

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.11.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

C.M.A.No.1818 of 2013

1.Panchalai
2.Minor. premkumar
3.Minor. Karthik
4.Minor. Nandhini
5.Paramasivam
6.Lakshmi ... Appellants
(Minor appellants 2 to 4 are represented by their mother, Panchalai)

Vs.

1.M/s. All India Movement for Seva,
No.195, Kadalur, Cheyyar,
Kanchipuram District.
2.The Divisional Manager,
The New India Assurance Company Limited,
No.42, Big Street, Tiruvannamalai Town. ... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 28.09.2010 passed in M.C.O.P.No.433 of 2007 on the file of the Motor Accident Claims Tribunal / District Court, Tiruvannamalai.

For Appellants	: Mr.F.Terry Chellaraja
For R1	: No appearance
For R2	: Mr.J.Chandran

J U D G M E N T

The appellants are the claimants in M.C.O.P.No.433 of 2007 on the file of the Motor Accident Claims Tribunal / District Court, Tiruvannamalai. They filed the claim petition under Section 166 of the Motor Vehicles Act, 1988, seeking compensation of Rs.10,00,000/- for the death of one Krishnan, husband of the first claimant, father of the claimants 2 to 4 and son of the claimants 5 and 6 in a road accident on 17.04.2007.

2. The case of the claimants is that on 17.04.2007, the deceased was travelling in an ambulance van bearing Registration No. TN 45 TCK 6883 on Chennai - Trichi National Highways and at about 05.30 A.M., the driver of the ambulance van drove the vehicle rashly and negligently and hit a bus bearing Registration No. TN 45 H 7373, as a result whereof, the deceased sustained fatal injuries and died on the spot. According to the claimants, the rash and negligent driving of the driver of the ambulance van belonging to the first respondent was the cause of the accident and that since the said van was insured with the second respondent / New India Assurance Company Limited, the owner and the insurer of the ambulance van are jointly and severally liable to pay the compensation.

3. The owner of the ambulance van remained absent before the Tribunal and therefore he was set exparte. The second respondent / New India Assurance Company Limited contested the claim petition on all the grounds available to the insured. The learned District Judge / Motor Accident Claims Tribunal, Tiruvannamalai, after analysing the evidence on record, awarded a compensation of Rs.4,81,000/- 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.

4. Heard Mr.F.Terry Chellaraja, learned counsel appearing for the appellants / claimants, Mr.J.Chandran, learned counsel appearing for the second respondent. No appearance on behalf of the first respondent.

5. In the claim petition, it is contended that the deceased was an agriculturist, earning a sum of Rs.10,000/- per month. However no income proof was adduced by the claimants. The accident took place in the year 2007 and therefore the notional monthly income of the deceased is fixed as Rs.7,500/-. The Tribunal did not award any amount towards future prospects of the deceased, especially, when he was aged 32 years on the date of the accident. As per the decision rendered in **National Insurance Company Vs. Pranay Sethi** reported in **2017(2)TNMAC 609 (SC)**, 40% should be added

towards future prospects of the deceased. Since there are six dependents, 1/5th of the deceased's income is deducted towards his personal expenses. The proper multiplier to be adopted in the instant case is '16' as per the decision rendered in **Sarlavarma and others vs. Delhi Transport Corporation and another** reported in (2009) 6 SCC 121. The "loss of dependency" is calculated as follows:

Calculation:

Notional Income = Rs.7,500/-

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

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

After 1/5 deduction = Rs.8,400/-

Loss of dependency:

= Rs.8,400/- x 12 x 16

= Rs.16,12,800/-

6. 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.16,12,800/-
2.	Loss of estate	Rs.15,000/-
3.	Loss of love and affection	Rs.40,000/-
4.	Funeral expenses	Rs.15,000/-
Total		Rs.16,82,800/-

7. In the result,

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

(ii) The quantum of compensation awarded by the Tribunal is enhanced from Rs.4,81,000/- to Rs.16,82,800/-, which would carry interest at the rate of 7.5% per annum.

(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 respondents 1 and 2 are jointly and severally directed to deposit the enhanced compensation amount i.e., Rs.16,82,800/- (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.433 of 2007 on the file of the Motor Accident Claims Tribunal / District Court, Tiruvannamalai, within a period of four weeks from the date of receipt of a copy of this order.

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(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.

(vi) Since the appeal is filed with a delay of 379 days, the appellants / claimants are not entitled to claim interest for the delay period.

21.11.2019

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Index : Yes/No
Internet : Yes/No
Speaking / Non-speaking order

To

The Motor Accidents Claims Tribunal,
The District Court,
Tiruvannamalai.

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