

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.10.2019

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.1840 of 2013

1.Mrs.V.Vasanth
2.Mrs.B.Usha
3.Mr.V.Gopi

... Appellants/Petitioners

vs.

1.K.Manikandaram

2.The Oriental Insurance Co. Ltd.,
No.8, Esplanade, Chennai - 600 108.

... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment dated 11.12.2012 in M.C.O.P.No.1223 of 2010 on the file of the Motor Accident Claims Tribunal / Chief Judge, Small Causes Court, Chennai.

Appellants : Mr.V.Mohan Choudary

I Respondent : Exparte in Tribunal

II Respondent : Mr.N.Vijayaraghavan

J U D G M E N T

The appellants are the claimants in M.C.O.P.No.1223 of 2010 on the file of the Motor Accident Claims Tribunal / Chief Judge, Small Causes Court, Chennai. 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 J.Vasudevan, husband of the first claimant, father of the claimants 2 and 3 in a road accident on 05.06.2009.

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

On 05.06.2009, the deceased J.Vasudevan was travelling in a bus bearing Registration No.TN 23 AE 7835 and at about 14.15 hrs, the driver of the bus drove the vehicle rashly and negligently and hit a lorry bearing Registration No.KA 01 C 7776, as a result whereof, the deceased sustained fatal injuries and died on spot.

3. According to the claimants, the accident took place due to the rash and negligent driving of the driver of the bus bearing Registration No.TN 23 AE 7835 belonging to the first respondent and that since the said bus was insured with the second respondent, Oriental Insurance Company Limited, both of them are jointly and severally liable to pay compensation.

4. The first respondent remained absent before the Tribunal and therefore, he was set ex-parte. The second respondent / Oriental Insurance Company Limited contested the claim petition on all the grounds available to the insurer. The learned Chief Judge / Motor Accident Claims Tribunal, Small Causes Court, Chennai after analysing the evidence on record, awarded a compensation of Rs.4,36,000/- together with interest at the rate of 7.5% per annum to the claimants. 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.V.Mohan Choudary, learned counsel appearing for the appellants and Mr.N.Vijayaraghavan, learned counsel appearing for the second respondent. No appearance on behalf of the first respondent.

6. In the claim petition, it is contended that the deceased was working as a mason, earning a sum of Rs.400/- per day. In the absence of income proof, the Tribunal fixed the monthly income of the deceased as Rs.4,500/-. It is pertinent to point out that the accident took place in the year 2009 and in the facts and circumstances, this Court is of the opinion that fixing a sum of Rs.7,500/- as notional monthly income of the deceased would meet the ends of justice. The Tribunal did not award any amount towards "future prospects" of the deceased, especially, when the deceased was aged 55 years on the date of the accident. 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, 10% should be added towards future prospects of the deceased. Since there are three dependents, 1/3rd of the deceased's income should be deducted towards his personal expenses. The proper multiplier to be adopted in the instant case is 11 as per the decision rendered in Sarla Verma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121.

Calculation

Notional Income = Rs.7,500/-
10% Future Prospects = Rs.750/-
Total = Rs.7,500/- + Rs.750/- = Rs.8,250/-
After 1/3 deduction = Rs.5,500/-

Loss of dependency

= Rs.5,500/- x 12 x 11
= Rs.7,26,000/-

7. 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 consortium" and "funeral expenses" respectively, as per the decision rendered in National Insurance Co. vs Pranay sethi and others reported in 2017 (2) TNMAC 601 (SC). The award passed by this Court under various heads is extracted hereunder:

S.No.	Head	Amount granted by this court
1.	Loss of dependency	Rs.7,26,000/-
2.	Loss of estate	Rs.15,000/-
3.	Loss of consortium	Rs.40,000/-
4.	Funeral expenses	Rs.15,000/-
Total		Rs.7,96,000/-

8. Thus, the compensation awarded by the Tribunal is enhanced from Rs.4,36,000/- to Rs.7,96,000/- which would carry interest at the rate of 7.5% per annum.

9. In the result,

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

(ii) The compensation awarded by the Tribunal is enhanced from Rs.4,36,000/- to Rs.7,96,000/-.

(iii) The appellants / claimants are directed to pay 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 second respondent / Oriental Insurance Company Limited is directed to deposit the enhanced compensation amount i.e., Rs.7,96,000/- (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 M.C.O.P.No.1223 of 2010 on the file of the Motor Accident Claims Tribunal / Chief Judge, Small Causes Court, Chennai 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(CO)

//True copy//

mtl

To

The Chief Judge,
The Motor Accidents Claims Tribunal,
Small Causes Court,
Chennai.

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

+2cc to Mr.V.Mohan Choudary, Advocate SR.No.89480

+1cc to Mr.N.Vijayaraghavan, Advocate SR.No.89923

C.M.A.No.1840 of 2013

EV(CO)
GMY(27/01/2020)



WEB COPY