

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.11.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

C.M.A.No.2069 of 2013

1.Lakshmi

2.Selvaraj ... Appellants/Claimants

Vs.

1.Chettinadu Logistics Private Limited,
Rani Seethai Hall, 6th Floor,
Anna Salai, Chennai - 600 006.

2.M/s. The Oriental Insurance Company Limited,
Do-II, UIL Building,
No.8, Esplanade, Chennai - 600 103.

... Respondents/Respondents

(The 1st Respondent already set exparte before the tribunal
hence notice may be dispensed with)

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of
the Motor Vehicles Act, 1988 against the decree and Judgment
dated 06.08.2009 passed in M.C.O.P.No.951 of 2006 on the file
of the Motor Accident Claims Tribunal / Principal District
Court, Namakkal.

For Appellants : Mr.Ma.P.Thangavel

For R1 : Exparte

For R2 : Mr.S.Arunkumar

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J U D G M E N T

The appellants are the claimants in M.C.O.P.No.951 of 2006 on the file of the Motor Accident Claims Tribunal / Principal District Court, Namakkal. They filed the claim petition under Section 166 of the Motor Vehicles Act, 1988, seeking compensation of Rs.5,00,000/- for the death of their son S.Kathiravan, in a road accident on 17.09.2006.

2. The case of the claimants is that on 17.09.2006, the deceased Kathiravan was riding his motorcycle bearing Registration No. TN 47 L 8040 on Aravakurichi - Chinnatharapuram Main Road, near Vaikkal Bridge and at about

06.30 A.M., a speeding lorry bearing Registration No. TN 01 R 2296 hit the motorcycle, as a result whereof, the Kathiravan sustained fatal injuries and died on the spot. According to the claimants, the rash and negligent driving of the driver of the lorry belonging to the first respondent was the cause of the accident and that since the said lorry was insured with the second respondent / Oriental Insurance Company Limited, the owner and the insurer of the lorry are jointly and severally liable to pay the compensation.

3. The owner of the lorry remained absent before the Tribunal and therefore he was set exparte. The second respondent / Oriental Insurance Company Limited contested the claim petition on all the grounds available to the insured. The learned Principal District Judge / Motor Accident Claims Tribunal, Namakkal, after analysing the evidence on record, awarded a compensation of Rs.2,65,000/- 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.Ma.P.Thangavel, learned counsel appearing for the appellants / claimants and Mr.S.Arunkumar, 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 labourer, earning a sum of Rs.5,000/- per month. No income proof was adduced by the claimants. The accident took place in the year 2006 and therefore, the notional monthly income of the deceased is fixed as Rs.5,000/-. The Tribunal did not award any amount towards future prospects, especially, when the deceased was aged 21 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), 40% should be added towards future prospects of the deceased. Since the deceased died as a bachelor, 50% of his income is deducted towards his personal expenses. The proper multiplier to be adopted in the instant case is '18' 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.5,000/-
40% Future Prospects = Rs.2,000/-
Total = Rs.5,000/- + Rs.2,000/- = Rs.7,000/-
After ½ deduction = Rs.3,500/-

Loss of dependency:

$$\begin{aligned} &= \text{Rs.}3,500/- \times 12 \times 18 \\ &= \text{Rs.}7,56,000/- \end{aligned}$$

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", as per the decision in National Insurance Company Vs. Pranay Sethi reported in 2017(2)TNMAC 609 (SC) respectively. The award passed by this Court under various heads is extracted hereunder:

S.No.	Head	Amount granted
1.	Loss of dependency	Rs.7,56,000/-
2.	Loss of estate	Rs.15,000/-
3.	Loss of love and affection	Rs.40,000/-
4.	Funeral expenses	Rs.15,000/-
Total		Rs.8,26,000/-

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.2,65,000/- to Rs.8,26,000/-, which would carry interest at the rate of 7.5% per annum.

(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 respondents 1 and 2 are jointly and severally directed to deposit the enhanced compensation amount i.e., Rs.8,26,000/- (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.951 of 2006 on the file of the Motor Accident Claims Tribunal / Principal District Court, Namakkal, 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.

(vi) Since the appeal is filed with a delay of 191 days, the appellants / claimants are not entitled to claim interest for the delay period.

Sd/-
Assistant Registrar (CS-VI)

//True copy//

Sub Assistant Registrar

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To

1. The Motor Accidents Claims Tribunal,
The Principal District Court,
Namakkal.

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

+1cc to Mr. Ma. P. Thangavel, Advocate SR.No.95900

+1cc to Mr. S. Arunkumar, Advocate SR.No.95632

C.M.A.No.2069 of 2013

VBA (CO)
GMY (22/07/2020)



सत्यमेव जयते

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