



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.11.2019

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.3179 of 2012

1.N.Lashmi
2.K.Vasanthamma
3.M.Thyagaraju
4.K.Savithiri
5.P.Anusuyamma
6.G.Prabhavathi
7.M.Murali
8.G.Amaravathi

... Appellants/Petitioners

Vs.

1.R.Kathiresan

2.The New India Assurance Co. Ltd.,
No.46, Moore Street,
Chennai - 600 001.

...Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment dated 04.12.2007 in M.C.O.P.No.5380 of 2002 on the file of the Motor Accident Claims Tribunal / Additional District and Sessions Court, Fast Track Court - V, Madras.

Appellants	:	Mr.V.Mohan Choudary
R1	:	Exparte
R2	:	Mr.Elveera Ravindran

J U D G M E N T

The appellants are the claimants in M.C.O.P.No.5380 of 2002 on the file of the Motor Accident Claims Tribunal / Additional District and Sessions Court, Fast Track Court - V, Madras. They filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.10,00,000/- for the death of one Kamalamma, mother of the claimants in a road accident on 23.10.2002.

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

On 23.10.2002, at about 10.30 hours, while the deceased was crossing the MMDA Colony Main Road, a speeding motorcycle bearing Registration No. TN 07 U 0256 hit her, as a result



whereof, the deceased Kamalamma sustained injuries all over her body and died on the same day.

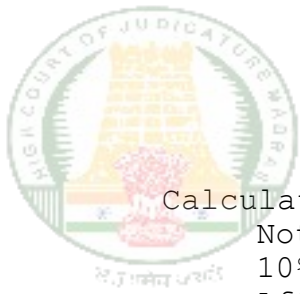
3. According to the claimants, the rash and negligent riding of the rider of the motorcycle belonging to the first respondent was the cause of the accident and that since the said motorcycle was insured with the second respondent / The New India Assurance Company Limited, the owner and the insurer of the motorcycle 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 New India Assurance Company Limited contested the claim petition on all the grounds available to the insured. The learned Additional District and Sessions Judge / Motor Accident Claims Tribunal, Fast Track Court - V, Madras after analysing the evidence on record, awarded a compensation of Rs.2,40,000/- together with interest at the rate of 9% 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.V.Mohan Choudary, learned counsel appearing for the appellants and Mr.Elveera Ravindran, learned counsel appearing for the second respondent. No appearance on behalf of the first respondent.

6. In the claim petition, the claimants contended that the deceased was a tailor by profession, earning a sum of Rs.10,000/- per month. In the absence of income proof, the Tribunal fixed the notional income of the deceased as Rs.4,500/- per month. It is pertinent to point out that the accident took place in the year 2002 and in the facts and circumstances, the notional monthly income fixed by the Tribunal is upheld. However, the Tribunal did not award any amount towards "future prospects" of the deceased. The deceased was aged 54 years on the date of the accident. 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, 10% should be added towards the future prospects of the deceased.

7. In the decision in New India Assurance Co. Ltd. Vs. Vinish Jain and others reported in 2018 (1) TN MAC 365 (SC) the Hon'ble Supreme Court held that where the claimants are majors and had their own source of income 50% deduction towards personal expenses is called for. The proper multiplier to be adopted in the instant case is '11' as per the decision rendered in Sarla Verma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121. The calculation towards loss of dependency is as follows:



Calculation

Notional Income = Rs.4,500/-
10% Future Prospects = Rs.4,950/-
After 1/2 deduction = Rs.2,475/-

Loss of dependency

= Rs.2,475/- x 12 x 11
= Rs.3,26,700/-

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.3,26,700/-
2.	Loss of estate	Rs.15,000/-
3.	Loss of love and affection	Rs.40,000/-
4.	Funeral expenses	Rs.15,000/-
Total		Rs.3,96,700/-

9. Thus, the compensation awarded by the Tribunal is enhanced from Rs.2,40,000/- to Rs.3,96,700/- 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 quantum of compensation awarded by the Tribunal is enhanced from Rs.2,40,000/- to Rs.3,96,700/-.

(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.

(iv) The second respondent / The New India Assurance Company Limited is directed to deposit the enhanced compensation amount i.e., Rs.3,96,700/- (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.5380 of 2002 on the file of the Motor Accident Claims



Tribunal / Additional District and Sessions Court, Fast Track Court - V, Madras 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/-
Assistant Registrar(CS VIII)

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Sub Assistant Registrar

mtl
To

1.The Motor Accidents Claims Tribunal,
The Additional District and Sessions Judge,
Fast Track Court - V,
Madras.

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

+2cc to Mr.Mohan Choudary, Advocate Sr.94350
+1cc to Mrs.Elveera Ravindran, Advocate Sr.94167

C.M.A.No.3179 of 2012

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