

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.11.2019

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.3197 of 2012

- 1.Mrs.Sulochana
- 2.Mr.E.Pasupathy
- 3.Narayanamoorthy
- 4.Narmada

... Appellants/Petitioner

vs.

- 1.J.Sahayaraj (deceased)
- 2.ICICI Lombard General Insurance Company Ltd.,
No.140, Nungambakkam High Road, Chennai - 34.

- 3.Arokkia Mary
- 4.Agastin Pradesh (Minor)

5.Sagaya Monika (Minor) ... Respondents/Respondents
(4 & 5 minors rep. by their mother 3rd respondent)

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment dated 28.08.2012 in M.C.O.P.No.1770 of 2009 on the file of the Motor Accident Claims Tribunal / IV Court of Small Causes, Chennai.

Appellants : Mr.K.Varadha Kamaraj
R1 : Died
R2 : Mrs.R.Sreevidhya
R3 : No appearance
Exparte

J U D G M E N T

The appellants are the claimants in M.C.O.P.No.1770 of 2009 on the file of the Motor Accident Claims Tribunal / IV Court of Small Causes, Chennai. They filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.12,00,000/- for the death of one Dhamodharan, son of the claimants 1 & 2 and brother of the claimants 3 & 4 in a road accident on 14.02.2009.

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

On 14.02.2009, the deceased Dhamodharan was riding his

two wheeler bearing Registration No. TN 09 P 7614 on GST Road and at about 07.30 hours, a speeding Tata 407 Van bearing Registration No. TSB 3961 hit him, as a result whereof, the deceased Dhamodharan sustained fatal injuries and died on the spot.

3. According to the claimants, the rash and negligent driving of the driver of the van belonging to the first respondent (since deceased) was the cause of the accident and that since the said van was insured with the second respondent / ICICI Lombard General Insurance Company Limited, the owner and the insurer of the van are jointly and severally liable to pay compensation.

4. During the pendency of the claim petition, the first respondent died and the respondents 3 to 5 were impleaded as the legal heirs of the deceased first respondent. The respondents 3, 4 & 5 remained absent before the Tribunal and therefore, they were set ex-parte. The appellant / ICICI Lombard General Insurance Company Limited contested the claim petition on all the grounds available to the insured. The learned IV Judge / Motor Accident Claims Tribunal, Small Causes Court, Chennai after analysing the evidence on record, awarded a compensation of Rs.4,20,000/- 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.K.Varadha Kamaraj , learned counsel appearing for the appellants and Mrs.R.Sreevidhya, learned counsel appearing for the second respondent.

6. In the claim petition, it is contended that the deceased was working as a faculty for S.S.I. Ltd., earning a sum of Rs.10,000/- per month. Ex.P5 shows that the S.S.I. Ltd., had sent an appointment letter dated 02.07.2008 to the deceased for the post of a trainer in their organization with emoluments at Rs.6,000/- per month. However, the Tribunal fixed the notional income of the deceased as Rs.5,000/- per month. 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.6,000/- as monthly income of the deceased would meet the ends of justice. The Tribunal did not also award any amount towards "future prospects" of the deceased, especially, when the deceased was aged 27 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, 40% should be added towards future prospects of the deceased. Since the deceased died as a bachelor, 50% should be

deducted towards his personal expenses. The proper multiplier to be adopted in the instant case is '17' 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.6,000/-
40% Future Prospects = Rs.8,400/-
After 1/2 deduction = Rs.4,200/-

Loss of dependency

= Rs.4,200/- x 12 x 17
= Rs.8,56,800/-

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 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.8,56,800/-
2.	Loss of estate	Rs.15,000/-
3.	Loss of love and affection	Rs.40,000/-
4.	Funeral expenses	Rs.15,000/-
Total		Rs.9,26,800/-

8. Thus, the compensation awarded by the Tribunal is enhanced from Rs.4,20,000/- to Rs.9,26,800/- 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.4,20,000/- to Rs.9,26,800/-.

(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 / ICICI Lombard General Insurance Company Limited is directed to deposit the enhanced compensation amount i.e., Rs.9,26,800/- (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.1770 of 2009 on the file of the Motor Accident Claims Tribunal / IV Court of Small Causes, 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 / 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

//True Copy//

Sub Assistant Registrar

mtl

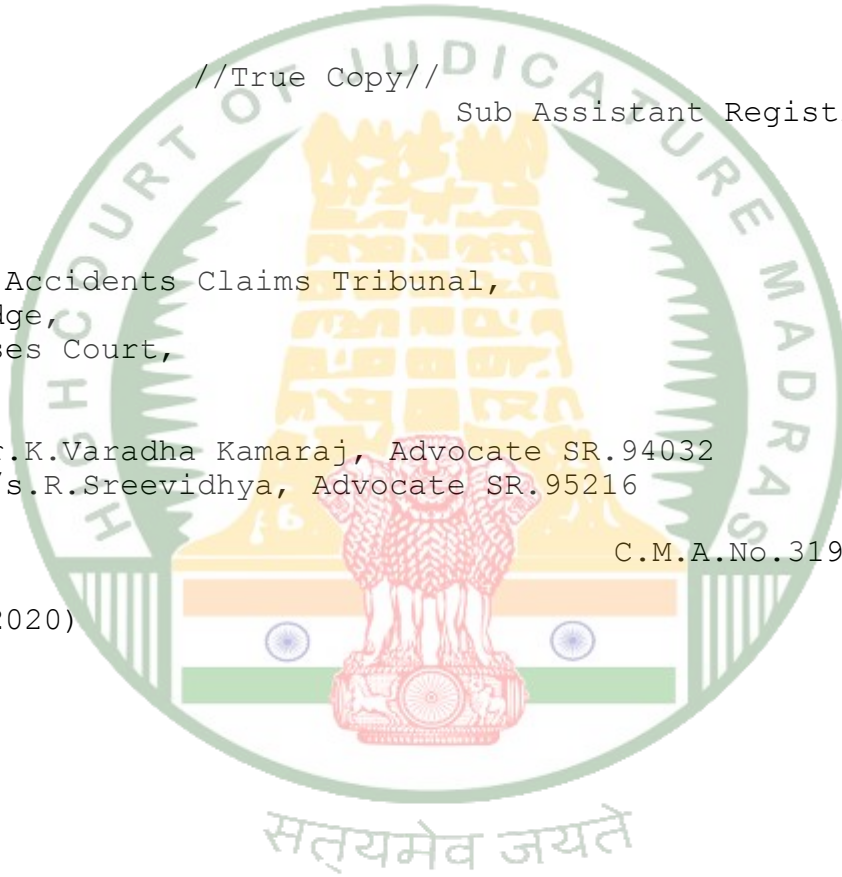
To
The Motor Accidents Claims Tribunal,
The IV Judge,
Small Causes Court,
Chennai.

+1cc to Mr.K.Varadha Kamaraj, Advocate SR.94032

+1cc to M/s.R.Sreevidhya, Advocate SR.95216

C.M.A.No.3197 of 2012

RSV(CO)
CB(07/02/2020)



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