

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.12.2019

CORAM:

THE HONOURABLE MRS. JUSTICE V. BHAVANI SUBBAROYAN

CMA.No.1898 of 2013

1. V.Nagabooshanam
2. T.Vadamalai

...Appellants/Claimants

Vs.

1. R.Baskaran
2. ICICI Lombard General Insurance co. Ltd.,
Chotabhai Centre, 2nd and 3rd floors,
140, Nungambakkam High Road,
Chennai 600 034.

...Respondents/Respondents

PRAYER: This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 07.02.2013 passed in MCOP No.5871 of 2011 by the Chief Judge, Court of Small Causes, Motor Accidents Claims Tribunal, Chennai.

For Appellants	:	Mr.R.Kalai Arasan
For 2nd Respondent	:	Mrs R.Sreevidhya
For 1st respondent	:	No appearance

J U D G M E N T

The appellants are the claimants in MCOP No.5871 of 2011 on the file of the Chief Judge, Court of Small Causes, Motor Accidents Claims Tribunal, Chennai and they filed the present appeal seeking enhancement of compensation passed in the above said claim petition.

2. The appellants/claimants filed the above said claim petition seeking compensation of Rs.15,00,000/- for the death of their son Arunkumar, who died in a motor accident that took place on 12.07.2011.

3. The case of the appellants is that on 12.07.2007, the deceased Arunkumar was riding a motorcycle bearing registration No. TN-18-F-6754 along with one Devendaran as a pillion rider and he had proceeded towards Egmore from Manali

new Town. When they were nearing Elanthanur-Manali Junction, a speeding tipper lorry bearing registration No.TN-03-6575 hit the motorcycle from behind, as a result of which both of them sustained sustained grievous injuries and the deceased died on the spot. According to the claimants, the rash and negligent driving of the tipper lorry belonging to the first respondent was the cause of the accident and that since the first respondent insured his vehicle with the 2nd respondent, both of them are jointly and severally liable to pay compensation to them.

4. In the trial court, the first respondent, the owner of the tipper lorry remained absent and was set *ex parte*. The 2nd respondent, the ICICI Lombard General Insurance Company Limited contested the claim petition.

5. The Tribunal, after analysing the evidence on record, awarded a compensation of Rs.5,61,400/- together with interest at the rate of 7.5% p.a. from the date of claim petition till the date of deposit.

6. Not satisfied with the quantum of compensation awarded by the Tribunal, the claimants have filed the present appeal by raising the following grounds.

(i) The Trial Court has erred in deducting 50% of the income for the personal expenses, as the deceased was a bachelor. But the Trial court ought to have deducted only 1/3rd towards personal expenses.

(ii) Though the deceased was working in M/s Sriram Fibers, Manali and was earning a sum of Rs.10,000/- per month, the Trial Court wrongly fixed only a sum of Rs.4,500/- as monthly income.

(iii) The Trial Court has committed error by adopting multiplier '14', since the deceased was aged 22 years on the date of accident.

(iv) The Trial court has erred in awarding very meagre amounts towards "Loss of dependency" and "funeral expenses" and hence the compensation awarded by the Trial court has got to be enhanced.

7. The learned counsel appearing for the claimants/appellants submitted that though the deceased was working in M/s Sriram Fibers, Manali and earned a sum of Rs.10,000/- per month, the Tribunal had fixed the monthly income of the deceased only as Rs.4,500/-. He also contended that very meagre amounts were awarded towards "Funeral Expenses" and "Loss of love and affection" and no amounts were awarded towards "Damages to clothes", "Loss of Estate" and "Loss of Expectation of life". He therefore prayed for enhancement of compensation.

8. The learned counsel appearing for the 2nd respondent contended that the Tribunal after considering the well laid principles of law which prevailed at the time of passing of the award, had awarded a sum of Rs.5,61,400/- to the claimants and the same need not be disturbed at this stage.

9. The claimants have contended that the deceased was working in M/s Sriram Fibers, Manali and was earned a sum of Rs.10,000/- per month. However no proof of income has been filed. In the absence of proof of income, notional income is fixed at Rs.7,500/- per month, since the date of accident was took place in the year 2011. Further, though the Tribunal has added 30% towards future prospect, this court fixed the same as 40%. The deceased was aged 22 years on the date of accident and therefore, proper multiplier to be adopted in the instant case is ' 18 '. The deceased was a bachelor on the date of accident. Therefore, 50% should be deducted towards his personal expenses . Thus, Loss of dependency is calculated as follows.

Notional Income + 40% future prospects (7,500+3000)= 10,500

Less 50% towards personal expenses (10,500-5250)= 5,250

Proper multiplier = 18

Loss of dependency (5250x12x 18) = 11,34,000

The learned counsel appearing for the respondent contended that the Trial Court has awarded a sum of Rs.30,000/- each (totally Rs.60,000/) towards " loss of love and affection" , which is on the higher side and hence, he prayed to reduce the same. The above said contention is accepted and hence Rs.40,000/- is awarded towards " Loss of love and affection". In addition to that, the claimants are also entitled to Rs.15,000/-, Rs.15,000/- towards "Loss of Estate" and "Funeral Expenses" . The revised compensation awarded under various heads is extracted hereunder.

Sl.N o	Heads	Amount
1	Loss of dependency (5250x12x18)	11,34 ,000
2	Loss of love and affection	40,000
3	Loss of Estate	15,000
4	Funeral Expenses	15,000
	Total	12,04, 000

This amount would carry interest at the rate of 7.5% per annum from the date of claim petition.

9. In the result,

(i) The civil miscellaneous appeal is allowed in part.
No costs.

(ii) The compensation awarded by the Tribunal is enhanced from 5,61,400 to 12,04,000/-.

(iii) The 2nd respondent is directed to deposit the enhanced compensation amount of Rs.12,04,000/- together with interest at the rate of 7.5% p.a. from the date of claim petition till the date of deposit (less the amount already deposited by them), within 8 weeks from the date of receipt of a copy of this order.

(iv) On such deposit being made by the 2nd respondent, the first claimant/first appellant is entitled to receive a sum of Rs.7,00,000 (seven lakhs) and the 2nd claimant/2nd appellant is entitled to receive a sum of Rs.5,04,000/- (five lakhs and four thousand), after following due process of law.

s/d-
Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

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To

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

2.The Section Officer
VR Section, High Court, Madras 104.

+1 CC to Mr.N.M. Muthurajan, Advocate sr 100544

+1 CC to Ms.R. Sreevidya, Advocate sr 101756.

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GP(CO)
SP(20/07/2020)