

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.11.2019

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.2208 of 2012

1.P.Savithri

2.P.Sakthi Meenakshi (Minor)
Represented by her mother
and Next Friend P.Savithri.

3.K.A.Vasantha ... Petitioners/Appellants

vs.

1. K.Kumaresan

2. The Oriental Insurance Co.Ltd.,
Bail Towers, 1st Floor,
No.1, Abdul Razack Street,
Saidapet. ... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 09.09.2011 made in M.A.C.T.O.P.No.2162 of 2008 on the file of the Motor Accidents Claims Tribunal/Fast Track Court No.IV, Additional District Judge, Chennai.

For Appellants : Mr.Arundattan

For Respondents : Mr.R.Sivakumar for R2
R1 -Exparte

JUDGMENT

The appellants are the claimants in M.A.C.T.O.P.No.2162 of 2008 on the file of the Motor Accident Claims Tribunal / Fast Track Court No.IV, Additional District Judge, Chennai. They filed the claim petition under Section 166(3) of the Motor Vehicles Act, 1988 seeking compensation of Rs.20,00,000/- for the death of one K.Prakash, husband of the first claimant, father of the 2nd claimant and son of the 3rd claimant in a road accident on 08.04.2008.

2. The case of the claimants is that on 08.04.2008, the deceased Prakash was riding a motor cycle bearing Registration No.TN-22-P-4936 along G.S.T.Road, near Chrompet bus stand. At about 21.00 hours, a speeding tempo van bearing Registration No.TN-07-AT-6804 hit the deceased, as a result of which, the deceased Prakash sustained fatal injuries and died in the hospital on the same date.

3. According to the claimants, the accident took place due to the rash and negligent driving of the driver of the Tempo Van bearing Registration No.TN-07-AT-6804 belonging to the first respondent and that since the said Temp Van was insured with the second respondent, the owner and the insurer of the Tempo Van 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, the New India Assurance Company Limited., contested the claim petition on all the grounds available to the insured and the learned Motor Accidents Claims Tribunal / Fast Track Court No.IV, Additional District Judge, Chennai after analysing the evidence on record, awarded a compensation of Rs.6,27,000/- 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. Mr.Arundattan, learned counsel appearing for the appellants / claimants contended that though the claimants have specifically contended that the deceased was earning a sum of Rs.10,000/- per month as a Priest in a temple, the Tribunal has fixed the notional income of the deceased only as Rs.3,000/- per month and prayed for enhancement of compensation.

6. Per contra, Mr.R.Sivakumar, learned counsel appearing for the 2nd respondent / Insurance Company 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 orders and therefore, the same need not be disturbed at this stage.

7.The deceased was a priest in a temple and was aged 38 years on the date of accident. Therefore, the notional income fixed by the Tribunal at Rs.3,000/- per month is meagre and hence, a sum of Rs.7,500/- per month is taken up as the notional 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 there are three dependents, 1/3rd of the income of the deceased should be deducted towards his personal expenses. The proper multiplier to be adopted in the instant case is 15 as per the decision rendered in Sarlaverma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121.

Calculation

Notional Income = Rs.7,500/-
40% Future Prospects = Rs.3,000/-
Total = Rs.7,500/- + Rs.3,000/- = Rs.10,500/-
After 1/3 deduction = Rs.7,000/-

Loss of dependency

= Rs.7,000/- x 12 x 15
= Rs.12,60,000/-

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, 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.12,60,000/-
2.	Loss of estate	Rs.15,000/-
3.	Loss of love and affection	Rs.40,000/-
4.	funeral expenses	Rs.15,000/-
	Total	Rs.13,30,000/-

9. Thus, the compensation awarded by the Tribunal is enhanced from Rs.6,27,000/- to Rs.13,30,000/- which would carry interest at the rate of 7.5% per annum.

10. In the result,

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

(ii) The compensation awarded by the Tribunal is enhanced from Rs.6,27,000/- to Rs.13,30,000/-.

(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 receipt of the Court fee.

(iv) The 2nd respondent / Oriental Insurance Company Ltd., is directed to deposit the enhanced compensation amount i.e., Rs.13,30,000/- (less the amount already deposited if any) 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.A.C.T.O.P.No.2162 of 2008 on the file of the Motor Accident Claims Tribunal / Fast Track Court No.IV, Additional District Judge, Chennai, within a period of four weeks from the date of receipt of a copy of this Judgment.

(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/-
Asst. Registrar

//True Copy//
Sub Asst. Registrar

ssn

To

1. The Motor Accidents Claims Tribunal,
Fast Track Court No.IV,
Additional District Judge,
Chennai.

2. The Section Officer,
V.R.Section,
High Court of Madras,
Chennai.

+1 C.C.to M/S.R.SIVAKUMAR, ADVOCATE, SR.NO.92296

+1 C.C.to M/S.C.MUNUSAMY, ADVOCATE, SR.NO.92834

RP(CO)
VC (22/01/2021)

C.M.A.No.2208 of 2012

सत्यमेव जयते

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