr.C.Kulanthaivel, Advocate, S.R.No. 92021
+1cc to Mr.D.Bhaskaran, Advocate, S.R.No. 92003

C.M.A.No.532 of 2010

NMI (CO)
GN (21/01/2021)



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