

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 05.02.2019
CORAM:
THE HONOURABLE MR. JUSTICE RMT.TEEKA RAMAN
C.M.A.No.2134 of 2011 and
M.P.No.1 of 2011

The Divisional Manager,
The New India Assurance Company Limited,
Vellore. ... Appellant/2nd Respondent

Vs.

1.Anbu Mani
2.Minor Jaswanth
rep. by mother Anbu Mani
3.C.Divakar
4.D.Rani ... Respondents 1 to 4/
Petitioners
5.R.Balaji
6.R.Santhkumari ... Respondents 5&6/
Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 31.03.2011 made in M.C.O.P.No.539 of 2009 on the file of the Motor Accidents Claims Tribunal (Principal District Judge) at Vellore.

For Appellant : Mr.M.Krishnamoorthy

For Respondents : Mrs.R.T.Sundari
for Mr.M.P.Jayaprakash
for R1 to R4
R5 and R6 - exparte

JUDGMENT

This Civil Miscellaneous Appeal is filed by the New India Assurance Company, challenging the Judgment and decree passed in M.C.O.P.No.539 of 2009, dated 31.03.2011, on the file of the Motor Accidents Claims Tribunal (Principal District Judge) at Vellore.

2. The brief case of the respondents 1 to 4/claimants is as follows:

On 25.08.2009, at about 08.10 am, the deceased D.Vinoth Kumar was riding his two wheeler bearing Registration No. TN 25

J 2052 from Ussoor to Vellore road. While he was nearing Sri Narayani Vidyalaya School, Ariyur, a Navasakthi bus bearing Registration No. TN 23 AD 9399, belonging to the fifth and sixth respondents, dashed against the deceased two wheeler, as a result of which, the deceased D.Vinoth Kumar sustained grievous injuries all over his body and died on the spot.

3. According to the respondents 1 to 4/claimants, the rash and negligent driving of the driver of the said bus was the cause of the accident and that the said bus was insured with the present appellant. Therefore, the present appellant, the fifth and sixth respondents herein are jointly and severally liable to pay compensation of Rs.50,00,000/- to them.

4. The fifth and sixth respondents herein remained absent before the Tribunal and therefore, they were set ex-parte. The learned Principal District Judge, Motor Accidents Claims Tribunal, Vellore after analysing the evidence on record, awarded a compensation of Rs.17,51,000/- together with interest at the rate of 7.5% per annum.

5. Heard both sides and perused the materials available on records.

6. Mr. M. Krishnamoorthy, learned counsel appearing for the appellant drew the attention of this Court to the evidence of Thiru. V. L. Sankaran (PW3) and stated that the employment of the deceased was not proved in the manner known to the law. He contended that since the age of the deceased was taken as 28 years on the date of the accident, the proper multiplier to be adopted in the instant case is 17 as per the decision rendered in Sarlavarma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121.

7. Per contra, Mrs. R. T. Sundari, learned counsel appearing for the respondents 1 to 4/claimants submitted that in support of the deceased D. Vinoth Kumar's employment, the office bearer of the company was examined as PW3. In addition to that, Identity Card (Ex.P8) and Pay Certificate (Ex.P9) were marked by the respondents 1 to 4/claimants.

8. In the absence of any age proof, it appears that the Motor Accidents Claims Tribunal has taken up the age of the deceased as 28 years as per post-mortem certificate and accordingly, the multiplier to be adopted in the instant case is 17. Coming into the income aspect of the deceased Vinoth Kumar, Identity Card (Ex.P8) and Pay Certificate (Ex.P9) have been marked. Thiru. V. L. Sankaran (PW3) has deposed that he was the Managing Partner of 'R. S. M. Engineering Works' and the deceased Vinoth Kumar was working as a supervisor in firm.

9. It is contended by the learned counsel appearing for the appellant that the deceased was earning a sum of Rs.15,000/- per month. In the absence of any authorised document, the Tribunal has fixed the notional income of the deceased as Rs.12,000/- and deducted 1/3 for the personal expenses of the deceased and awarded a sum of Rs.17,28,000/- (Rs.96,000/- x 18) towards loss of income. However, the Tribunal adopted multiplier of 18 instead of 17. As per the decision rendered in Sarlavarma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121, the proper multiplier to be adopted in the instant case is 17. Therefore, loss of income would come to Rs.96,000 x 17 = Rs.16,32,000/-.

10. Coming into the question of non-conventional heads, a sum of Rs.40,000/- is awarded towards loss of consortium as against Rs.15,000/- awarded by the Tribunal, a sum of Rs.10,000/- is awarded towards transportation as against Rs.3,000/- awarded by the Tribunal and a sum of Rs.15,000/- is awarded towards funeral expenses as against Rs.5,000/- awarded by the Tribunal.

11. Accordingly, the award of the Tribunal in M.C.O.P.No. 539 of 2009 is modified as follows:

Sl. No.	Particulars	Amount granted by the Tribunal	Amount granted by this Court
1	Loss of Income	Rs.17,28,000/-	Rs.16,32,000/-
2.	Loss of consortium	Rs.15,000/-	Rs.40,000/-
3.	Funeral expenses	Rs.5,000/-	Rs.15,000/-
4.	Transportation	Rs.3,000/-	Rs.10,000/-
	Total	Rs.17,51,000 /-	Rs.16,97,000/-

12. In the result,

(i) The Civil Miscellaneous Appeal is allowed to the limited extent indicated above. No costs. Consequently, the connected Miscellaneous Petition is closed.

(ii) The quantum of compensation awarded by the Tribunal is scaled down from Rs.17,51,000/- to Rs.16,97,000/-.

(iv) The present appellant - New India Assurance Company Limited is directed to deposit the entire compensation of Rs.16,97,000/- (if not 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.539 of 2009, dated 31.03.2011, on the file of the Motor Accidents Claims Tribunal (Principal District Judge) at Vellore within a period of eight weeks from the date of receipt

of a copy of this order.

(v) On such deposit being made, the respondents 1,3 and 4 are permitted to withdraw the entire amount as apportioned by the Tribunal.

(vi) The second respondent herein is a minor, and therefore, his compensation amount is ordered to be deposited in any one of the nationalized bank until he attains majority and the first respondent is permitted to withdraw the interest directly from the bank, once in three months in order to maintain the minor.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

mbi

To

1. The Motor Accidents Claims Tribunal,
The Principal District Judge, Vellore.

Copy To: The Section Officer,
V.R.Section, High Court, Madras.

+1 cc to M/s.M.P.JAYAPRAKASH, Advocate, Sr.No. 9871

+1 cc to M/s.M.Krishnamoorthy, Advocate, Sr.No. 9829

C.M.A.No.2134 of 2011 and
M.P.No.1 of 2011

CNR(CO)
CSL/08.05.2019

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