

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.11.2019

CORAM:

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

C.M.A.NO.281 OF 2013

- 1.Madurai Mary
- 2.Minor Pudukai Anthony
- 3.Minor Andriyas
- 4.Minor Amalamary

(Appellants 2 to 4 are represented by his next friend and mother Madurai Mary)

- 5.Mariyaselvam ... Appellants/Claimants

vs.

1. Subramani

2. The Divisional Manager,
The New India Assurance Company Ltd.,
No.106, Big Street,
Tiruvannamalai.

...Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Order and Judgment dated 29.09.2006 made in M.C.O.P.No.899 of 2004 on the file of the Motor Accidents Claims Tribunal/District Court, Tiruvannamalai.

For Appellants : Mrs.M.Malar

For Respondents : No Appearance

WEB COPY
JUDGMENT

The appellants are the claimants in M.C.O.P.No.899 of 2004 on the file of the Motor Accidents Claims Tribunal/ District Court, Tiruvannamalai. 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 Mariyaselvanayagam, husband of the first claimant, father of the claimants 2 to 4 and son of the 5th claimant, in a road accident on 06.09.2004.

2. The case of the claimants is that on 06.09.2004, the deceased was a Cleaner in a tipper lorry bearing Registration No.TN-04-C-1351 and was proceeding towards Tambaram from Chennai and at about 8.15 a.m., when they were nearing Meenambakkam, the driver of the lorry drove the vehicle rashly and hit the centre median of the road, as a result whereof, the deceased sustained fatal injuries and died in the hospital on the same date.

3. According to the claimants, the accident took place due to the rash and negligent driving of the driver of the lorry bearing Registration No.TN-04-C-1351 belonging to the first respondent and that since the said lorry was insured with the second respondent, the owner and the insurer of the lorry 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 second respondent, the New India Assurance Company Limited., contested the claim petition on all the grounds available to the insured and the Motor Accidents Claims Tribunal/District Court, Tiruvannamalai, after analysing the evidence on record, awarded a compensation of Rs.2,78,000/- 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. Mrs.M.Malar, 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, the Tribunal fixed the notional income of the deceased only as Rs.2,000/- per month. She further contended that no amount was awarded towards future prospects of the deceased and prayed for enhancement of compensation.

6. No representation for the respondents.

7. In the claim petition it is contended that the deceased Mariyaselvanayagam was a cleaner in the lorry earning a sum of Rs.6,000/- per month. However, no proof of income was produced by the claimants. The deceased was aged 32 years on the date of accident and the notional income fixed by the Tribunal at Rs.2,000/- per month appears to be meagre. Hence, a sum of Rs.4,500/- 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), 40% should be added towards future prospects of the deceased. Since there are five dependents, 1/4th of the income of the deceased should be deducted towards his personal expenses. The proper multiplier to be adopted in the

instant case is 16 as per the decision rendered in Sarlaverma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121.

Calculation

Notional Income = Rs.4,500/-
40% Future Prospects = Rs.1,800/-
Total = Rs.4,500/- + Rs.1,800/- = Rs.6,300/-
After 1/4 deduction = Rs.4,725/-

Loss of dependency

= Rs.4,725/- x 12 x 16
= Rs.9,07,200/-

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.9,07,200/-
2.	Loss of estate	Rs. 15,000/-
3.	Loss of love and affection	Rs. 40,000/-
4.	funeral expenses	Rs. 15,000/-
Total		Rs.9,77,200/-

9. Thus, the compensation awarded by the Tribunal is enhanced from Rs.2,78,000/- to Rs.9,77,200/- which would carry interest at the rate of 7.5% per annum.

10. In the result,

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

(ii) The compensation awarded by the Tribunal is enhanced from Rs.2,78,000/- to Rs.9,77,200/-.

(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 2nd respondent/Insurance Company Ltd., is directed to deposit the enhanced compensation amount i.e., Rs.9,77,200/- (less the amount already deposited if any) 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.899 of 2004 on the file of the Motor Accidents Claims Tribunal/District Court, Tiruvannamalai, within a period of four weeks from the date of receipt of a copy of this Judgment.

(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

ssn

To

1. The Motor Accidents Claims Tribunal,
District Court, Tiruvannamalai.
2. The Section Officer,
V.R.Section,
High Court of Madras,
Chennai.

+1cc to Mrs.M.Malar, Advocate, S.R.No.94175

C.M.A.No.281 of 2013

PM(CO)
CS/12/08/2020

WEB COPY