

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 21.11.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA
C.M.A.No.2701 of 2011

1.B.Dharani Priyadharshini
2.B.Janani Priyadharshini
3.N.Balasubramaniam ... Appellants/Claimants
Vs.

1.Kathiresan

2.M/s. Bajaj Alliance General Insurance Company Limited,
Door No.1, (Office No.6-A),
Peoples Park, IIIrd floor,
Government Art College Road,
Coimbatore. ... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 05.04.2011 passed in M.C.O.P.No.585 of 2009 on the file of the Motor Accident Claims Tribunal / Additional District Court, Fast Track Court - II, Gobichettipalayam.

For Appellants : Mr.S.Kamadevan
For R1 : Ex-parte
For R2 : Mr.R.Rathna Thara

J U D G M E N T

The appellants are the claimants in M.C.O.P.No.585 of 2009 on the file of the Motor Accident Claims Tribunal / Additional District Court, Fast Track Court - II, Gobichettipalayam. They filed the claim petition under Section 166 of the Motor Vehicles Act, 1988, seeking compensation of Rs.30,00,000/- for the death of one S.Tamilarasi, mother of the claimants 1 and 2 and wife of the claimant 3 in a road accident on 16.11.2009.

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

On 16.11.2009, the deceased was riding her TVS Scooty bearing Registration No. TN 33 AJ 4048 on Gobi - Kunnathur Main Road, near Nagaya Theater and at about 07.20 P.M., a speeding Mahindra Van bearing Registration No. TN 38 L 9119 hit her, as a result of which, she sustained fatal injuries and died on the way to hospital. According to the claimants, the rash and negligent driving of the driver of the Mahindra Van belonging to the first respondent was the cause of the accident and that since the said van was insured with the second respondent / Bajaj Alliance General Insurance Company Limited, the owner and the insurer of the van are jointly and

severally liable to pay compensation.

3. The owner of the van remained absent before the Tribunal and therefore he was set exparte. The second respondent / Bajaj Alliance General Insurance Company Limited contested the claim petition on all the grounds available to the insured. The learned Additional District Judge / Motor Accident Claims Tribunal, Fast Track Court - II, Gobichettipalayam, after analysing the evidence on record, awarded a compensation of Rs.6,05,000/- 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.S.Kamadevan, learned counsel appearing for the appellants / claimants and Mr.R.Rathna Thara, 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 a tailor and was also promoting plant nursery, earning a sum of Rs.16,000/- per month. In order to prove her income, the claimants have filed Income Tax returns for the assessment year 2006-2007 (Ex.A13), in which the income from the house property is shown as Rs.5,944/- per annum and income from business / profession is shown as Rs.1,15,500/- per annum. The Tribunal without considering Ex.A13, had fixed the notional income of the deceased as Rs.4,500/- per month contending that the claimants did not adduce sufficient documentary evidence to prove the income of the deceased. The Income Tax returns clearly shows that the income of the deceased was Rs.1,21,444/- per annum. However, the income from the house property amounting to Rs.5,944/- cannot be taken into consideration while calculating loss of dependency and therefore a sum of Rs.1,15,500/- is taken up for calculating loss of dependency. The Tribunal did not awarded any amount towards future prospects, especially when the deceased was aged 44 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), 25% should be added towards future prospects. Since there are three dependents, 1/3rd of her income is deducted towards personal expenses. The proper multiplier to be adopted in the instant case is '14' 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.1,15,500/-

25% Future Prospects = Rs.28,875/-

Total = Rs.1,15,500/- + Rs.28,875/- = Rs.1,44,375/-

After 1/3 deduction = Rs.96,250/-

= Rs.96,250/- x 14
= Rs.13,47,500/-

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.13,47,500/-
2.	Loss of estate	Rs.15,000/-
3.	Loss of love and affection	Rs.40,000/-
4.	Funeral expenses	Rs.15,000/-
Total		Rs.14,17,500/-

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.6,05,000/- to Rs.14,17,500/-.

(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 van (respondents 1 and 2) are jointly and severally directed to deposit the enhanced compensation amount i.e., Rs.14,17,500/- (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.585 of 2009 on the file of the Motor Accident Claims Tribunal / Additional District Court, Fast Track Court - II, Gobichettipalayam, 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(CS)

//True Copy//

Sub Assistant Registrar

To

1.The Additional District Judge,
Motor Accidents Claims Tribunal,
Fast Track Court - II,
Gobichettipalayam

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

+1cc to Mr.R.Rathna Thara, Advocate SR.No. 97665

+1cc to Mr.S.Kamadevan, Advocate SR.No. 97259

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A.SK(02/09/2020)



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