

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.10.2019

CORAM:

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

CMA.NO.220 OF 2012

1.Chellam
2.M.Madhaiyan

...Appellants/Petitioners

.Vs.

1.R.S.Bothumani
(Remained exparte before the Trial Court)

2.The New India Assurance Co. Ltd.,
No.375, Anna Salai, Canara Bank 2nd Floor,
Saidapet, Chennai - 600 015.

... Respondents/Respondents

PRAYER:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 01.06.2011 passed in MCOP.No.3096 of 2007 on the file of the Motor Accident Claims Tribunal/Chief Judge, Small Causes Court, Chennai.

For Appellants : Mr.K.Ayyadurai
for Mr.N.M.Muthurajan

For Respondents: Mr.J.Chandran for R2
Exparte - R1

JUDGMENT

The appellants are the claimants in MCOP.No.3096 of 2007 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.14,00,000/- for the death of their son Ashok Kumar in a road accident on 23.08.2007.

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

On 23.08.2007, the deceased Ashok Kumar was riding his motorcycle bearing Registration No. TN 22 AM 5441 along Arcot

Road and he was proceeding towards Valasaravakkam from Porur and at about 19.15 hours, when he was nearing Devaraj Hardware, Ajay Garden, Arcot Road, a speeding van bearing Registration No. TN Z 1476 hit his motorcycle, as a result whereof, Ashok Kumar sustained fatal injuries and died on the spot.

3. According to the claimants, the accident took place due to the rash and negligent driving of the driver of the van bearing Registration No. TN Z 1476 belonging to the first respondent was the cause of the accident and that since the said van was insured with the second respondent, the owner and the insurer of the van are jointly and severally liable to pay compensation.

4. The first respondent, owner of the van remained absent before the Tribunal and therefore, he was set ex-parte. The second respondent, New India Assurance Company Limited contested the claim petition. The learned Chief Judge / Motor Accidents Claims Tribunal, Small Causes Court, Chennai after analysing the evidence on record, awarded a compensation of Rs.4,40,000/- together with interest at the rate of 7.5% per annum. Not 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. Mr.N.M.Muthurajan, learned counsel appearing for the appellants / claimants would contend that though the deceased was working as Manager Human Resources for M/s.Novel Furniture Systems Private Limited, Chennai earning a sum of Rs.7,500/- per month, the Tribunal fixed the notional income of the deceased as Rs.5,000/- per month. He would further contend that no amount was added towards future prospects and prayed for enhancement of compensation.

6. Per contra, Mr.J.Chandran, learned counsel appearing for the second respondent / New India Assurance Company Limited contended that the Award passed by the Tribunal is based on the well laid principles of law which were in vogue at the time of passing of the order and therefore, the same need not be disturbed at this stage.

7. The notional income fixed by the Tribunal at Rs.5,000/- per month is very low and therefore, a sum of Rs.7,500/- is taken up as notional monthly income of the deceased. 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 (SC), 40% should be added towards future prospects of the deceased. Since the deceased died as a bachelor, 50% should be deducted towards his personal expenses. The deceased was aged 27 years on the date of accident and the proper multiplier to be

adopted in the instant case is 17 as per the decision rendered in Sarla Verma and Others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121.

Calculation

$$[(Rs.7,500/- + Rs.3,000/- (Rs.7,500/- of 40\%) \times 12 \times 17 \times 50\% = Rs.10,71,000/-)]$$

8. 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 love and affection and funeral expenses respectively. The award passed under various heads is extracted hereunder:

S.No.	Head	Amount granted
1.	Loss of income	Rs.10,71,000/-
2.	Loss of estate	Rs. 15,000/-
3.	Loss of love and affection	Rs. 40,000/-
4.	Funeral expenses	Rs. 15,000/-
Total		Rs.11,41,000/-

9. Thus, the compensation awarded by the Tribunal is enhanced from Rs.4,40,000/- to Rs.11,41,000/-.

10. In the result,

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

(ii) The compensation awarded by the Tribunal is enhanced from Rs.4,40,000/- to Rs.11,41,000/-.

(iii) The appellants / claimants are directed to pay the court fee for the enhanced compensation amount, if any, and the Registry is directed to draft the decree only after the receipt of Court fee.

(iv) The second respondent, New India Assurance Company Limited is directed to deposit the enhanced compensation amount i.e., Rs.11,41,000/- (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 MCOP.No.3096 of 2007 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(CS V)

//True Copy//

Sub Assistant Registrar

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To

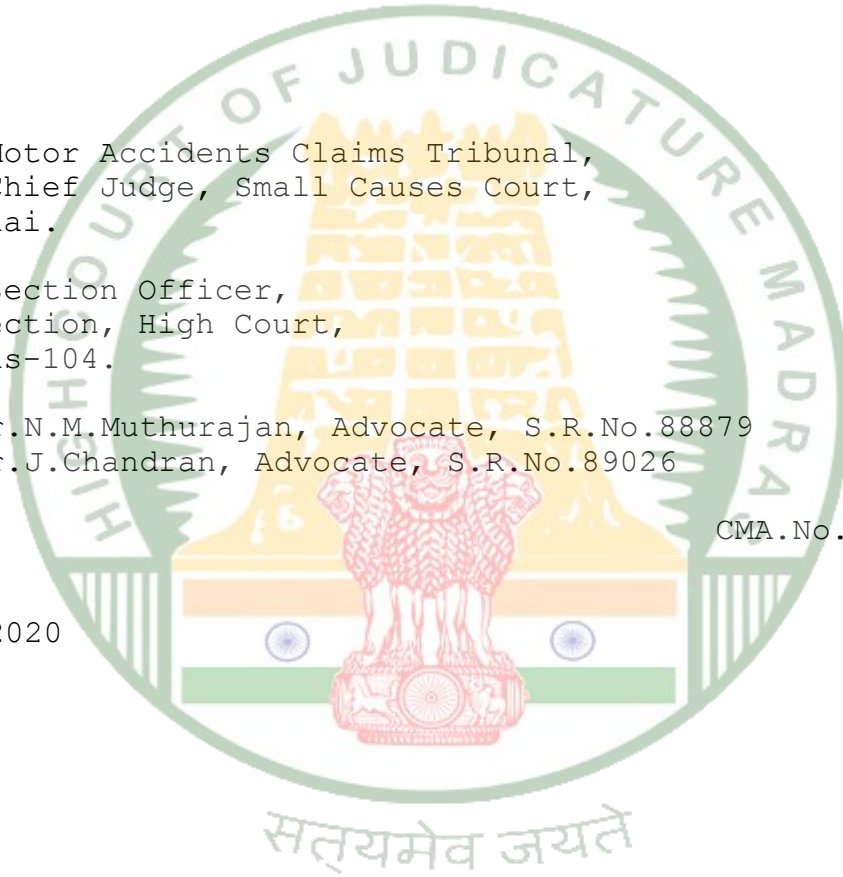
1. The Motor Accidents Claims Tribunal,
The Chief Judge, Small Causes Court,
Chennai.
2. The Section Officer,
VR Section, High Court,
Madras-104.

+lcc to Mr.N.M.Muthurajan, Advocate, S.R.No.88879

+lcc to Mr.J.Chandran, Advocate, S.R.No.89026

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NRL (CO)
CS/05/06/2020



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