

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.11.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

C.M.A.No.614 of 2013

1.Boopalan
2.Thangammal

... Appellants/Petitioner

Vs.

1.K.Muthu

2.The National Insurance Company Limited,
Vijay Plaza Building,
No.C-32, 2nd Floor, Second Avenue,
Anna Nagar, Chennai - 600 040.

3.M.Velumani

4.The National Insurance Company Limited,
Branch Office,
No.352, Mint Street,
Sowcarpet, Chennai - 600 079. ... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 19.01.2010 passed in M.C.O.P.No.145 of 2008 on the file of the Motor Accident Claims Tribunal Fast Track Cum Additional District Court, Dharmapuri.

For Appellants : Mr.V.Kumaravelan

For RR 1 & 3 : No appearance

For R2 : Mr.S.Vadivel

For R4 : Mr.J.Chandran

J U D G M E N T

The appellants are the claimants in M.C.O.P.No.145 of 2008 on the file of the Motor Accident Claims Tribunal / Additional District Court, Dharmapuri. They filed the claim petition under Section 166 of the Motor Vehicles Act, 1988, seeking compensation of Rs.10,00,000/- for the death of their son Baskar in a road accident on 18.11.2007.

2. The case of the claimants is that on 18.11.2007, the deceased Baskar was riding a two wheeler near Solapadi, Periya Mariamman Koil and at about 14.30 hours, a speeding Tractor bearing Registration No. TN 29 8096 hit him, as a result of which, he sustained fatal injuries and died on the spot. According to the claimants, the rash and negligent driving of the driver of the Tractor belonging to the first respondent was the cause of the accident and that since the said Tractor was insured with the second respondent / National Insurance Company Limited, the owner and the insurer of the Tractor are jointly and severally liable to pay the compensation.

3. The learned Additional District Judge / Motor Accident Claims Tribunal, Dharmapuri, after analysing the evidence on record, awarded a compensation of Rs.4,49,000/- to the claimants together with interest at the rate of 7.5% per annum and directed the first respondent / owner of the Tractor to pay the award amount, since the driver of the Tractor was not in possession of a valid driving licence on the date of accident. Aggrieved over the orders passed by the Tribunal, the claimants have filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

4. Mr.V.Kumaravelan, learned counsel appearing for the appellants / claimants contended that as per the settled legal principles of law, in the absence of a valid driving licence, the Insurance Company should be directed to pay the award amount in the first instance and then recover the same from the owner of the offending vehicle. He also contended that though the claimants were depending only on the income of the deceased, the Tribunal awarded a very meagre amount of Rs.4,49,000/- towards pecuniary loss and that no amount was awarded towards future prospects of the deceased.

5. Heard Mr.S.Vadivel, learned counsel appearing for the second respondent and Mr.J.Chandran, learned counsel appearing for the fourth respondent. No appearance on behalf of the respondents 1 and 3.

6. In the decisions in (i) Oriental Insurance Company Limited Vs. Nanjappan and others reported in 2004 (2) CTC 464, (ii) Shamanna vs. Divisional Manager, The Oriental Insurance Co. Ltd. in Civil Appeal No. 8144 of 2018, and (iii) Kempaiah and others Vs. S.S.Murthy and another reported in 2017 (1) TN MAC 737 (SC), the Hon'ble Supreme Court of India has held that if the driver of the offending vehicle does not possess a valid driving licence on the date of accident, the insurer must be directed to satisfy the award with a liberty to recover the same from the owner of the vehicle. In fact, the decision in National Insurance Company Limited Vs. Swarn Singh and others reported in (2004) 3 (SCC) 297 was followed in the decision in Kempaiah and others Vs. S.S.Murthy and another reported in 2017 (1) TN MAC 737 (SC).

7. In the facts and circumstances of the present case, the orders passed by the Tribunal directing only the first respondent / owner of the Tractor to pay compensation to the claimants is liable to be set aside. The second respondent / National Insurance Company Limited is directed to pay the award amount in the first instance and then recover the same from the first respondent / owner of the Tractor.

8. As far as the quantum of compensation is concerned, in the claim petition, the claimants have contended that the deceased was a Mason, earning a sum of Rs.6,000/- per month. No income proof was adduced by the claimants. The accident took place in the year 2007 and therefore the notional monthly income of the deceased can be fixed as Rs.6,000/-. The Tribunal did not award any amount towards future prospects, especially, when the deceased was aged 20 years on the date of accident. As per the decision rendered in National Insurance Company Vs. Pranay Sethi reported in 2017(2)TNMAC 609 (SC), 40% should be added towards future prospects. Since the deceased died as a bachelor, 50% of his income is deducted towards his personal expenses. The proper multiplier to be adopted in the instant case is '18' as per the decision in Sarlavarma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121. The "loss of dependency" is calculated as follows:

Calculation:

Notional Income = Rs.6,000/-
40% Future Prospects = Rs.2,400/-
Total = Rs.6,000/- + Rs.2,400/- = Rs.8,400/-
After 1/2 deduction = Rs.4,200/-

Loss of dependency:

= Rs.4,200/- x 12 x 18
= Rs.9,07,200/-

9. Apart from the above said amount, the 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. The award passed by this Court under various heads is extracted hereunder:

S.No.	Head	Amount granted
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/-

10. 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.4,49,000/- to Rs.9,77,200/-, which would carry interest at the rate of 7.5% per annum.

(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 / National Insurance Company Limited is directed to deposit the enhanced compensation 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 M.C.O.P.No.145 of 2008 on the file of the Motor Accident Claims Tribunal / Additional District Court, Dharmapuri, within a period of four weeks from the date of receipt of a copy of this order and then recover the same from the owner of the Tractor / first respondent 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 ratio of apportionment made by the Tribunal shall be kept intact.

(vi) Since the appeal is filed with a delay of 484 days, the appellants / claimants are not entitled to claim interest for the delay period.

Sd/-

Assistant Registrar (CS-I)

//True copy//

Sub Assistant Registrar

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To

1.The Motor Accidents Claims Tribunal,
Fast Track cum The Additional District Court,
Dharmapuri.

2.The Section Officer,
VR Section, High Court of Madras.

+1cc to Mr.J.Chandran, Advocate SR.No.97526

+1cc to Mr.S.Vadivel, Advocate SR.No.97377

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RSI (CO)

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GMI (18/03/2020)