

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.11.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

C.M.A.No.1594 of 2013

1.G.Chitradevi
2.T.G.Vikram
3.A.Vijayambal ... Appellants/Petitioners

Vs.

1.N.Jeyaraman
2.K.Nagaraj
3.United India Insurance Company,
5, Big Bazaar Street, Dharapuram,
Tiruppur District. ... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 19.02.2013 passed in M.C.O.P.No.82 of 2011 on the file of the Motor Accident Claims Tribunal / Sub Court, Tiruppur.

For Appellants : Mr.S.S.Swaminathan

For RR 1 & 2 : No appearance

For R3 : Mrs.I.Malar

J U D G M E N T

The appellants are the claimants in M.C.O.P.No.82 of 2011 on the file of the Motor Accident Claims Tribunal / Sub Court, Tiruppur. They filed the claim petition under Section 166 of the Motor Vehicles Act, 1988, seeking compensation of Rs.25,00,000/- for the death of one A.Gopinath, in a road accident on 01.11.2010.

2. The case of the claimants is that on 01.11.2010, the deceased A.Gopinath was riding his motorcycle bearing Registration No. TN 33 U 7743 on Kangayam - Tiruppur road. About 9.00 P.M., when he was nearing Pallakkattupudur Petrol Bunk, a speeding lorry bearing Registration No. TN 28 X 7399, driven by the first respondent hit him, as a result of which, he fell down and sustained multiple injuries and died on the spot. According to the claimants, the rash and negligent driving of the first respondent was the cause of the accident and that since the said lorry was insured by the second

respondent / owner with the third respondent / United India Insurance Company, both the owner of the lorry and the third respondent / United India Insurance Company are jointly and severally liable to pay the compensation.

3. The driver and owner of the lorry remained absent before the Tribunal and therefore they were set exparte. The learned Subordinate Judge / Motor Accidents Claims Tribunal, Sub Court, Tiruppur, after analysing the evidence on record, awarded a compensation of Rs.14,43,500/- to the claimants 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, seeking enhancement of compensation.

4. Mr.S.S.Swaminathan, learned counsel appearing for the appellants / claimants contended that though the claimants were depending only on the income of the deceased, the Tribunal awarded a very meager amount of Rs.13,93,337/- towards loss of income and no amount was awarded for future prospects of the deceased.

5. Per contra, Mrs.I.Malar, learned counsel appearing for the third respondent / United India Insurance Company contended that the Tribunal after considering all the aspects of the case has awarded just compensation and the same need not be disturbed at this stage.

6. No appearance on behalf of the respondents 1 and 2.

7. In the instant case, the Tribunal while fixing monthly income of the deceased had taken into account the Form-16, filed by the claimants during the assessment year 2011-2012 (Ex.P12). It is relevant to point out that in Ex.P12, the period for which the income tax is assessed is indicated as April 2010 to October 2010, which means the income assessed was not for the full year but only for seven months. The accident took place on 01.11.2010. The claimants have also adduced salary certificate (Ex.P9) showing the income of the deceased as Rs.18,000/- per month. In the circumstances, the monthly income fixed by the Tribunal as Rs.13,000/- is erroneous and therefore a sum of Rs.18,000/- is fixed as monthly income of the deceased. The deceased was aged 54 years on the date of accident and the Tribunal did not award any amount towards future prospects. As per the decision rendered in National Ins. Co. Vs. Pranay Sethi reported in 2017(2)TNMAC 609 (SC), 10% should be added towards future prospects. There are three persons depending on the income of the deceased and 1/3 is deducted towards personal expenses of the deceased and the "loss of dependency" is calculated as follows:

Calculation:

Monthly Income = Rs.18,000/-
10% Future Prospects = Rs.1,800/-
Total = Rs.18,000/- + Rs.1,800/- = Rs.19,800/-
After 1/3 deduction = Rs.13,200/-

Loss of dependency:

= Rs.13,200/- x 12 x 11
= Rs.17,42,400/-

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 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.17,42,400/-
2.	Loss of estate	Rs.15,000/-
3.	Loss of love and affection	Rs.40,000/-
4.	Funeral expenses	Rs.15,000/-
Total		Rs.18,12,400/-

8. In the result,

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

(ii) The compensation awarded by the Tribunal is enhanced from Rs.14,43,500/- to Rs.18,12,400/-.

(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 the date of this order and the Registry is directed to draft the decree only after receipt of the Court fee.

(iv) The third respondent / United India Insurance Company is directed to deposit the enhanced compensation amount i.e., Rs.18,12,400/- (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.82 of 2011 on the file of the Motor Accident Claims Tribunal / Sub Court, Tiruppur within a period of four weeks from the date of receipt of a copy of

(v) On such deposit being made, the appellants / claimants are at liberty to withdraw the same as per the apportionment made by the Tribunal after following due process of law.

Sd/-
Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

krk

To

1.The Motor Accidents Claims Tribunal,
The Subordinate Judge,
Tiruppur.

Copy To: The Section Officer,
VR Section, High Court, Madras.

+1cc to Mr.S.S.Swaminathan, Advocate SR.No.92393

+1cc to Mrs.I.Malar, Advocate SR.No.92302

C.M.A.No.1594 of 2013

LN(CO)
GMY(06/08/2020)



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