

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.10.2019

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.3701 of 2013

- 1.Chithiraiselvi
- 2.Minor Chandru @ Sham
- 3.Minor Santhosh
(2nd and 3rd appellants are rep. by their mother and natural guardian Chithiraiselvi)
- 4.Thangavel ... Appellants/Petitioners

vs.

- 1.Manikandan
- 2.The Shriram General Insurance Co. Ltd.,
10003-E, Recco Industrial Area,
Chittapura, Jaipur District,
Rajasthan. ... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment dated 15.09.2012 in M.C.O.P.No.300 of 2009 on the file of the Motor Accident Claims Tribunal / Additional Subordinate Judge, Mayiladuthurai.

For Appellants : Mr.R.Gopinath

For respondents : Mrs.Ponmalai for R2
R1 Exparte

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J U D G M E N T

The appellants are the claimants in MCOP.No.300 of 2009, on the file of the Motor Accident Claims Tribunal / Additional Subordinate Judge, Mayiladuthurai. They filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.15,00,000/- for the death of one Shanmugam, husband of the first claimant, father of the claimants 2 and 3 and son of the fourth claimant in a road accident on 22.09.2009.

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

On 22.09.2009, the deceased was driving a minidor van bearing Registration No. TN 51 Q 3503 on Villianoor - Mayiladuthurai Main Road. At about 02.30 pm, a speeding lorry bearing Registration No. TN 01 K 5289 belonging to the first respondent and insured with the second respondent hit the minidor van, as a result of which, the deceased Shanmugam sustained grievous injuries and died on the spot.

3. According to the claimants, the rash and negligent driving of the driver of the lorry belonging to the first respondent was the cause of the accident and that since the said lorry was insured with the second respondent, the owner and the insurer of the lorry are jointly and severally liable to pay compensation.

4. The first respondent remained absent before the Tribunal and therefore, he was set ex-parte. The Shriram General Insurance Company contested the claim petition on all the grounds available to the insured. The learned Additional Subordinate Judge / Motor Accident Claims Tribunal, Mayiladuthurai after analysing the evidence on record, awarded a compensation of Rs.4,83,000/- 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.R.Gopinath, learned counsel appearing for the appellants and Mrs.Ponmalai, 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 load man, earning a sum of Rs.7,500/- per month. In the absence of income proof, the Tribunal fixed the notional income of the claimant as Rs.3,000/- 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.7,500/- as notional monthly income of the deceased would meet the ends of justice. The Tribunal did not also award any amount towards "future prospects" of the deceased, especially, when the deceased was aged 32 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 there are four dependents, 1/4th of the deceased's income should be deducted towards his personal expenses. 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, since the age of the deceased was 32 years on the date of the accident.

Calculation

Notional Income = Rs.7,500/-
40% Future Prospects = Rs.3,000/-
Total = Rs.7,500/- + Rs.3,000/- = Rs.10,500/-
After 1/4 deduction = Rs.7,875/-

Loss of dependency

= Rs.7,875/- x 12 x 16
= Rs.15,12,000/-

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.15,12,000/-
2.	Loss of estate	Rs.15,000/-
3.	Loss of love and affection	Rs.40,000/-
4.	Funeral expenses	Rs.15,000/-
Total		Rs.15,82,000/-

8. Thus, the compensation awarded by the Tribunal is enhanced from Rs.4,83,000/- to Rs.15,82,000/- which would carry interest at the rate of 7.5% per annum.

9. 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.4,83,000/- to Rs.15,82,000/-.

(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 / Shriram General Insurance Company is directed to deposit the enhanced compensation amount i.e., Rs.15,82,000/- (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 MCOP.No.300 of 2009, on the file of the Motor

Mayiladuthurai 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.

Sd/-
Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

mbi

To

1.The Motor Accidents Claims Tribunal,
The Subordinate Judge,
Mayiladuthurai.

Copy To:
The Section Officer,
VR Section, High Court, Madras

+1cc to Mr.Ponmalai, Advocate SR.No.89149

+1cc to M/s.Royan Law Associates, Advocate SR.No.89245

C.M.A.No.3701 of 2013

SR(CO)
GMY(18/02/2020)

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