

IN THE HIGH COURT OF JUDICATURE AT MADRAS  
DATED: 18.11.2019  
CORAM:  
THE HONOURABLE MRS. JUSTICE R. HEMALATHA  
C.M.A.No.3059 of 2013

1.Mallika  
2.Iyyappan  
3.Minor. Jayalakshmi  
4.Minor. Jayakumar  
5.Minor. Jagatheesh  
6.Anjali ... Appellants/ Petitioners

(Minor appellants 3 to 5 are represented by their mother, Mallika)

Vs.

1.M/s. Gavs Information Service Private Limited,  
Horizon Centre, III Floor,  
94, TTK Road, Alwarpet,  
Chennai.  
2.United India Insurance Company,  
No.134, Greams Road,  
Chennai - 600 005. ... Respondents/ Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 23.02.2011 passed in M.C.O.P.No.2039 of 2009 on the file of the Motor Accident Claims Tribunal / II Small Causes Court, Chennai.

For Appellants : Ms.A.Subadra  
for Mr.V.Velu

For Respondents : No appearance

J U D G M E N T

The appellants are the claimants in M.C.O.P.No.2039 of 2009 on the file of the Motor Accident Claims Tribunal / II Small Causes Court, Chennai. 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 Jayamoorthy, in a road accident on 30.05.2009.

2. The case of the claimants is that on 30.05.2009, the deceased was walking along ECR road, near Chetty Nagar Bus Stop and at about 19.40 hours, a speeding car bearing Registration No. TN 07 AE 3823 hit him, as a result whereof, the deceased sustained fatal injuries and died on the spot. According to the claimants, the rash and negligent driving of the driver of the car belonging to the first respondent was the cause of the accident and that since the said car was insured with the second respondent / United India Insurance

Company, the owner and the insurer of the car are jointly and severally liable to pay compensation.

3. The first respondent / owner of the car remained absent before the Tribunal and therefore he was set exparte. The second respondent / United India Insurance Company contested the claim petition on all the grounds available to the insured. The learned II Judge / Motor Accidents Claims Tribunal, Small Causes Court, Chennai, after analysing the evidence on record, awarded a compensation of Rs.6,47,000/- 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.

4. Ms.A.Subadra, learned counsel appearing for the appellants / claimants contended that though the claimants were depending only on the income of the deceased, the Tribunal awarded a meager amount of Rs.5,67,000/- towards pecuniary loss and no amount was awarded towards future prospects of the deceased.

5. No appearance on behalf of the respondents.

6. In the claim petition, the claimants contended that the deceased was a carpenter by profession, earning a sum of Rs.15,000/- per month. However, no income proof was adduced by the claimants. The accident took place in the year 2009 and therefore the notional monthly income of the deceased can be fixed as Rs.7,500/-. The Tribunal did not award any amount towards future prospects of the deceased, especially, when the deceased was aged 45 years on the date of accident. As per the decision of the Supreme Court of India in National Insurance Company Vs. Pranay Sethi reported in 2017(2)TNMAC 609 (SC), 25% should be added towards future prospects of the deceased. Since there are six dependents, 1/5<sup>th</sup> is deducted from his income towards personal expenses. The proper multiplier to be adopted in the instant case is '14' as per the decision in Sarlavarma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121. The "loss of dependency" is calculated as follows:

Calculation:

Notional Income = Rs.7,500/-  
25% Future Prospects = Rs.1,875/-  
Total = Rs.7,500/- + Rs.1,875/- = Rs.9,375/-  
After 1/5 deduction = Rs.7,500/-

Loss of dependency:

= Rs.7,500/- x 12 x 14  
= Rs.12,60,000/-

7. 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, 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 |
|-------|----------------------------|----------------|
| 1.    | Loss of dependency         | Rs.12,60,000/- |
| 2.    | Loss of estate             | Rs.15,000/-    |
| 3.    | Loss of love and affection | Rs.40,000/-    |
| 4.    | Funeral expenses           | Rs.15,000/-    |
| Total |                            | Rs.13,30,000/- |

8. In the result,

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

(ii) The quantum of compensation awarded by the Tribunal is enhanced from Rs.6,47,000/- to Rs.13,30,000/-, which would carry interest at the rate of 7.5% per annum.

(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 / United India Insurance Company is directed to deposit the enhanced compensation amount i.e., Rs.13,30,000/- (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.2039 of 2009 on the file of the Motor Accident Claims Tribunal / II 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 are at liberty to withdraw the same as per the apportionment made by the Tribunal after following due process of law.

(vi) Since the appeal is filed with a delay of 595 days, the appellants / claimants are not entitled to claim interest for the delay period.

Sd/-

Assistant Registrar(CS I)

//True Copy//

Sub Assistant Registrar

To

The Motor Accidents Claims Tribunal,  
The II Small Causes Court,  
Chennai.

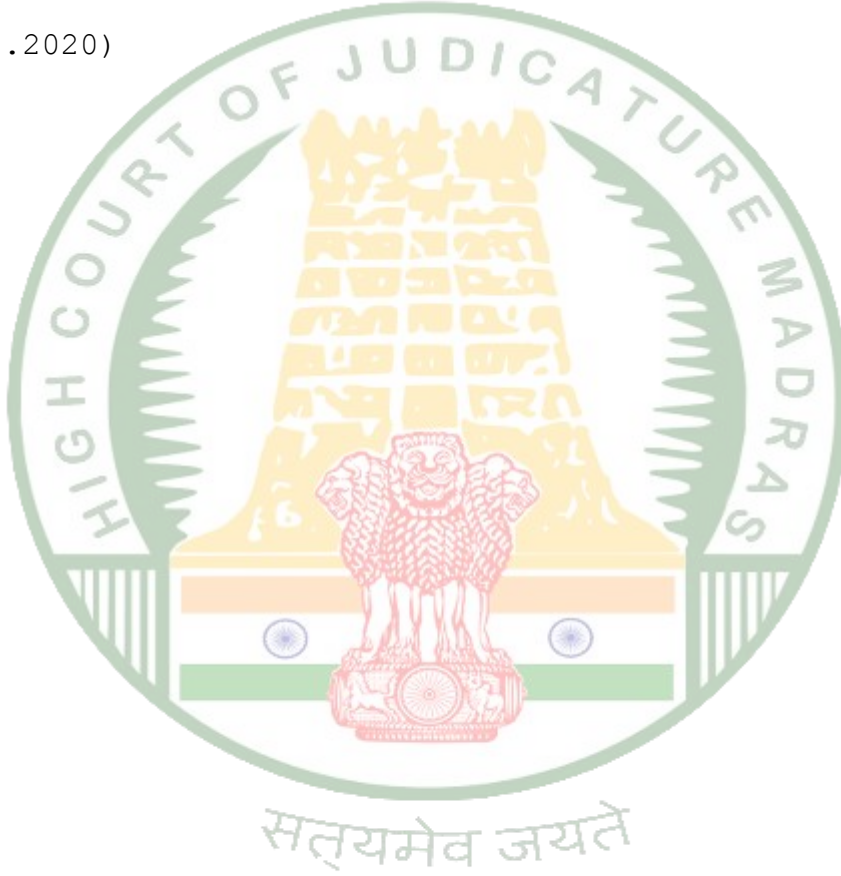
Copy to:

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

+lcc to Mr.V.Velu , Advocate SR.No. 95881

C.M.A.No.3059 of 2013

A.Sk(22.12.2020)



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