

IN THE HIGH COURT OF JUDICATURE AT MADRAS  
DATED: 23.10.2019  
CORAM:  
THE HONOURABLE MRS.JUSTICE R. HEMALATHA  
C.M.A.No.3219 of 2012

1.Baby  
2.Moorthy  
3.Chandra  
4.Mani  
5.Nithiya  
6.Saraswathy

... Appellants/Petitioners

vs.

1.MD.Sajid  
(R1 Remained exparte before the Tribunal)

2.The New India Assurance Co. Ltd.,  
Issue Office, Naik Nivas, Shivaji Chowkosmanabad,  
T.P.Cell,  
No.16, Moore Street,  
Chennai - 1.

... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment dated 09.07.2012 in M.C.O.P.No.434 of 2009 on the file of the Motor Accident Claims Tribunal / Court of Chief Small Causes, Chennai.

For Appellants : Mrs.M.Malar

For Respondents : R1-Exparte

Mr.K.Vinod for R2

J U D G M E N T

The appellants are the claimants in M.C.O.P.No.434 of 2009 on the file of the Motor Accident Claims Tribunal / Chief Judge, Court of Small Causes, Chennai. They filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.6,00,000/- for the death of one Varathan, husband of the first claimant, father of the claimants 2 to 6 in a road accident on 27.11.2008.

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

On 27.11.2008, the deceased Varathan was riding his bicycle along GST Road and when he was nearing Guduvancherry and at about 16.15 hours, a speeding lorry bearing Registration No. AP 12 U 7948 belonging to the first respondent and insured with the second respondent / New India Assurance Company Limited, hit the deceased Varathan, as a result whereof, the deceased Varathan sustained fatal injuries and died on the same day in Government General Hospital, Chennai.

3. According to the claimants, the rash and negligent driving of the driver of the lorry bearing Registration No. AP 12 U 7948 belonging to the first respondent was the cause of the accident and that since the said lorry was insured with the second respondent / New India Assurance Company Limited, the owner and the insurer of the lorry are jointly and severally liable to pay compensation.

4. The first respondent / owner of the lorry 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 insurer. The learned Chief Judge / Motor Accident Claims Tribunal, Small Causes Court, Chennai after analysing the evidence on record, awarded a compensation of Rs.5,18,904/- 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. Heard Mrs.M.Malar, learned counsel appearing for the appellants and Mr.K.Vinod, 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 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/-. It is pertinent to point out that the accident took place in the year 2008 and in the facts and circumstances, this Court is of the opinion that fixing a sum of Rs.7,500/- as notional monthly income of the deceased would meet the ends of justice. 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), 10% should be added towards future prospects of the deceased. Since there are six dependents, 1/4<sup>th</sup> should be deducted towards the personal expenses of the deceased. The

deceased was aged 60 years on the date of accident and the proper multiplier to be adopted in the instant case is 9 as per the decision rendered in Sarlavarma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121.

Calculation

Notional Income = Rs.7,500/-  
10% Future Prospects = Rs.750/-  
Total = Rs.7,500/- + Rs.750/- = Rs.8,250/-  
After 1/4 deduction = Rs.6,187/-

Loss of dependency

= Rs.6,187/- x 12 x 9  
= Rs.6,68,196/-

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.6,68,196/-                |
| 2.    | Loss of estate     | Rs.15,000/-                  |
| 3.    | Loss of consortium | Rs.40,000/-                  |
| 4.    | Funeral expenses   | Rs.15,000/-                  |
| Total |                    | Rs.7,38,196/-                |

8. Thus, the compensation awarded by the Tribunal is enhanced from Rs.5,18,904/- to Rs.7,38,196/- 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 compensation awarded by the Tribunal is enhanced from Rs.5,18,904/- to Rs.7,38,196/-.

(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 / New India Assurance Company Limited is directed to deposit the enhanced compensation amount i.e., Rs.7,38,196/- (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.434 of 2009 on the file of the Motor Accident Claims Tribunal / Court of Chief 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(CO)

//True Copy//

Sub Assistant Registrar

mtl

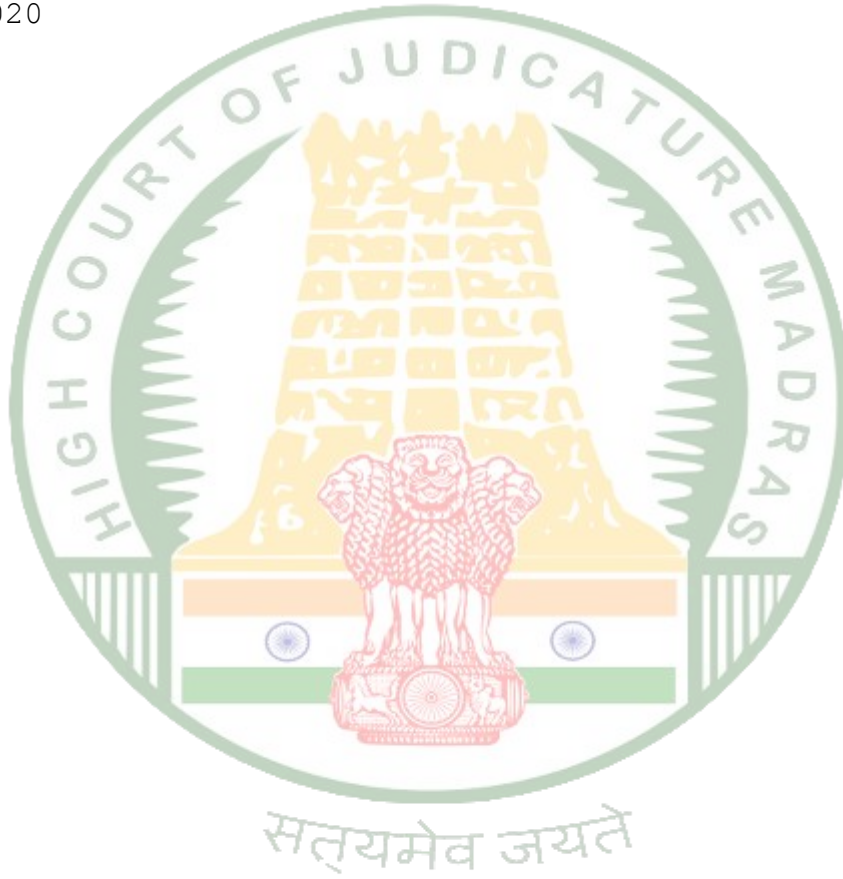
To  
The Motor Accidents Claims Tribunal,  
The Chief Judge,  
Small Causes Court,  
Chennai.

copy to  
The Section  
VR Section High Court, Madras-104

+1cc to M/s.M.Malar Advocate sr88634  
+1cc to Mr.K.Vinod Advocate sr88614

C.M.A.No.3219 of 2012

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