

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.11.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

CMA.No.3524 of 2013
and
MP.No.1 of 2014

1.Dharuman

2.RaniAppellants/Petitioners

vs.

1.C.Velumani

2.United India Insurance Co. Ltd.,
No.134, Greaves Road,
Chennai - 600 006. Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 26.07.2013 passed in MCOP.No.3451 of 2009 on the file of the Motor Accident Claims Tribunal / III Judge, Small Causes Court, Chennai.

For Appellant : Mr.F.Terry Chellaraja

For Respondents : Mr.C.Paranthaman for R2
No appearance for R1

J U D G M E N T

The appellants are the claimants in MCOP.No.3451 of 2009, on the file of the Motor Accident Claims Tribunal / III Judge, Small Causes Court, Chennai. They filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 and Rule 3 of MACT Rules seeking compensation of Rs.10,00,000/- for the death of their daughter Mala in a road accident on 05.06.2009.

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

On 05.06.2009, the deceased was walking along GST road, Potheri, near Post Office, Kanchipuram and at about 21.00 hours, a speeding auto bearing Registration No.TN 10 Q 4977 belonging to the first respondent and insured with the second respondent hit her, as a result of which, the deceased

Mala sustained fatal injuries and died on the spot. According to the claimants, the rash and negligent driving of the driver of the auto belonging to the first respondent was the cause of the accident and that since the said auto was insured with the second respondent, the owner and the insurer of the auto are jointly and severally liable to pay compensation.

3. The owner of the auto remained absent before the Tribunal and therefore, he was set exparte. The United India Insurance Company contested the claim petition. The learned III Judge, Small Causes Court / Motor Accident Claims Tribunal, Chennai after analysing the evidence on record, awarded a compensation of Rs.5,38,000/- together with interest at the rate of 7.5% per annum to the claimant. The Tribunal further directed the Insurance Company to pay compensation to the claimant in the first instance and then recover the same from the owner of the auto, since the driver of the auto did not possess a valid driving licence on the date of the accident. 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.

4. Heard Mr.F.Terry Chellaraja, learned counsel appearing for the appellants / claimants and Mr.C.Paranthaman, learned counsel appearing for the second respondent. No appearance for the first respondent.

5. In the claim petition, it is contended that the deceased was working as a helper in a canteen, earning a sum of Rs.6,000/- per month. In the absence of income proof, the Tribunal fixed the notional income of the deceased as Rs.4,000/- per month. It is pertinent to point out that the accident took place in the year 2009 and in the facts and circumstances, this Court is of the opinion that fixing a sum of Rs.6,000/- as notional monthly income of the deceased would meet the ends of justice. The deceased was aged 21 years on the date of the accident. 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, 40% should be added towards future prospects of the deceased. Since the deceased died as a bachelor, 50% of her income is deducted towards her personal expenses and the proper multiplier to be adopted in the instant case is 18 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.6,000/-
40% Future Prospects = Rs.2,400/-
Total = Rs.6,000/- + Rs.2,400/- = Rs.8,400/-
After 50% deduction = Rs.4,200/-

Loss of dependency

$$= \text{Rs.}4,200/- \times 12 \times 18$$
$$= \text{Rs.}9,07,200/-$$

6. 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/-

7. Thus, the compensation awarded by the Tribunal is enhanced from Rs.5,38,000/- to Rs.9,77,200/- which would carry interest at the rate of 7.5% per annum.

8. In the result,

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

(ii) The quantum of compensation awarded by the Tribunal is enhanced from Rs.5,38,000/- to Rs.9,77,200/-.

(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 / United India Insurance Company is directed to deposit the enhanced compensation awarded by this Court i.e., Rs.9,77,200/- (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 MCOP.No.3451 of 2009 on the file of the Motor Accident Claims Tribunal / III Judge, Small Causes Court, Chennai within a period of four weeks from the date of

the owner of the auto bearing Registration No. TN 10 Q 4977 on the same cause of action.

(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 apportionment made by the Tribunal shall be kept intact.

Sd/-

Assistant Registrar(CS-I)

//True copy//

Sub Assistant Registrar

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To

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

+1cc to Mr.C.Paranthaman, Advocate SR.No.90785

CMA.No.3524 of 2013

GP(CO)
GMY(13/03/2020)

सत्यमेव जयते

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