

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.11.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

CMA.No.2276 of 2014

and

MP.No.1 of 2014

1.Ravichandran

2.Koteeswaran

...Appellants/Respondents

vs.

1.Kamalam

2.Sigamani

3.Subramani

4.Saradhambal

... Respondents/Petitioners

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 01.10.2013 passed in MCOP.No.32 of 2011 on the file of the Motor Accident Claims Tribunal / Additional Subordinate Court, Virudhachalam.

For Appellants : Mr.G.Surya Narayanan

For Respondents : Mr.L.Munusamy

J U D G M E N T

The appellants are the respondents (the owner and the rider of the offending vehicle) in MCOP.No.32 of 2011 on the file of the Additional Subordinate Court, Virudhachalam. The claimants filed the claim petition under Section 166(1) of the Motor Vehicles Act, 1988 seeking compensation of Rs.4,00,000/- for the death of one Kaliyan, husband of the first claimant, father of the claimants 2 to 4 in a road accident on 05.02.2011.

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

On 05.02.2011, the deceased Kaliyan was a pedestrian on Virudhachalam - Aandimadam Road, Kolathangurichi and at about 10.00 am, a speeding motorcycle bearing Registration No. TN 30 T 0517 hit him, as a result of which, he sustained fatal injuries and died on the spot. According to the claimants, the rash and negligent riding of the rider of the motorcycle belonging to the appellant was the cause of the accident and therefore, the rider and the owner of the motorcycle are jointly and severally liable to pay compensation.

3. The learned Additional Subordinate Judge / Motor Accident Claims Tribunal, Virudhachalam after analysing the evidence on record, awarded a compensation of Rs.2,77,500/- together with interest at the rate of 7.5% per annum and directed the owner and the rider of the motorcycle to pay the compensation to the claimant. Aggrieved over the orders passed by the Tribunal, the owner and the rider of the motorcycle have filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

4. Heard Mr.G.Surya Narayanan, learned counsel appearing for the appellants and Mr.L.Munusamy, learned counsel appearing for the respondents.

5. In the claim petition, it is contended that the deceased was an agriculturist, earning a sum of Rs.15,000/- per month. In the absence of income proof, the Tribunal fixed the notional income of the deceased as Rs.4,500/- per month and the same is taken up for calculating 'loss of dependency'. The deceased was aged 70 years on the date of the accident, as evidenced by a copy of the post mortem certificate (Ex.P4) and therefore, he is not entitled to get future prospects as per the decision in National Insurance Co. vs Pranay sethi and others reported in 2017 (2) TNMAC 601. Since there are four claimants, the Tribunal deducted 1/4th of deceased's income towards his personal expenses. In the decision in New India Assurance Co. Ltd. Vs. Vinish Jain and others reported in 2018 (1) TN MAC 365 (SC) the Honourable Supreme Court held that where the claimants are majors and had their own source of income, 50% deduction towards personal expenses is called for. The proper multiplier to be adopted in the instant case is 5 as per the decision rendered in Sarlavarma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121.

Calculation

Notional Income = Rs.4,500/-

After 50% deduction = Rs.2,250/-

Loss of dependency

= Rs.2,250/- x 12 x 5

= Rs.1,35,000/-

6. 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.1,35,000/-
2.	Loss of estate	Rs.15,000/-
3.	Loss of love and affection	Rs.40,000/-
4.	Funeral expenses	Rs.15,000/-
Total		Rs.2,05,000/-

7. In the result,

(i) The Civil Miscellaneous Appeal is allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

(ii) The quantum of compensation awarded by the Tribunal is scaled down from Rs.2,77,500/- to Rs.2,05,000/- which would carry interest at the rate of 7.5% per annum.

(iii) The appellants are directed to deposit the compensation awarded by this Court i.e., Rs.2,05,000/- (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 MCOP.No.32 of 2011 on the file of the Motor Accident Claims Tribunal / Additional Subordinate Court, Virudhachalam within a period of four weeks from the date of receipt of a copy of this order.

(iv) On such deposit being made, the respondents / 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 (CCC)

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Sub Assistant Registrar

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To

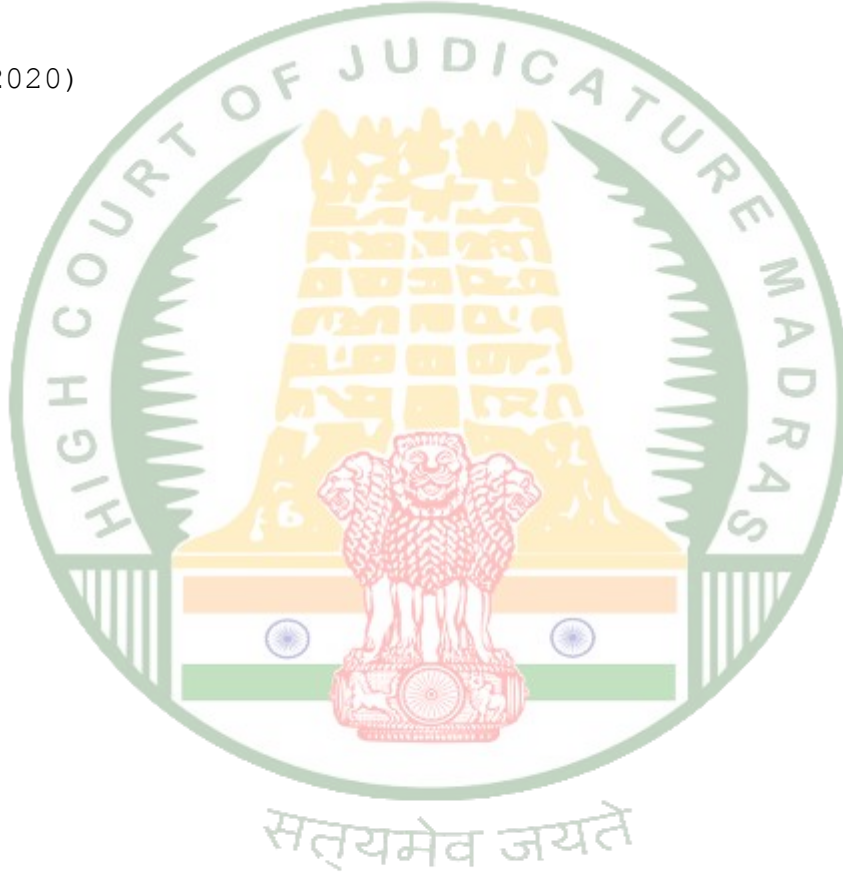
1.The Motor Accidents Claims Tribunal,
The Additional Subordinate Court,
Virudhachalam.

2.The Section Officer,
VR Section,
High Court of Madras,
Chennai.

+1cc to Mr.L.Munusamy, Advocate, S.R.No. 99490

CMA.No.2276 of 2014
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SJ(CO)
GN(30/07/2020)



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