

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.09.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

CMA.No.3025 of 2012

1. Amirthagowri

2. Vijayakumar

3. Deepa

4. Pappathi Appellants/Petitioner

Vs.

1. L.Jayabalan

2. M/s United India Insurance Co. Ltd.,
No.2, Dr. Sankaran Road,
Namakkal Town and Taluk.

3. R.Balasubramanian Respondents/Respondent

Prayer This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the orders dated 12.11.2010 passed in M.C.O.P.No.775 of 2006 by the Principal District Judge/ Motor Accident Claims Tribunal, Namakkal.

For Appellants : Mr.Ma.Pa.Thangavel

For Respondents : Mr.C.Paranthaman (for R2)
No appearance for R1 and R3

J U D G M E N T

The appellants are the claimants in MCOP No.775 of 2006 on the file of the Principal District Judge/ Motor Accident Claims Tribunal, Namakkal and they filed the above said claim petition seeking compensation of Rs.5,00,000/- for the death of one Madeswaran (husband of the first claimant, father of the 2nd and 3rd claimant and son of the 4th claimant) in a road accident that took place on 18.06.2006.

2. The case of the appellants/claimants is that on 18.06.2006 at about 3.30p.m the deceased was riding his two wheeler bearing registration No.TN28-P-5478 on Salem-Namakkal Road and at about 3.30 p.m. when he was nearing Atthanur Samathuvapuram, a speeding car bearing Registration No.TN28-J-5445, which was came on the opposite direction, hit the two wheeler ridden by the deceased, as a result of which, he was thrown out and sustained multiple injuries. Though he was immediately admitted in a nearby Government Hospital for treatment, he succumbed to injuries on the same day. According to the claimant, the rash and negligent driving of the driver of the car was the cause of accident and that since the owner of the car insured his vehicle with the 2nd respondent, both of them are jointly and severally liable to pay compensation to them.

3. The owner and the driver of the car remained absent before the Tribunal and therefore, they were set exparte. The Insurance Company contested the claim petition.

4. After analysing the evidence on record, the Principal District Judge/ Motor Accident Claims Tribunal, Namakkal, awarded a compensation of Rs.3,64,000/- together with interest at the rate of 7.5% per annum to the claimants. Not satisfied with the quantum of compensation awarded by the Tribunal, the claimants have filed the present appeal.

5.Mr.Ma.Pa.Thangavel, learned counsel appearing for the appellants/claimants contended that though the deceased was working for Alagumurugan Lorry Body Builder and was drawing a salary of Rs.6,000/- per month and the claimants also adduced documentary evidence to that effect, the Tribunal had fixed the monthly income of the deceased only as Rs.3,000/-. His further contention is that very meagre amounts were awarded under the other heads and therefore, prayed for enhancement of compensation.

6. Per contra, Mr.C.Paranthaman, learned counsel appearing for the Insurance Company contended that the Tribunal after analysing the evidence on record, awarded a compensation of Rs.3,64,000/- to the claimants based on the well laid principles of law which prevailed at the time of passing of the award and therefore, the same need not be disturbed at this stage.

7. In the instant case, the claimants filed the salary certificate (Ex.P11) of the deceased issued by Alagumurugan Lorry body builder, which shows that the deceased was drawing a salary of Rs.6,000/- per month. The age of the deceased was 50 years on the date of accident. Hence, as per the decision of the Constitution Bench of the Hon'ble Supreme Court of India in National Insurance Company Limited Vs. Pranay Sethi and others

reported in 2017 (2) TN MAC 609 (SC), 25% should be added towards future prospects and proper multiplier to be adopted in the instant case is ' 13 ', as per the decision rendered in Sarlavarma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121. There are 4 persons depending on the income of the deceased. Hence, 1/4 should be deducted towards personal expenses of the deceased. Accordingly, loss of dependency is calculated as follows.

Monthly income	- Rs.6000
Add: 25% future prospects (6000+1500)	- Rs.7500
Deduction 1/4 (7500-1875)	- Rs.5625
Proper multiplier	- 18
Loss of dependency (5625 x 12 x 13)	- Rs.8,77,500

Apart from this amount, the claimants are also entitled to Rs.15,000/- Rs.15,000/- and Rs.40,000/- towards "loss of estate", "funeral expenses" and "loss of consortium" to the first claimant" respectively, as per the decision in National Insurance Company Limited Vs. Pranay Sethi and others reported in 2017 (2) TN MAC 609 (SC) (cited supra). The revised compensation awarded under various heads is extracted hereunder.

Sl.No	Heads	Amount
1	Loss of dependency (5625x12x13)	8,77,500
2	Loss of estate	15,000
3	Funeral expenses	15,000
4	Loss of consortium to the first claimant	40,000
	Total	9,47,500

This amount would carry interest at the rate of 7.5% per annum from the date of claim petition.

8. In the result,

(i) The civil miscellaneous appeal is allowed. No costs.

(ii) The compensation awarded by the tribunal is enhanced from Rs.3,64,000/- to Rs.9,47,500/-.

(iii) The appellants/claimants are directed to pay necessary court fees for the enhanced compensation amount, within four weeks from the date of this order.

(iv) The insurance company is directed to deposit the enhanced compensation amount of Rs.9,47,500/- together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit (less the amount already deposited by them), within 4 weeks from the date of receipt of a copy of this order.

(v) On such deposit being made by the insurance company, the claimants are entitled to withdraw the same, after following due process of law and as per the apportionment made by the tribunal.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

mst

To

1. The Principal District Judge.
Motor Accident Claims Tribunal, Namakkal.

Copy To

The Section Officer,
V.R. Section, High Court,
Madras.

+1cc to Mr.Ma.P.Thangavel, Advocate, S.R.No. 80639
+1cc to Mr.C.Paranthaman, Advocate, S.R.No. 80447

CMA.No.3025 of 2012

VG II(CO)
GN(24/01/2020)

सत्यमेव जयते

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