

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.10.2019

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.1522 of 2013

1. S.Amuthadevi
2. S.N.Subramania ... Appellants / Petitioners

..Vs..

1.R.Kandasamy
2.The National Insurance Company Limited
Division 10
Flat No.101-106,
No.1, BMC House,
Connaught Place,
New Delhi ...Respondents / Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment dated 22.02.2010 in M.C.O.P.No.164 of 2010 on the file of the Motor Accidents Claims Tribunal / Sub Court, Sathyamangalam.

For Appellants : Mr.Ma.P.Thangavel

For respondents : Mr.N.Vijya Raghavan for R2
No appearance for R1

JUDGMENT

The appellants are the claimants in MCOP.No.164 of 2010 on the file of the Motor Accident Claims Tribunal / Sub Court, Sathyamangalam. They filed the claim petition under Section 166 of the Motor Vehicles Act, 1988, seeking compensation of Rs.8,00,000/- for the death of their son Manoharan in a road accident, which took place on 04.11.2008.

2. The case of the claimants is that on 04.11.2008, when the deceased Manokaran was standing near SRT Corner road, a speeding Maruthi Car bearing Registration No.TN-36-H-2728 belonging to the 1st respondent and insured with the 2nd respondent, hit him, as a result of which, he sustained injuries. Though he was immediately rushed to the Government Hospital at Coimbatore, he succumbed to injuries on the same day.

3. According to the claimants, the rash and negligent driving of the driver of the Maruthi Car bearing Registration No. TN 36 H 2728 belonging to the first respondent, was the cause for the accident and that since the owner of the Car insured his vehicle with the second respondent/National Insurance Company Limited, both of them are jointly and severally liable to pay compensation.

4. Both the respondents contested the claim petition and the learned Subordinate Judge, Sathyamangalam after analysing the evidence on record, awarded a compensation of Rs.3,46,000/- to the claimants together with interest at the rate of 7.5% per annum. 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.

5. Mr.Ma.Pa.Thangavel, learned counsel appearing for the appellants / claimants contended that though the deceased was working in a lorry body building company and was earning a sum of Rs.15,000/- per month, the Tribunal had fixed the income of the deceased as Rs.3,000/- per month. He further contended that no amount was awarded towards 'future prospects' of the deceased and prayed for enhancement of compensation.

6. Per contra, Mr.N.Vijayaraghavan, learned counsel appearing for the second respondent / National India 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 and prayed for dismissal of the Appeal.

7. No appearance on behalf of the 1st respondent.

8. In the instant case, it is contended by the claimants that the deceased was working as a lorry body builder cum painter for Sathyamangalam Bakkiyalakshmi Labour body builders. Since no proof of income was filed by the claimants, the notional monthly income of the deceased was fixed as Rs.3,000/- pm by the Tribunal. However, the same appears to be very meager. Since the accident took place in the year 2008, the notional monthly income of the deceased fixed is Rs.7,500/-. As rightly pointed out by the learned counsel for the Appellant no amount was added 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, 40% should be added towards "future prospects" of the deceased, as the deceased was aged about 30 years on the date of the accident. He died as a Bachelor and therefore, 50% should be

deducted towards his personal expenses as per the decision rendered in Sarlavarma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 12. The proper multiplier to be adopted in the instant case is 17, as per the decision rendered in Sarlavarma (cited supra) in (2009) 6 SCC 12.

Calculation

Total Income = Rs.7,500/-

40% Future Prospects = Rs.3,000/-

Total = Rs.7,500/- + Rs.3,000/- = Rs.10,500/-

After 1/4 deduction = Rs.5,250/-

Loss of dependency

= Rs. 5,250/- x 12 x 17 = Rs.10,71,000/-

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 by this Court under various heads is extracted hereunder:

S.No.	Head	Amount granted
1.	Loss of dependency	Rs.10,71,000/-
2.	Loss of estate	Rs.15,000/-
3.	Loss of love and affection	Rs.40,000/-
4.	Funeral expenses	Rs.15,000/-
Total		Rs.11,41,000/-

9. Thus, the compensation awarded by the Tribunal is enhanced from Rs.3,46,000/- to Rs.11,41,000/-, which would carry interest at the rate of 7.5% per annum.

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.3,46,000/- to Rs.11,41,000/-.

(iii) The appellants / claimants are directed to pay the court fee for the enhanced compensation amount, if any, within a period of three weeks from today ie., 14.09.2019, 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.11,41,000/- (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.164 of 2010 on the file of the Motor Accident Claims

Tribunal / Sub Court, Sathyamangalam, 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 order passed by the Tribunal after following due process of law. The ratio of apportionment granted by the Tribunal shall be kept intact.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

The Subordinate Judge,
Motor Accident Claims Tribunal / Subordinate Court,
Sathyamangalam.

Copy to

The Section Officer,
VR Section, High Court, Madras.

+1cc to Mr.N.Vijayaraghavan, Advocate Sr.86568
+1cc to Mr.Ma.P.Thangavel, Advocate Sr.86540

C.M.A.No.1522 of 2013

ev[col]
srg 05/06/2020