

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.09.2019

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.2285 of 2014

1.Pushpa

2.Minor Manushree

D/o.Late Sivaraj

rep by NF Mother Pushpa

3.Sonnappa

4.Kamalamma

5.Anusuya

... Appellants/ Petitioners

..Vs..

1.S.Moorthy

2.The Branch Manager,

Reliance General Insurance Company Limited,

Branch Office, Sri Lakshmi Complex,

1st Floor, Bharathi Street,

Omalar Main Road, Swarnapuri,

Salam - 636 004.

...Respondents/ Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment dated 17.02.2012 in M.C.O.P.No.953 of 2009 on the file of the Motor Accidents Claims Tribunal / Additional District Court, Krishnagiri.

For Appellants : Mr.Mukund R.Pandiyan
for Mr.M.Sriram

For respondents : Mr.K.Moorthy for R2
No appearance for R1

JUDGMENT

The appellants are the claimants in MCOP.No.953 of 2009 on the file of the Motor Accident Claims Tribunal / Additional District Court, Krishnagiri. They filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.10,00,000/- for the death of one Sivaraj in a road accident that took place on 03.06.2008.

2. The case of the claimants is that on 03.06.2008, the deceased was riding his TVS Star City motorcycle bearing Registration No. KA 51 H 4740 on Thali - Denkanikottai road. When he was nearing Kakkadasam, a speeding Tata Ace vehicle bearing Registration No. TN 29 AC 2145 hit his motorcycle, as a result of which, he fell down and died on the spot.

3. According to the claimants, the accident took place due to the rash and negligent driving of the driver of the Tata Ace vehicle bearing Registration No. TN 29 AC 2145 belonging to the first respondent and that since the said Tata Ace vehicle was insured with the second respondent, both of them are jointly and severally liable to pay a sum of Rs.10,00,000/- to them.

4. The first respondent, owner of the Tata Ace remained absent before the Tribunal and therefore, he was set ex-parte. The second respondent, Reliance General Insurance Company Limited contested the claim petition on all the grounds available to the insurer. The learned Motor Accidents Claims Tribunal / Additional District Judge, Krishnagiri after analysing the evidence on record, awarded a compensation of Rs.7,73,500/- together with interest at the rate of 6% per annum. 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.Mukund R.Pandiyar, learned counsel appearing for the appellants / claimants contended that though the deceased was doing milk vending business and was earning a sum of Rs.10,000/- per month, the Tribunal had fixed the income of the deceased as Rs.4,500/- per month which according to him is very meagre.

6. Per contra, Mr.K.Moorthy, learned counsel appearing for the second respondent / Reliance 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 the present stage.

7. It is pertinent to point out that the accident took place in the year 2008 and in the facts and circumstances, the notional income fixed by the Tribunal as Rs.4,500/- cannot be found fault with. However, the Tribunal did not award any amount towards "future prospects" of the deceased when the deceased was aged 28 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 prospectus of the deceased. Since there are five dependents, 1/4 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 claimant was 28 years on the date of the accident.

Calculation

Total Income = Rs.4,500/-
40% Future Prospects = Rs.1,800/-
Total = Rs.4,500/- + Rs.1,800/- = Rs.6,300/-
After 1/4 deduction = Rs.4,725/-

Loss of dependency

= Rs. 4,725/- x 17 x 12
= Rs.9,63,900/-

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. The award passed by this Court under various heads is extracted hereunder:

S.No.	Head	Amount granted
1.	Loss of dependency	Rs.9,63,900/-
2.	Loss of estate	Rs.15,000/-
3.	Loss of love and affection	Rs.40,000/-
4.	Funeral expenses	Rs.15,000/-
Total		Rs.10,33,900/-

9. Thus, the compensation awarded by the Tribunal is

enhanced from Rs.7,73,500/- to Rs.10,33,900/- 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.7,73,500/- to Rs.10,33,900/-.

(iii) The appellants / claimants are directed to pay the court fee for the enhanced compensation amount, if any, within a period of three weeks from today ie., 06.09.2019, and the Registry is directed to draft the decree only after the receipt of Court fee.

(iv) The second respondent, Reliance General Insurance Company Limited is directed to deposit the enhanced compensation amount i.e., Rs.10,33,900/- (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.953 of 2009 on the file of the Motor Accident Claims Tribunal / Additional District Court, Krishnagiri 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 made by the Tribunal shall be kept intact.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

dua/mbi

To

The Motor Accidents Claims Tribunal,
The Additional District Court,
Krishnagiri.

+1cc to Mr.K.Moorthy , Advocate SR.No. 78188

+1cc to Mr.Mukund R.Pandiyan , Advocate SR.No. 77543

C.M.A.No.2285 of 2014

A.SK(14/11/2019)