

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.11.2019

CORAM:

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

C.M.A.NO.2056 OF 2014

1.Kalyani
2.Anandan (Minor)
3.Poongodi (Minor)
4.Dinamalar (Minor)
(Minors represented by mother and
next friend Kalyani)
5.Muniammal
6.Munusamy ... Appellants/Petitioners

vs.

1.V.Raghuram
2.The New India Assurance Co. Ltd.,
No.46, Moore Street, Chennai - 1. ... Respondents/Respondents

PRAYER:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment dated 24.03.2006 in M.C.O.P.No.4298 of 2001 on the file of the Motor Accident Claims Tribunal/Additional District and Sessions Court, Fast Track Court II, Chennai.

Appellants : Mr.M.L.Ramesh

R1 : No appearance

R2 : Mr.S.Krishnamoorthy

WEB COPY
J U D G M E N T

The appellants are the claimants in M.C.O.P.No.4298 of 2001 on the file of the Motor Accident Claims Tribunal/ Additional District and Sessions Court, Fast Track Court II, Chennai. They filed the claim petition under Section 163(A) of the Motor Vehicles Act, 1988 seeking compensation of Rs.12,00,000/- for the death of one Sekar, husband of the first claimant, father of

the claimants 2 to 4, son of the claimants 5 & 6 in a road accident on 09.04.2001.

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

On 09.04.2001, the deceased Sekar was walking along V.N.Kandigal Junction, Tiruthani and at about 04.00 p.m, a speeding tractor bearing Registration No. TN 21 B 8178, hit him, as a result whereof, he sustained fatal injuries and died in the Hospital on 08.05.2001.

3. According to the claimants, the rash and negligent driving of the driver of the tractor bearing Registration No. TN 21 B 8178 belonging to the first respondent, was the cause of the accident and that since the said tractor was insured with the second respondent/New India Assurance Company Limited, the owner of the tractor and the insurer are jointly and severally liable to pay compensation.

4. The first respondent, owner of the tractor remained absent before the Tribunal and therefore, he was set ex-parte. The second respondent, New India Assurance Company Limited contested the claim petition and the learned Additional District and Sessions Judge/Motor Accident Claims Tribunal, Fast Track Court II, Chennai after analysing the evidence on record, awarded a compensation of Rs.2,02,000/- 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.M.L.Ramesh, learned counsel appearing for the appellants and Mr.S.Krishnamoorthy, 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 working as a load man in a sand lorry, earning a sum of Rs.250/- per day. In the absence of income proof, the Tribunal fixed the annual income of the deceased as Rs.15,000/-. It is pertinent to point out that the accident took place in the year 2001 and in the facts and circumstances, this Court is of the opinion that fixing a sum of Rs.3,000/- 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 26 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 six

dependents, 1/5th of the deceased's income should be deducted towards his personal expenses. The proper multiplier to be adopted in the instant case is 17 as per the decision rendered in Sarla Verma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121. It is seen from the records that the deceased was admitted in Government Hospital, Chennai as an inpatient on 09.04.2001 and died on 08.05.2001. However, the Tribunal has not awarded any amount towards transportation and attender's charges and hence this Court grants a sum of Rs.10,000/- towards transportation and attender's charges.

Calculation

Notional Income = Rs.3,000/-
40% Future Prospects = Rs.1,200/-
Total = Rs.3,000/- + Rs.1,200/- = Rs.4,200/-
After 1/5 deduction = Rs.3,360/-

Loss of dependency

= Rs.3,360/- x 12 x 17
= Rs.6,85,440/-

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 consortium" 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.6,85,440/-
2.	Loss of estate	Rs. 15,000/-
3.	Loss of consortium	Rs. 40,000/-
4.	Funeral expenses	Rs. 15,000/-
5.	Transportation and Attender's charges	Rs. 10,000/-
Total		Rs.7,65,440/-

8. Thus, the compensation awarded by the Tribunal is enhanced from Rs.2,02,000/- to Rs.7,65,440/- 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 from Rs.2,02,000/- to Rs.7,65,440/-.

(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/New India Assurance Company Limited is directed to deposit the enhanced compensation amount i.e., Rs.7,65,440/- (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.4298 of 2001 on the file of the Motor Accident Claims Tribunal/Additional District and Sessions Court, Fast Track Court II, 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.

Sd/-

Assistant Registrar(CS I)

//True Copy//

Sub Assistant Registrar

mtl

To

1. The Additional District Judge & Sessions Judge,
The Motor Accidents Claims Tribunal,
The Additional District Judge and Sessions Court,
Fast Track Court - II, Chennai.
2. The Section Officer,
VR Section, High Court,
Madras-104.

+1cc to Mr.S.Krishnamoorthy, Advocate, S.R.No.92560

+1cc to Mr.M.L.Ramesh, Advocate, S.R.No.91462

C.M.A.No.2056 of 2014

BR(CO)

CS/31/07/2020