

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.11.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

C.M.A.No.3243 of 2012

1.C.Chandra
2.S.Thangaraj
3.Jothi
4.R.Vijayalakshmi
5.R.Deepa

... Appellants/Petitioners

Vs.

1.C.M.Kumaresan (died)

2.The New India Assurance Company Limited,
No.46, Armenian street, I & II Floor,
Chennai.

... Respondents/Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 29.08.2012 passed in M.C.O.P.No.2130 of 2007 on the file of the Motor Accident Claims Tribunal / Chief Judge, Small Causes Court, Chennai.

For Appellants : Mr.K.Varadhakamaraj
For Respondents : Ms.Elveera Ravindran (for R2)

J U D G M E N T

The appellants are the claimants in M.C.O.P.No.2130 of 2007 on the file of the Motor Accident Claims Tribunal / Chief Judge, Small Causes Court, 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 Thanamani @ Thinamani, in a road accident on 27.12.2006.

2. The case of the claimants is that on 27.12.2006, the deceased Thanamani @ Thinamani was walking along M.K.N. road and at about 13.30 hours, a speeding maruti car bearing Registration No. TN 20 A 6649, hit her, as a result of which, she fell down and sustained multiple injuries. She was immediately rushed to Sri Balaji Hospital, Chennai. However, she succumbed to injuries

on 28.12.2006. According to the claimants, the rash and negligent driving of the driver of the maruti car belonging to the first respondent and insured with the second respondent / New India Assurance Company Limited was the cause of the accident and therefore the owner and insurer are jointly and severally liable to pay the compensation.

3. The first respondent / owner of the car died during the pendency of the claim petition and the second respondent / New India Assurance Company Limited contested the claim petition. The learned Chief Judge / Motor Accidents Claims Tribunal, Small Causes Court, Chennai, after analysing the evidence on record, awarded a compensation of Rs.61,776/- to the claimants together with interest at the rate of 7.5% per annum. 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, seeking enhancement of compensation.

4. Mr.K.Varadhakamaraj, learned counsel appearing for the appellants / claimants contended that though the claimants were daughters and son of the deceased Thanamani @ Thinamani and were depending on the income of the deceased, the Tribunal had awarded very meager amount of Rs.61,776/-.

5. Per contra, Ms.Elveera Ravindran, learned counsel appearing for the second respondent / New India Assurance Company Limited contended that the Tribunal after considering all the aspects of the case has awarded just compensation and the same need not be adjusted at this stage.

6. No appearance on behalf of the first respondent.

7. In the instant case, the age of the deceased is fixed as 70 years by the Tribunal after considering the oral and documentary evidence adduced on both sides. The Tribunal after taking into account the marital status of the claimants held that the claimants were not depending on the income of the deceased and after referring to Section 140 of the Motor Vehicles Act, 1988, concluded that the claimants are entitled to a compensation of Rs.50,000/-. The Tribunal further added the hospital expenses amounting to Rs.11,776/-. Thus, a total sum of Rs.61,776/- was awarded as compensation. The decision in New India Assurance Co. Ltd. Vs. Vinish Jain and others reported in 2018 (1) TN MAC 365 (SC) relates to death of a person who was aged 78 years and the claimants were two major sons and two grand-daughters. Though the Hon'ble Supreme Court concluded that the major sons have their own source of income and were not dependent on the deceased and the two grand-daughters were primarily depending on their father and not on their grandfather

had held that 50% deduction alone is called for towards personal expenses and awarded a sum of Rs.9,11,250/-. Therefore the award of Rs.50,000/- passed by the Tribunal is very meagre. The proper multiplier to be adopted in the instant case is '5' as per the decision rendered in Sarlavarma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121. According to the claimants, the deceased was earning a sum of Rs.150/- per day. Since no proof of income is adduced by the claimants, the notional monthly income of the deceased is fixed as Rs.3,000/-. After deducting $\frac{1}{2}$ of the income towards personal expenses, the monthly income of the deceased would come to Rs.1,500/- and the compensation towards loss of dependency is Rs.90,000/- [Rs.1,500/- X 12 X 5]. Apart from the above said amount, the 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. In addition to that the claimants are entitled to a sum of Rs.11,776/- towards medical expenses. 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.90,000/-
2.	Loss of estate	Rs.15,000/-
3.	Loss of love and affection	Rs.40,000/-
4.	Funeral expenses	Rs.15,000/-
5.	Medical expenses	Rs.11,776/-
Total		Rs.1,71,776/-

8. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed. No costs.

(ii) The compensation awarded by the Tribunal is enhanced from Rs.61,776/- to Rs.1,71,776/-.

(iii) The appellants / claimants are directed to pay the 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.1,71,776/- (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.2130 of 2007 on the file of the Motor Accident Claims Tribunal / Chief Small Causes 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 / claimants is at liberty to withdraw the same as per the apportionment made by the Tribunal after following due process of law.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

krk

To

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

Copy To

The Section Officer,
V.R. Section, High Court,
Madras-104.

+1cc to Mr.K.Varadha Kamaraj, Advocate, S.R.No. 92034
+1cc to Mr.Elveera Ravindran, Advocate, S.R.No. 91996

C.M.A.No.3243 of 2012

CA(CO)
GN(01/09/2020)