

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.11.2019

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.375 of 2013

- 1.K.Nithya
- 2.K.Rajesh (minor)
- 3.K.Abirami (minor)
- 4.S.Unnamalai
- 5.V.K.Sundaramoorthy

...Appellants/Petitioners

vs.

- 1.Ms.M.P.Mayadi Devika

- 2.National Insurance Company Limited,
No.66, Greams 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 29.08.2012 made in M.C.O.P.No.539 of 2010 on the file of the XVI Additional Judge, Motor Accidents Claims Tribunal, Chennai.

Appellants : Mr.R.Arundattan
for M/s.Cand K Law Firm
Respondents : Mr.S.Vadivel for R2
R1 - Exparte in Tribunal

J U D G M E N T

The appellants are the claimants in M.A.C.T. O.P.No.539 of 2010 on the file of the XVI Additional Judge, Motor Accident Claims Tribunal, Chennai. They filed the claim petition under Section 163(A) of the Motor Vehicles Act, 1988 seeking compensation of Rs.20,00,000/- for the death of one Tr.S.Kumaran, husband of the first claimant, father of the claimants 2 & 3 in a road accident on 13.01.2010.

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

On 13.01.2010, the deceased Tr.S.Kumaran was walking along Thyagaraya Road near Priya Tea Stall, T.Nagar and at about 9.45 p.m., a car bearing Registration No. TN 09 AE 9724,

belonging to first respondent, hit him, as a result whereof, he sustained fatal injuries and died in the Hospital on the 15.01.2010.

3. According to the claimants, the accident took place due to the rash and negligent driving of the driver of the car bearing Registration No. TN 09 AE 9724 belonging to the first respondent and that since the said car was insured with the National Insurance Company Limited, the owner and the insurer are jointly and severally liable to pay compensation to him.

4. The learned Additional District Judge / Motor Accident Claims Tribunal, Chennai after analysing the evidence on record, awarded a compensation of Rs.8,58,553/- 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.R.Arundatta, learned counsel appearing for the appellants and Mr.S.Vadivel, learned counsel appearing for R2.

6. In the claim petition, it is contended that the deceased was a Computer Operator, earning a sum of Rs.10,000/- per month. In the absence of income proof, the Tribunal fixed the monthly income of the deceased as Rs.5,000/-. It is pertinent to point out that the accident took place in the year 2010 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 award any amount towards "future prospects" of the deceased, especially, when the deceased was aged 31 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 five dependents, $1/4^{\text{th}}$ of the deceased's income should be deducted towards his personal expenses. The proper multiplier to be adopted in the instant case is 13 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.7,500/-

40% Future Prospects = Rs.3000/-

Total = Rs.7,500/- + Rs.3000/- = 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.8,58,553/- 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 partly allowed. No costs.

(ii) The compensation awarded by the Tribunal is enhanced from Rs.8,58,553/- 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 respondent / National Insurance Company Limited is directed to deposit the enhanced compensation amount i.e., 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 M.C.O.P.No.539 of 2010 on the file of the Motor Accident Claims Tribunal / XVI Additional 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

pns

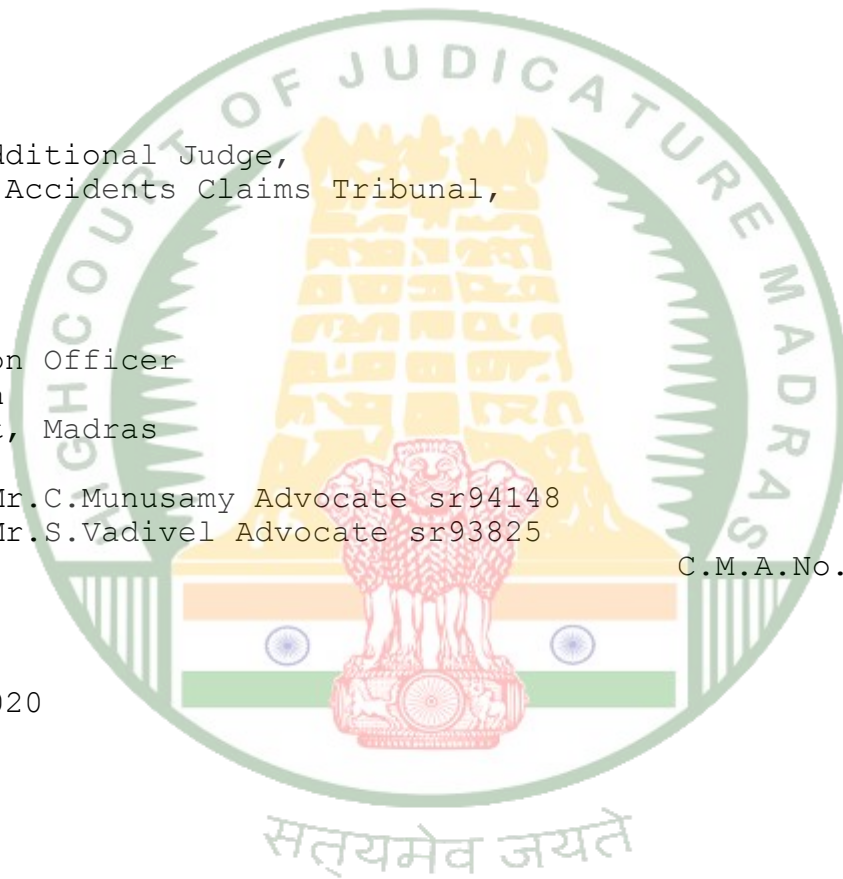
To
The XVI Additional Judge,
The Motor Accidents Claims Tribunal,
Chennai.

copy to
The Section Officer
VR Section
High Court, Madras

+1 cc to Mr.C.Munusamy Advocate sr94148
+1 cc to Mr.S.Vadivel Advocate sr93825

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