IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 26.09.2019
CORAM:
THE HONOURABLE MRS. JUSTICE R. HEMALATHA
CMA.No.2479 of 2013

1.Kalavathi
2.Valarmathi (Minor)
3.Hemavathi (Minor)
(2nd and 3rd petitioners rep. by their mother Kalavathi as Next Friend and Next Guardian)
4.Indirani
5.Jothi
6.Minor Samuel
7.Minor Sowmya ...Appellants

(6th and 7th petitioners rep. by their mother Jothi as Next Friend and Next Guardian)

.Vs.

1.S.Vijayan
(R1 remained exparte before the Tribunal)
2.M/s.United India Insurance Co. Ltd.,
No.14, Whites Road,
Sudarsan Building, 2nd Floor,
Royapettah, Chennai - 14. ... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 27.09.2012 passed in MCOP.No.1348 of 2009 on the file of the Motor Accident Claims Tribunal / XV Additional Court, Chennai.

For Appellants : Mr.V.Velu
for Ms.A.Subadra

For Respondents : Mr.S.Arunkumar for R2
Exparte - R1

JUDGMENT

WEB COPY

The appellants are the claimants in MCOP.No.1348 of 2009 on the file of the Motor Accident Claims Tribunal/XV Additional Court, Chennai. They filed the claim petition under Section 166 of the Motor Vehicles Act and Rule 3 of MACT Rules seeking compensation of Rs.10,00,000/- for the death of one Ramachandran, husband of the claimants 1 and 5 father of the claimants 2, 3, 6 & 7 and son of the 4th claimant in a road accident that took place on 28.02.2009.

https://hcservices.ecourts.gov.in/hcservices/

2. The case of the claimants is that on 28.02.2009, the deceased Ramachandran was travelling in a lorry bearing Registration No.TN-07-F-4111 as a cleaner and at about 13.30 hrs, the driver of the lorry drove the vehicle rashly and negligently and hit a Indica Car bearing Registration No.TN-21-L-3610, as a result of which, he 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 lorry belonging to the first respondent and that since the said lorry was insured with the second respondent, United India Insurance Company Limited, both of them are jointly and severally liable to pay compensation of Rs.10,00,000/- to them.

4. The first respondent, owner of the lorry remained absent before the Tribunal and therefore, he was set ex-parte. The second respondent, United India Insurance Company Limited contested the claim petition on all the grounds available to the insurer. The learned Motor Accidents Claims Tribunal / XV Additional Judge, Chennai after analysing the evidence on record, awarded a compensation of Rs.8,64,840/- 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 under Section 173 of the Motor Vehicles Act, 1988.

5. Mr.V.Velu for Ms.A.Subadra, learned counsel appearing for the appellants / claimants contended that though the claimants have specifically contended that the deceased was earning a sum of Rs.6,000/- per month as a cleaner and also filed a salary certificate (Ex.P4), the Tribunal fixed the notional income of the deceased as Rs.4,500/- per month. He further contended that 1/4th has been deducted towards personal expenses of the deceased, though there were seven persons depending on his income. He therefore prayed for enhancement of compensation.

6. Per contra, Mr.S.Arunkumar, learned counsel appearing for the second respondent, United India Insurance 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.

WEB COPY

7. It is pertinent to point out that the accident took place in the year 2009 and in the facts and circumstances, the notional income fixed by the Tribunal at Rs.4,500/- per month is meagre and therefore, 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), 25% should

https://hcservices.ecourts.gov.in/hcservices/

be added towards future prospects of the deceased. Since there are seven dependents, 1/5th should be deducted towards the personal expenses of the deceased. The deceased was aged 45 years on the date of accident and the proper multiplier to be adopted in the instant case is 14 as per the decision rendered in Sarlavarma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121.

Calculation

[(Rs.7,500/- + Rs.1,875/- (Rs.7,500/- of 25%) x 12 x 14 x 4/5 = Rs.12,60,000/-)]

Loss of dependency is modified to 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 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.12,60,000/-
2.	Loss of estate	Rs.15,000/-
3.	Loss of consortium	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.8,64,840/- 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 partly allowed. No costs.

(ii) The compensation awarded by the Tribunal is enhanced from Rs.8,64,840/- 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 second respondent, United India Insurance Company Limited is directed to deposit the enhanced compensation amount i.e., Rs.13,30,000/- (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

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

MCOP.No.1348 of 2009 on the file of the Motor Accident Claims Tribunal / XV Additional 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 1, 4 & 5 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. At this time, the minor appellants 2 & 3 attain majority. Hence, they are declared as major and their mother/first appellant/first claimant is discharged from their guardianship.

(vi) The share of the minor appellants 6 & 7 are directed to be deposited in any one of the Nationalised Bank till they attain majority. The fifth appellant being the mother of the appellants 6 & 7 is permitted to withdraw the accrued interest once in three months for the welfare of the minors.

Sd/-
Assistant Registrar(CJ Conf)

// True Copy//

Sub Assistant Registrar

mtl

To

The Motor Accidents Claims Tribunal,
The XV Additional Judge,
Chennai.

+1cc to Mr.V.Velu, Advocate, SR.No.82843.
+1cc to Mr.S.Arunkumar, Advocate, SR.No.82909.

C.M.A.No.2479 of 2013

SS(CO)
CSR:27.02.2020

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/