

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.11.2019

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.202 of 2014

1.B.Ambika
2.B.Suresh
3.B.Selvakumar (minor) ... Appellants/Petitioners
(rep. by his mother and Next Friend
1st petitioner)

vs.

1.Abdul Rahman.A

2.Reliance General Insurance Co. Ltd.,
Rai' Tower, 2nd Floor,
Plot No.2054, 2nd Avenue,
Anna Nagar, Chennai - 600 040.

...Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment dated 09.10.2013 in M.C.O.P.No.5055 of 2011 on the file of the Motor Accident Claims Tribunal / IV Small Causes Court, Chennai.

Appellants	: Mr.K.Varadha Kamaraj
R1	: Mr.V.Chandrakanthan
R2	: Mr.S.Arunkumar

J U D G M E N T

The appellants are the claimants in M.C.O.P.No.5055 of 2011 on the file of the Motor Accident Claims Tribunal / IV Small Causes Court, Chennai. They filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.12,00,000/- for the death of one Murugan, son of the first claimant and brother of the claimants 2 and 3 in a road accident on 01.10.2011.

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

On 01.10.2011, the deceased Murugan was riding his motorcycle bearing Registration No. TN 21 U 3618 along East Coast Road and was proceeding towards Pudupattinam and at about 23.00 hours, a speeding mini lorry bearing Registration No. TN 47 F 1545 hit the motorcycle, as a result whereof, the deceased

Murugan fell down and sustained fatal injuries. He was immediately rushed to Government General Hospital at Chennai. However, he succumbed to injuries on 04.10.2011.

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

4. The learned IV Judge / Motor Accident Claims Tribunal, Small Causes Court, Chennai after analysing the evidence on record, awarded a compensation of Rs.5,90,000/- together with interest at the rate of 7.5% per annum. 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.K.Varadha Kamaraj, learned counsel appearing for the appellants, Mr.V.Chandrakanthan, learned counsel appearing for the first respondent and Mr.S.Arunkumar, learned counsel appearing for the second respondent.

6. In the claim petition, it is contended that the deceased was a flower merchant, earning a sum of Rs.10,000/- per month. In the absence of income proof, the Tribunal fixed the monthly income of the deceased including future prospects as Rs.6,000/- per month. It is pertinent to point out that the accident took place in the year 2011 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 21 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. In the decision in Sarla Verma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121 it has been held that,

"where family of the bachelor is large and dependant on the income of the deceased, as in a case where he has a widowed mother and large number of younger non-earning sisters or brothers, his personal and living expenses may be restricted to one-third and contribution to the family will be taken as two-third".

In the instant case, the deceased was survived by his widowed mother and two younger brothers and therefore, contribution to the family is taken as 2/3rd of his income. The proper multiplier to be adopted in the instant case is 18 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.3,000/-
Total = Rs.7,500/- + Rs.3,000/- = Rs.10,500/-
After 1/3 deduction = Rs.7,000/-

Loss of dependency

= Rs.7,000/- x 12 x 18
= 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.5,90,000/- 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 partly allowed. No costs.

(ii) The quantum of compensation awarded by the Tribunal is enhanced from Rs.5,90,000/- 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 / Reliance General Insurance Company Limited, 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 M.C.O.P.No.5055 of 2011 on the file of the Motor Accident Claims Tribunal / IV Small Causes 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

mtl

To

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

+1 CC to Mr.K.Varadha Kamaraj, Advocate sr 95496
+1 CC to Mr.S.Arunkumar, Advocate sr 95631.

C.M.A.No.202 of 2014

VSNII (CO)
SP(24/07/2020)