

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.02.2019

CORAM:

THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

C.M.A.No.334 of 2013
and M.P.1 of 2013

ICICI Lombard General Insurance
Company Limited,
Chottabai Centre,
Nungambakkam,
Chennai 34.

...Appellant/2nd Respondent

..Vs..

1.Kolanchiyappa

2.Balamurugan

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment dated 30.11.2011, passed in M.C.O.P.No.117 of 2008, on the file of the Motor Accidents Claims Tribunal, Subordinate Judge, Ariyalur.

For Appellant : Mr.R.Sree Vidhya

For Respondents : Mr.A.A.Venkatesan for R1
R2 - Ex-parte

JUDGMENT

The appellant is the second respondent in M.C.O.P.No. 117 of 2008 on the file of the Subordinate Court, Motor Accidents Claims Tribunal, Ariyalur. The first respondent/claimant filed a claim petition under Section 166 of the Motor Vehicles Act, 1988, seeking compensation of Rs.12,00,000/- for the death of one Palanivel, the brother of the first respondent/claimant.

2. The brief case of the first respondent/claimant is as follows:

On 22.01.2008, at about 09.00 p.m., the deceased Palanivel was passing urine on the northern side mud portion of the Veenakaikatti to Jayankondam Main Road near Veenakaikatti Murugan Temple. At that time, a speeding lorry bearing

Registration No. TN 46 D 7457, hit the deceased and the lorry wheel ran over the body of the deceased Palanivel. The driver of the lorry drove the vehicle rashly and negligently, as a result of which, the deceased Palanivel died on the spot and post-mortem took place at Ariyalur Government Hospital.

3. According to the first respondent/claimant, he is the brother of the deceased, and as the parents of the deceased already passed away, he is the only legal heir of the deceased. The deceased Palanivel was aged about 33 years on the date of the accident and that he was a mason, earning a sum of Rs.250/- per day and the income of the deceased Palanivel would be a sum of Rs.7,500/- per month. The first respondent/claimant was the only dependent of the deceased Palanivel and he is completely depending upon the income of the deceased. It is further contended by him that the rash and negligent driving of the driver of the second respondent herein, was the cause of the accident and the second respondent had insured his vehicle with the present appellant ICICI Lombard General Insurance Company Limited, Chennai. Since the first respondent is the only legal heir of the deceased Palanivel, the present appellant and the second respondent herein are jointly and severally liable to pay compensation to him.

4. The second respondent/owner of the bus remained absent before the tribunal and therefore, he was set ex-parte. The present appellant contested the claim petition by filing a counter. The learned Judge, Subordinate Court, Ariyalur, after analysing the evidence on record, awarded a compensation of Rs.8,25,000/- together with interest at the rate of 7.5% per annum to the claimant and permitted the claimant to withdraw the 50% of the award amount together with respective interest immediately after the deposit.

5. The learned counsel appearing for the appellant submitted that since the first respondent/claimant was a major, he can earn on his own. He pointed out that, the first respondent/claimant does not have any specific reason to be a dependent of the deceased Palanivel. However, the learned tribunal without taking into consideration all these facts, held the first respondent/claimant as the dependent of the deceased Palanivel.

6. The learned counsel appearing for the first respondent submits that the first respondent/claimant, being, an Asthma patient, was unable to do any work and was totally dependent on the income of the deceased. He specifically pointed out that the first respondent/claimant is the only legal heir of the deceased.

7. Aggrieved over the orders passed by the tribunal, ICICI Lombard General Insurance Company Limited have filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

8. This court finds no merit in the arguments of the learned counsel appearing for the appellant. Since, the first respondent/claimant is an Asthma patient, this court considers the submissions made by the learned counsel appearing for the first respondent/claimant and accepts the dependency of the claimant on the deceased Palanivel.

9. This court does not find any infirmity in the findings of the tribunal, as far as the first respondent/claimant would have earned a sum of Rs.150/- per day under the Minimum Wages Act. Therefore, the notional income of the deceased Palanivel is fixed as Rs.4,500/- per month.

10. The first respondent/claimant has examined the eyewitnesses PW1 and PW2 and also marked Ex.P1 to Ex.P5. Ex.P1 is the FIR, Ex.P2 is Post-mortem report, Ex.P3 is death certificate of the father of the deceased, Ex.P4 is death certificate of the mother of the deceased and Ex.P5 is the Village President Certificate.

11. A perusal of the orders passed by the tribunal shows that the tribunal fixed the monthly income of the deceased as Rs.5,700/-. As per the decision laid down in National Insurance Co. vs Pranay sethi and others reported in 2017 (2) TNMAC 601, 40% should be added towards future prospects, since the age of the deceased was 33 years on the date of the accident. As rightly pointed out by the learned counsel appearing for the appellant, the proper multiplier to be adopted in the instant case is 16 as per the decision rendered in Sarlavarma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121. But the tribunal was wrong in fixing the multiplier as 17.

Calculation:

Income = Rs.4,500/-

40% Future Prospects = Rs.1,800/-

Total = Rs.4,500/- + Rs.1,800/- = Rs.6,300/-

Loss of Dependency:

= Rs.6,300/- x 16 x 12 x 1/2 deduction

= Rs.6,04,800/-

The tribunal has awarded a sum of Rs.24,800, Rs.15,000/- and Rs.10,000/- towards loss of love and affection, transportation and funeral expenses respectively. This Court feels that it is appropriate to increase the award to a sum of Rs.5,000/-, Rs.10,000/- and Rs.15,000/- towards loss of love and affection, transportation and funeral expenses respectively. The various heads under which the award refixed by this Court is extracted

hereunder:

S.No.	Head	Amount granted
1.	Loss of Dependency	Rs.6,04,800/-
2.	Loss of love and affection	Rs.5,000/-
3.	Loss of transportation	Rs.10,000/-
4.	Funeral expenses	Rs.15,000/-
Total		Rs.6,34,800/-

Thus, the first respondent/claimant is entitled to a sum of Rs.6,34,800/- together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

12.In the result,

(i) The Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

(ii) The quantum of compensation awarded by the tribunal is reduced from Rs.8,25,000/- to Rs.6,34,800/- which shall carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

(iii) The appellant/ICICI Lombard General Insurance Company Limited is directed to deposit the entire amount awarded by this Court equally along with interest and costs before the Tribunal within a period of four weeks from the date of receipt of a copy of this order, after deducting the amount already deposited, if any. The interest awarded by the Tribunal at the rate of 7.5% per annum is unaltered.

(v) If the amount already deposited by the appellant is in excess of the amount awarded by this court, the appellant is at liberty to withdraw the same.

(vi) The claimant/first respondent is directed to pay the court fee for the enhanced compensation, if any, and the Registry is directed to draft the decree only after the payment of court fee.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

vkr

To

The Motor Accidents Claims Tribunal,
The Subordinate Court,
Ariyalur.

Copy to

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

+1cc to M/S.R.Sreevidhya, Advocate Sr.11948
+1cc to Mr.A.A.Venkatesan, Advocate Sr.10622

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