

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 29.11.2019
CORAM:
THE HONOURABLE MRS.JUSTICE R. HEMALATHA
C.M.A.No.3282 of 2011

1.R.Lakshmi
2.R.Revathi
3.R.Amasaveni
4.R.Kavitha

... Appellants/Claimants
vs.

1.Palanisamy

2.Bajaj Allianz General Insurance Co. Ltd.,
G.V.R. Complex,
No.6A, Lawsons Road,
2nd Floor, Cantonment,
Trichi - 620 001.

...Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment dated 15.07.2011 in M.C.O.P.No.364 of 2009 on the file of the Motor Accident Claims Tribunal / I Additional District Court, Erode.

Appellants : Mr.A.Praveen
for Mr.S.Kaithamalaikumaran
R1 : (Not Ready Notice)
R2 : Mr.J.Michael Visuvasam

J U D G M E N T

The appellants are the claimants in M.C.O.P.No.364 of 2009 on the file of the Motor Accident Claims Tribunal / I Additional District Court, Erode. 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 one Ramasamy, husband of the first claimant, father of the claimants 2 to 4 in a road accident on 07.01.2009.

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

On 07.01.2009, the deceased was riding his bicycle along Erode - Karur Main Road, near Vellottam Parappu Ellai and at about 05.30 p.m, a speeding Bajaj Auto (unregistered) hit the bicycle, as a result whereof, the deceased Ramasamy fell down

and sustained fatal injuries. He was immediately rushed to the Government Hospital at Erode. However, he succumbed to injuries on the same day.

3. According to the claimants, the rash and negligent driving of the driver of the auto belonging to the first respondent was the cause of the accident and that since the said auto was insured with the second respondent / Bajaj Allianz General Insurance Company, the owner and the insurer of the auto are jointly and severally liable to pay compensation.

4. The owner of the auto remained absent before the Tribunal and therefore, he was set ex-parte. The Bajaj Allianz General Insurance Company contested the claim petition on all the grounds available to the insured. The learned I Additional District Judge / Motor Accident Claims Tribunal, Erode after analysing the evidence on record, awarded a compensation of Rs.1,10,000/- 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. Heard Mr.A.Praveen, learned counsel appearing for the appellants and Mr.J.Michael Visuvasam, learned counsel appearing for the second respondent. No appearance on behalf of the first respondent.

6. In the claim petition, it is contended that the deceased was a Carpenter, earning a sum of Rs.7,000/- per month. In the absence of income proof, the Tribunal fixed the annual income of the deceased as Rs.15,000/-. It is pertinent to point out that the accident took place in the year 2009 and in the facts and circumstances, this Court is of the opinion that fixing a sum of Rs.7,000/- as notional monthly income of the deceased would meet the ends of justice. The deceased was aged 65 years on the date of the accident and therefore, he is not entitled to get future prospects as per the decision in National Insurance Co. vs Pranay sethi and others reported in 2017 (2) TNMAC 601. Since there are four dependents, 1/3rd of the deceased's income should be deducted towards his personal expenses. The proper multiplier to be adopted in the instant case is 7 as per the decision rendered in Sarla Verma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121.

Calculation

Notional Income = Rs.7,000/-
After 1/3 deduction = Rs.4,667/-
Loss of dependency
= Rs.4,667/- x 12 x 7
= Rs.3,92,028/-

7. 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 consortium" 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.3,92,028/-
2.	Loss of estate	Rs.15,000/-
3.	Loss of consortium	Rs.40,000/-
4.	Funeral expenses	Rs.15,000/-
Total		Rs.4,62,028/-

8. Thus, the compensation awarded by the Tribunal is enhanced from Rs.1,10,000/- to Rs.4,62,028/- which would carry interest at the rate of 7.5% per annum.

9. In the result,

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

(ii) The quantum of compensation awarded by the Tribunal is enhanced from Rs.1,10,000/- to Rs.4,62,028/-.

(iii) The appellants / claimants are directed to pay 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.

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(iv) The second respondent / Bajaj Allianz General Insurance Company is directed to deposit the enhanced compensation amount i.e., Rs.4,62,028/- (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.364 of 2009 on the file of the Motor Accident Claims Tribunal / I Additional District Court, Erode 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/-
Asst.Registrar

/true copy/
Sub Asst. Registrar

mtl

To
The Motor Accidents Claims Tribunal,
The I Additional District Judge,
Erode.

Copy to

The Section Officer
VR Section
High Court, Madras 600 104

+1 cc to Mr.S.Kaithamalai kumaran Advocate sr99825
+1 cc to Mr.J.Michael Visuvasam Advocate sr99862

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