

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 16.10.2019
CORAM:
THE HONOURABLE MRS.JUSTICE R. HEMALATHA
CMA.No.3612 of 2013

1.B.Sheela Baskaran
2.V.Baskaran

... Appellants/Claimants

vs.

1.S.Sermadurai

2.The Oriental Insurance Co. Ltd.,
No.8, Esplanade road, UIL Building,
3rd floor, Chennai-108.
Now at: Oriental House, 2nd floor,
O.No.15, N.No.16, Prakasam Salai,
Broadway Chennai - 600 108.

... Respondents/Respondents
(R1 set exparte in MCOP)

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment dated 30.09.2011 in M.C.O.P.No.3545 of 2007 on the file of the Motor Accidents Claims Tribunal / Chief Judge, Small Causes Court, Chennai.

For Appellants : Mr.A.A.Venkatesan

For respondents : Mr.S.Jeyaram for R2
No appearance for R1

JUDGMENT

The appellants are the claimants in MCOP.No.3545 of 2007 on the file of the Motor Accident Claims Tribunal / Chief Judge, Court of Small Causes, 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 son B.Suresh, in a road accident on 24.08.2007.

2. The case of the claimants is that on 24.08.2007, the deceased was riding his motorcycle bearing Registration No. TN 05 Q 4029 along Perambur High road and at about 18.00 hours, a speeding van bearing Registration No. TN 09 P 7173 belonging to the first respondent and insured with the second respondent hit

the motorcycle, as a result of which, the deceased was thrown out and sustained fatal injuries all over his body and died in the hospital.

3. According to the claimants, the rash and negligent driving of the driver of the van was the cause of the accident and that since the said van was insured with the second respondent / Oriental Insurance Company Limited, the owner and the insurer are jointly and severally liable to pay compensation.

4. The owner of the van remained absent before the Tribunal and therefore, he was set ex-parte. The second respondent, Oriental Insurance Company Limited contested the claim petition on all the grounds available to the insured. The learned Motor Accident Claims Tribunal / Chief Judge, Small Causes Court, Chennai after analysing the evidence on record, awarded a compensation of Rs.4,00,000/- together with interest at the rate of 7.5% per annum to the claimants. 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.

5. Heard Mr.A.A.Venkatesan, learned counsel appearing for the appellants / claimants and Mr.S.Jeyaram learned counsel appearing for the second respondent. No appearance for the first respondent.

6. It is pertinent to point out that the accident took place in the year 2007 and in the facts and circumstances, the notional monthly income fixed by the Tribunal as Rs.4,500/- cannot be found fault with. However, the Tribunal did not award any amount towards "future prospects" of the deceased, especially, when 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 prospectus of the deceased. Since the deceased was a bachelor on the date of the accident, 50% of his income should be deducted towards his personal expenses. 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, since the age of the deceased was 21 years on the date of the accident.

Calculation

Notional Income = Rs.4,500/-
40% Future Prospects = Rs.1,800/-
Total = Rs.4,500/- + Rs.1,800/- = Rs.6,300/-
After 50% deduction = Rs.3,150/-

Loss of dependency

= Rs.3,150/- x 12 x 18
= Rs.6,80,400/-

7. 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.6,80,400/-
2.	Loss of estate	Rs.15,000/-
3.	Loss of love and affection	Rs.40,000/-
4.	Funeral expenses	Rs.15,000/-
Total		Rs.7,50,400/-

8. Thus, the compensation awarded by the Tribunal is enhanced from Rs.4,00,000/- to Rs.7,50,400/- which would carry interest at the rate of 7.5% per annum.

9. In the result,

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

(ii) The compensation awarded by the Tribunal is enhanced from Rs.4,00,000/- to Rs.7,50,400/-.

(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, Oriental Insurance Company Limited is directed to deposit the enhanced compensation amount i.e., Rs.7,50,400/- (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.3545 of 2007 on the file of the Motor Accident Claims Tribunal / Chief Judge, Court of Small Causes, 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 order passed by the Tribunal after following due process of law. The apportionment made by the Tribunal shall be kept intact.

s/d-
Assistant Registrar(CO)

True Copy
Sub-Assistant Registrar

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

copy to
The Section Officer
VR Section
High Court
Madras

C.M.A.No.3612 of 2013

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