

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.11.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

C.M.A.No.2508 of 2011

1.Jayalakshmi
2.Minor. Ganesh
3.Minor. Gowtham
4.Kattaiyan
5.Dhanam ... Appellants/Petitioners

(Minor appellants 2 & 3 are represented by their mother Jayalakshmi, first appellant herein)

Vs.

1.Pari
2.The Divisional Manager,
United India Insurance Company Limited,
Having their office at
No.46, Katpadi Dalai, Vellore.
3.M/s.Dhanalakshmi Transports,
Having their office at
No.9/C. Gnanathikkam pillai Street,
Kallukuli, Trichy - 620 020.
4.The Branch Manager,
The Oriental Insurance Company Limited,
Having their office at
No.75, Krishnan Street,
Thiruvannamalai. ... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 08.09.2010 passed in M.C.O.P.No.275 of 2007 on the file of the Motor Accident Claims Tribunal / District Court, Tiruvannamalai.

For Appellants : Mr.F.Terry Chellaraja
For RR 1 & 3 : No appearance
For R2 : Mr.S.Arunkumar
For R4 : Mr.R.Sivakumar

J U D G M E N T

The appellants are the claimants in M.C.O.P.No.275 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 Jayapal, husband of the first claimant, father of the claimants 2 and 3 and son of the claimants 4 and 5 in a road accident on 10.12.2006.

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

On 10.12.2006, the deceased Jayapal was travelling as a cleaner in a tempo van bearing Registration No. TN 10 H 6914 on Chennai - Trichy National Highways, near Melmaruvathoor Temple Lake Bund and at about 05.45 A.M., the driver of the tempo van drove the vehicle rashly and negligently and hit a container lorry bearing Registration No. TN 45 D 9979, as a result of which, 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 tempo van belonging to the first respondent was the cause of the accident and that since the said tempo van was insured with the United India Insurance Company Limited, the owner and the insurer of the tempo van are jointly and severally liable to pay the compensation.

4. The owner of the tempo van remained absent before the Tribunal and therefore he was set exparte. The learned District Judge / Motor Accident Claims Tribunal, Tiruvannamalai, after analysing the evidence on record, awarded a compensation of Rs.7,11,000/- 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.

5. Heard Mr.F.Terry Chellaraja, learned counsel appearing for the appellants / claimants, Mr.S.Arunkumar, learned counsel appearing for the second respondent and Mr.R.Sivakumar, learned counsel appearing for the fourth respondent. No appearance on behalf of the respondents 1 and 3.

6. In the claim petition, the claimants contended that the deceased was a cleaner, earning a sum of Rs.7,000/- per month. However, no income proof was adduced by the claimants. The accident took place in the year 2006 and therefore the notional monthly income of the deceased is fixed as Rs.7,000/-. The Tribunal did not award any amount towards future prospects. The deceased was aged 30 years on the date of the accident and 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. Since there are five dependents, 1/4th is deducted from his income towards his personal expenses. The proper multiplier to be adopted in the instant case is '17' as per the decision 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.7,000/-
40% Future Prospects = Rs.2,800/-
Total = Rs.7,000/- + Rs.2,800/- = Rs.9,800/-
After 1/4 deduction = Rs.7,350/-

Loss of dependency:

= Rs.7,350/- x 12 x 17
= Rs.14,99,400/-

7. 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.14,99,400/-
2.	Loss of estate	Rs.15,000/-
3.	Loss of love and affection	Rs.40,000/-
4.	Funeral expenses	Rs.15,000/-
Total		Rs.15,69,400/-

8. 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.7,11,000/- to Rs.15,69,400/-, 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 owner and insurer of the tempo van (respondents 1 and 2) are jointly and severally directed to deposit the enhanced compensation amount i.e., Rs.15,69,400/- (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.275 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.

(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

//True Copy//

Sub Assistant Registrar

krk

To

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

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

+1cc to Mr.M.Malar, Advocate, S.R.No. 97680

+1cc to Mr.S.Arunkumar, Advocate, S.R.No. 98167

+1cc to Mr.R.Sivakumar, Advocate, S.R.No. 97357

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PA(CO)
GN(09/02/2021)

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