

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.09.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

CMA.No.2251 of 2014

S.Bharathi (Minor)
D/o K.Srinivasan
Rep. by her Guardian and next friend
P.Kumar (Maternal uncle) Appellant /Petitioner

Vs.

1. P.Arivazhagan
2. ICICI Lombard General Insurance Company Limited,
I Floor, Arihant Plaza, No.84/85, Waltax Road,
Chennai 600 003.
3. K.Srinivasan Respondents/ Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the order and decree dated 25.07.2013 passed in MCOP.No.3807 of 2010 on the file of the Special Subordinate Judge-I, Motor Accident Claims Tribunal, Chennai.

For Appellant : Mr.P.Natarajan
For Respondents : Mrs. R.Sreevidhya (for R2)
No appearance for R1 and R3

J U D G M E N T

The appellant is the claimant in MCOP No.3807 of 2010 on the file of the Special Subordinate Judge-I, dealing with MCOP Cases, Chennai. The appellant, a minor aged 4 years represented by her guardian and next friend Mr.P.Kumar filed the above said claim petition seeking compensation of Rs.20,00,000/- for the death of her mother P.Sudha.

2. The case of the claimant in nutshell is as follows.

On 17.08.2006 at about 8.45 hours, the deceased was riding her motorcycle bearing Registration No.TN-22-AE-7309 and was proceeding towards Infosys Software Company in Old Mahabalipuram Road at Sholinganallur, Chennai. When she was nearing Sankara Hospital, a speeding lorry bearing Registration No.KA-01-B-6766, belonging to the first respondent and insured with the ICICI Lombard General Insurance Company Limited, the 2nd respondent, hit the motorcycle, as a result of which, she fell down and the lorry ran over her and she died on the spot. According to the claimant, the rash and negligent driving of the driver of the

lorry was the cause of accident and that since the owner of the lorry, the first respondent insured his vehicle with the 2nd respondent, both of them are jointly and severally liable to pay compensation to her.

3. The 3rd respondent is the father of the minor claimant S.Bharathi.

4. In the orders dated 25.07.2013 passed by the Tribunal, it is observed that the 3rd respondent K.Srinivasan deserted the deceased P.Sudha and was leading a wavered life without taking care of his wife and child. The guardian of the minor child Mr.P.Kumar, who also happens to be the maternal uncle of the child filed a G.W.O.P.No.160/2007 before the Principal District Judge, Chengalpattu and the said petition was allowed. The 3rd respondent, the father of the minor child S.Bharathi did not contest the claim petition and was also set exparte by the Tribunal.

5. The learned Special Subordinate Judge-I, dealing with the MCOP Cases, Chennai, after analysing the evidence on record, awarded a sum of Rs.14,23,240/- together with interest at the rate of 7.5% per annum to the minor claimant S.Bharathi and directed the insurance company to deposit the compensation amount in a nationalized bank till she attains majority. The Tribunal further permitted the guardian of the minor S.Bharathi to withdraw the interest amount once in three months directly from the bank. The present appeal is filed by the claimant seeking enhancement of compensation.

6. The learned counsel appearing for the appellant/claimant contended that the Tribunal did not award any amount towards "Future Prospects" of the deceased and awarded a very meagre amount of Rs.75,000/- for love and affection, especially, when the minor claimant had lost her mother, who was the only person taking care of her and that the father of the child, the 3rd respondent deserted her mother and in the facts and circumstances of the case, the compensation awarded by the Tribunal should be enhanced.

7. Per contra, the learned counsel appearing for the 2nd respondent contended that the Tribunal after considering all the aspects of the case, awarded a just compensation of Rs.14,23,240/- and therefore, the same need not be disturbed at this stage.

8. This is a case, where a girl child aged 4 years had lost her mother in a road accident. It is also seen from the records that her father deserted her mother, even before the accident and her maternal uncle filed G.W.O.P.No.160 of 2007 for declaring him as guardian of the minor child. The said application was allowed by the learned Principal District Judge, Chengalpattu, as evidenced by the orders dated 04.03.2010 (Ex.P20) passed in G.W.O.P.No.160/2007.

9. The contention of the claimant is that the deceased

was earning a sum of Rs.10,166/- However, a perusal of pay slip (Ex.P16) shows that the deceased was drawing a salary of Rs.9,500/- per month. The age of the deceased was 32 years on the date of accident. Hence, as per the decision of the Constitution Bench of the Hon'ble Supreme Court of India in National Insurance Company Limited Vs. Pranay Sethi and others reported in 2017 (2) TN MAC 609 (SC), 40% should be added towards future prospects and proper multiplier to be adopted in the instant case is '16', as per the decision rendered in Sarlavarma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121 and 1/3 should be deducted towards personal expenses of the deceased. Accordingly, loss of dependency is calculated as follows.

