

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 29.11.2019
CORAM:
THE HONOURABLE MRS.JUSTICE R. HEMALATHA
C.M.A.No.3662 of 2013

1.Mrs.C.Subha
2.Miss.Nandhini (Minor)
3.Miss.Iniya (Minor)
(Minors petitioners are rep. By their mother
and next friend C.Subha, 1st Petitioner herein)

... Appellants/Petitioners

vs.

1.Sankar

2.ICICI Lombard General Insurance Co. Limited,
No.140, II and III Floor, Chotabai Centre,
Nungambakkam, Chennai - 34.

... Respondents/Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment dated 11.06.2013 in M.C.O.P.No.4073 of 2008 on the file of the Motor Accident Claims Tribunal / Chief Judge, Small Causes Court, Chennai.

Appellants : Mr.K.Varadha Kamaraj
R1 : No appearance Exparte
R2 : Mrs.Sreevidhya

J U D G M E N T

The appellants are the claimants in M.C.O.P.No.4073 of 2008 on the file of the Motor Accident Claims Tribunal / Chief Judge, Small Causes Court, Chennai. They filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.30,00,000/- for the death of one Chandrasekar, husband of the first claimant and father of the claimants two and three in a road accident on 18.10.2008.

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

On 18.10.2008, Chandrasekar (deceased) was riding his motorcycle bearing Registration No. TN 20 AD 7222 on C.T.H.Road, Pattabiram, Chennai and at about 12.45 hours, a speeding mini tempo bearing Registration No. TN 22 BZ 9263 hit the motorcycle,

as a result whereof, Chandrasekar sustained fatal injuries and died on the way to hospital.

3. According to the claimants, the rash and negligent driving of the driver of the mini tempo belonging to the first respondent was the cause of the accident and that since the said vehicle was insured with the second respondent / ICICI Lombard General Insurance Company, the owner and the insurer are jointly and severally liable to pay compensation.

4. The owner of the mini tempo remained absent before the Tribunal and therefore, he was set ex-parte. The ICICI Lombard General Insurance Company contested the claim petition on all the grounds available to the insured. The learned Chief Judge / Motor Accident Claims Tribunal, Small Causes Court, Chennai after analysing the evidence on record, awarded a compensation of Rs.17,09,328/- 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. Heard Mr.K.Varadha Kamaraj, learned counsel appearing for the appellants and Mrs.Sreevidhya, learned counsel appearing for the second respondent. No appearance on behalf of the first respondent.

6. In the claim petition, it is contended that the deceased was working as a Head Constable of Police. A perusal of the pay slip (Ex.P11) shows that he was earning a sum of Rs.11,869/- on the date of the accident. The Tribunal while fixing the salary of the deceased had observed that though salary of the deceased was refixed as Rs.14,756/- as per the VI Pay Commission, there is no documents to show that the arrears of the salary was disbursed to the beneficiaries of the deceased. A perusal of records shows that VI Pay Commission came in to effect from 01.01.2006. The accident took place in the year 2008. Therefore, the salary of the deceased should be fixed at Rs.14,756/- per month. The deceased was aged 44 years on the date of the accident and 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, 30% should be added towards his future prospects. Since there are three dependents, 1/3rd of the deceased's income should be deducted towards his personal expenses. The proper multiplier to be adopted in the instant case is 14 as per the decision rendered in Sarla Verma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121.

Calculation

Notional Income = Rs.14,756/-
30% Future Prospects = Rs.19,183/-
After 1/3 deduction = Rs.12,789/-

Loss of dependency

= Rs.12,789/- x 12 x 14
= Rs.21,48,552/-

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 consortium" 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.21,48,552/-
2.	Loss of estate	Rs.15,000/-
3.	Loss of consortium	Rs.40,000/-
4.	Funeral expenses	Rs.15,000/-
Total		Rs.22,18,552/-

8. Thus, the compensation awarded by the Tribunal is enhanced from Rs.17,09,328/- to Rs.22,18,552/- 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 quantum of compensation awarded by the Tribunal is enhanced from Rs.17,09,328/- to Rs.22,18,552/-.

(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 / ICICI Lombard General Insurance Company is directed to deposit the enhanced compensation amount i.e., Rs.22,18,384/- (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.4073 of 2008 on the file of the Motor Accident Claims Tribunal / Chief Judge, 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 orders passed by the Tribunal after following due process of law. The ratio of apportionment made by the Tribunal shall be kept intact.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

mtl

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

+1 cc to M/s.K.Varadhakamaraj Advocate sr99783

+1 cc to M/s.R.Sreevidhya Advocate sr100788

C.M.A.No.3662 of 2013

rsv(co)
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