

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.11.2019

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.137 of 2014

1.R.Deepika @ Sonia
2.R.Jyothi

...Appellants

vs.

1.K.J.Umamaheswari

2.ICICI Lombard General Insurance Co. Ltd.,
Chotabhai Centre, 2nd & 3rd Floors,
140, Nungambakkam High Road,
Chennai - 600 034.

...Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment dated 19.09.2013 in M.C.O.P.No.392 of 2010 on the file of the Motor Accident Claims Tribunal / Special Sub Court I, Chennai.

Appellants : Mr.R.Kalai Arasan
R1 : No appearance(Exparte)
R2 : Mrs.R.Sreevidhya

J U D G M E N T

The appellants are the claimants in M.C.O.P.No.392 of 2010 on the file of the Motor Accident Claims Tribunal / Special Sub Court I, Chennai. They filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.16,00,000/- for the death of one Jairaj @ J.Raj, father of the claimants in a road accident on 03.02.2007.

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

On 03.02.2007, the deceased was riding a two wheeler bearing Registration No. TN 09 D 7753 along Kodambakkam High Road and at about 22.10.hours, a speeding car bearing Registration No. TN 01 AA 0954 hit the two wheeler, as a result of which, the deceased Jairaj @ J.Raj sustained fatal injuries and was immediately rushed to the hospital. However, he succumbed to injuries on 21.02.2007.

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

4. The owner of the car remained absent before the Tribunal and therefore, she was set ex-parte. The ICICI Lombard General Insurance Company contested the claim petition on all the grounds available to the insured. The learned Special Subordinate Judge I / Motor Accident Claims Tribunal, Chennai after analysing the evidence on record, awarded a compensation of Rs.9,00,100/- 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.Kalai Arasan, learned counsel appearing for the appellants and Mrs.R.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 running a tailor shop in the name and style 'Delhi Tailors', earning a sum of Rs.20,000/- per month. In the absence of income proof, the Tribunal fixed the notional monthly income of the deceased as Rs.7,000/- including future prospects. It is pertinent to point out that the accident took place in the year 2007 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 deceased was aged 40 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, 25% should be added towards future prospects of the deceased. Since there are two 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.7,500/-
25% Future Prospects = Rs.9,375/-
After 1/3 deduction = Rs.6,250/-

Loss of dependency

= Rs.6,250/- x 12 x 14

= Rs.10,50,000/-

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.10,50,000/-
2.	Loss of estate	Rs.15,000/-
3.	Loss of love and affection	Rs.40,000/-
4.	Funeral expenses	Rs.15,000/-
Total		Rs.11,20,000/-

8. Thus, the compensation awarded by the Tribunal is enhanced from Rs.9,00,100/- to Rs.11,20,000/- 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.9,00,100/- to Rs.11,20,000/-.

(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 / ICICI Lombard General Insurance Company is directed to deposit the enhanced compensation amount i.e., Rs.11,20,000/- (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.392 of 2010 on the file of the Motor Accident Claims Tribunal / Special Sub Court I, 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

To

The Motor Accidents Claims Tribunal,
The Special Subordinate Judge I,
Chennai.

+1 CC to Mrs.R.Sreevidhya, Advocate sr 99392.

+1 CC to Mr.N.M. Muthurajan, advocate sr 99670.

C.M.A.No.137 of 2014

GP(CO)
SP(12/08/2020)



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