Monthly income - Rs.9,500
 Add: 40% future prospects (9500+3800) - Rs.13,300
 Deduction 1/3 (13,300-4433) - Rs.8,867
 Proper multiplier - 16
 Loss of dependency (8867 x 12 x 16) - Rs.17,02,464.

Apart from this amount, the claimant is also entitled to Rs.15,000/- and Rs.2,00,000/- towards "loss of estate", "funeral expenses" and "loss of love and affection" respectively. The revised compensation awarded under various heads is extracted hereunder.

Sl.No	Heads	Amount
1	Loss of dependency (8867x12x16)	17,02,464
2	Loss of estate	15,000
3	Funeral expenses	15,000
4	Loss of love and affection	2,00,000
	Total	19,32,464

This amount would carry interest at the rate of 7.5% per annum from the date of claim petition.

10. In the result, सत्यमेव जयते

(i) The civil miscellaneous petition is partly allowed.
 No costs.

(ii) The compensation awarded by the Tribunal is enhanced from 14,23,240/- to Rs.19,32,464/-.

(iii) The 2nd defendant, ICICI Lombard General Insurance Company Limited is directed to deposit the revised compensation of Rs.19,32,464/- together with interest at the rate of 7.5% per annum (less the amount already deposited by them), within four weeks from the date of receipt of a copy of this order.

(iv) Since the claimant is minor, the compensation amount is ordered to be deposited in a nationalized bank till the minor attain majority and the maternal uncle who has been appointed as guardina in GWOP No.160/2007 is permitted to withdraw the interest amount once in three months directly from the bank, for the welfare of the claimant.

Sd/-
Assistant Registrar(CS II)

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To
Sub Assistant Registrar

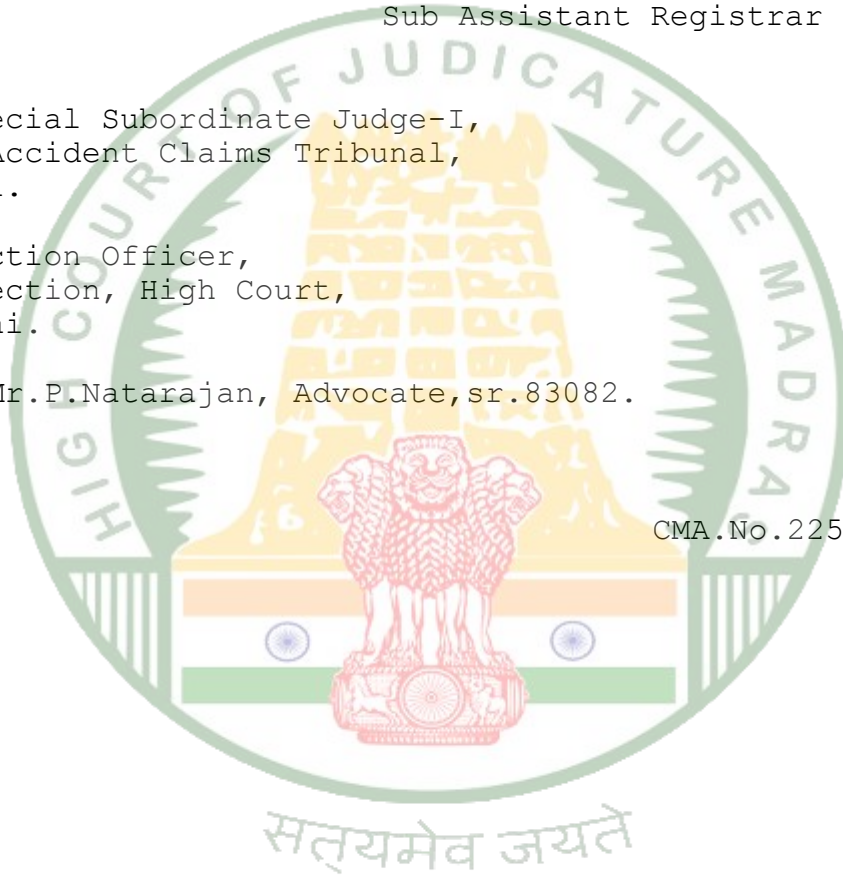
1. The Special Subordinate Judge-I,
Motor Accident Claims Tribunal,
Chennai.

2. The Section Officer,
V.R.Section, High Court,
Chennai.

+1 cc to Mr.P.Natarajan, Advocate,sr.83082.

mp(co)
krd 22/9

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