

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.09.2019

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.1522 of 2014

1.P.Gayathri
2.P.Sudharsan (Minor)
3.P.Sabarish (Minor)
(Minors 2 and 3 are represented by
Mother and Natural friend P.Gayathri)
4.V.Tamilarasi
5.Velu ... Appellants/Petitioners

vs.

1.Shyamala Devi
2.ICICI Lombard General Insurance Co. Ltd.,
No.140, 3rd floor, Nungambakkam High road,
Chennai 600 034. ... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment dated 29.10.2013 in M.C.O.P.No.5007 of 2011 on the file of the Motor Accidents Claims Tribunal / Chief Judge, Small Causes Court, Chennai.

For Appellants : Mr.A.Shanmugaraj

For respondents : Mrs.R.Sreevidhya for R2
No appearance for R1

JUDGMENT

The appellants are the claimants in MCOP.No.5007 of 2011 on the file of the Motor Accident Claims Tribunal / Chief Judge, Court of Small Causes, Chennai. They filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 and Rule 3 of MACT Rules seeking compensation of Rs.20,00,000/- for the death of one Prakash, husband of the first claimant, father of the claimants 2 and 3 and son of the claimants 4 and 5 in a road accident that took place on 26.12.2010.

2. The case of the claimants is that on 26.12.2010, the deceased was travelling as a passenger in a van bearing

Registration No. TN 22 BQ 1381 along GST road. At about 10.45 pm, the driver of the van drove the vehicle rashly and negligently and hit a stationary lorry, as a result of which, the deceased Prakash sustained fatal injuries and died on the way to the Hospital.

3. According to the claimants, the accident took place due to the rash and negligent driving of the driver of the van bearing Registration No. TN 22 BQ 1381 belonging to the first respondent and that since the said van was insured with the second respondent, both the owner and the insurer of the van are jointly and severally liable to pay compensation of Rs.20,00,000/- to them.

4. The first respondent remained absent before the Tribunal and therefore, she was set ex-parte. The second respondent, ICICI Lombard General Insurance Company Limited contested the claim petition on all the grounds available to the insured. The learned Motor Accidents Claims Tribunal / Chief Judge, Small Causes Court, Chennai after analysing the evidence on record, awarded a compensation of Rs.9,70,050/- 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. Mr.A.Shanmugaraj, learned counsel appearing for the appellants / claimants contended that though the claimants have specifically contended that the deceased was earning a sum of Rs.10,000/- per month as an electrician and also filed salary certificate issued by Mr.Arunkumar (PW3), the Tribunal has fixed the notional income of the deceased only as Rs.4,500/- per month. He further contended that 30% alone has been added towards future prospects of the deceased. He therefore prayed for enhancement of compensation.

6. Per contra, Mrs.R.Sreevidhya, learned counsel appearing for the second respondent / ICICI Lombard General Insurance Company Limited contended that the award passed by the Tribunal is based on the well laid principles of law which were in vogue at the time of passing of the order and therefore, the same need not be disturbed at this stage.

7. It is pertinent to point out that the accident took place in the year 2010 and in the facts and circumstances, the notional income fixed by the Tribunal at Rs.4,500/- per month is meagre and hence, a sum of Rs.7,500/- per month is taken up as the notional income of the deceased. 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 (SC), 40% should be added towards future prospects of the deceased. Since there are five dependents, 1/4th of his income should be

deducted towards the personal expenses of the deceased. The proper multiplier to be adopted in the instant case is 17 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 28 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 17
= Rs.16,06,500/-

8. 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.16,06,500/-
2.	Loss of estate	Rs.15,000/-
3.	Loss of love and affection	Rs.40,000/-
4.	Funeral expenses	Rs.15,000/-
Total		Rs.16,76,500/-

9. Thus, the compensation awarded by the Tribunal is enhanced from Rs.9,70,050/- to Rs.16,76,500/- which would carry interest at the rate of 7.5% per annum.

10. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed.
No costs.

(ii) The compensation awarded by the Tribunal is enhanced from Rs.9,70,050/- to Rs.16,76,500/-.

(iii) The appellants / claimants are directed to pay the court fee for the enhanced compensation amount, if any, 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 Limited is directed to deposit the enhanced compensation amount i.e., Rs.16,76,500/- (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.5007 of 2011 on the file of the Motor Accident Claims Tribunal / Chief Judge, Court of Small Causes, 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 order passed by the Tribunal after following due process of law. The apportionment granted by the Tribunal shall be kept intact.

Sd/-

Assistant Registrar(CJ conf)

//True Copy//

Sub Assistant Registrar

mbi

To

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

+1cc to Mr.A.Shanmugaraj, Advocate SR.81310

+1cc to Mrs.R.Sreevidhya, Advocate SR.81976

C.M.A.No.1522 of 2014

KJ(CO)
CB(17/12/2019)

WEB COPY