

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.10.2019

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.318 of 2014

1. Sampath

2. Kala

..Petitioners/Appellants

...Vs...

1. M/s.Aishwarya Feeds,
Sanniyasi Karadu,
Varurampatty,
Mohanur Road,
Namakkal - 637 002
(R1 remained exparte before the Tribunal)

2.The National Insurance Company Limited
751, Annasalai,
Chennai 600 002

..Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment dated 20.09.2013 in M.A.C.T.O.P.No.3335 of 2012 on the file of the Motor Accidents Claims Tribunal and IV Judge, Court of Small Causes, Chennai.

For Appellants : Mrs.A.Subadra for Mrs.M.Malar

For Respondents : Mr.R.Ravichandran for R2
R1- Exparte (Tribunal)

JUDGMENT

The appellants are the claimants in MCOP.No.3335 of 2012 on the file of the Motor Accident Claims Tribunal /IV Judge, Court of Small Causes, Chennai. They filed the claim petition under Section 166 of the Motor Vehicles Act, 1988, seeking compensation of Rs.14,00,000/- for the death of their son Anandakumar in a road accident, which took place on 10.01.2012.

2. The case of the claimants is that on 10.01.2012, the claimants son was traveling as a pillion rider in a motor cycle bearing Registration No.TN 19 C 2751 on Tambaram-Chengalpattu road. When he was nearing Sivanantha Gurukulam, a speeding lorry bearing Registration No.TN-28-AK-3094 belonging to the 1st

respondent and insured with the 2nd respondent, hit his two-wheeler, as a result of which, the deceased fell down and died on the same day in the hospital.

3. According to the claimants, the rash and negligent driving of the driver of the lorry bearing Registration No. TN-28-AK-3094 belonging to the first respondent, was the cause for the accident and that since the owner of the lorry insured his vehicle with the second respondent/National Insurance Company Limited, both of them are jointly and severally liable to pay compensation.

4. The 1st respondent/owner of the lorry remained absent before the Tribunal and therefore, he was set ex-parte. The present appellant / National Insurance Company Limited contested the claim petition and the learned Motor Accident Claims Tribunal /IV Judge, Court of Small Causes, Chennai after analysing the evidence on record, awarded a compensation of Rs.6,70,000/- together with interest at the rate of 7.5% per annum to the claimant. 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. Mrs.A.Subadra for Mrs.N.Malar, learned counsel for the appellants contended that though the deceased died at the age of 21 years due to the accident, the Tribunal had wrongly adopted multiplier 12 based on the age of mother of the deceased and that the notional monthly income of the deceased was fixed as 7000/- even though sufficient evidence was adduced to show that the deceased was a carpenter by profession earning a sum of Rs.12,000/- per month.

6. Per Contra, Mr.R.Ravichandran, the learned counsel for the respondent contended that the Tribunal after considering all the aspects of the case had awarded a first compensation of Rs.6,70,000/- to the claimants and therefore prayed for dismissal of the appeal.

7. No appearance on behalf of the 1st respondent.

8. In the instant case, since the age of the deceased was 21 years on the date of the accident, the proper multiplier to be adopted in the instant case is 18, as per the decision rendered in Sarlavarma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121. The contention of the claimants is that the deceased was a Carpenter in Vijay Modular Kitchen and was earning a sum of

Rs.12,000/- per month. In order to substantiate the same that the claimants have examined one of the colleagues of the deceased as PW.3. The salary certificates were marked as Ex.P5 to Ex.P7. It is to be pointed out that the Employer of the deceased was not examined as a witness and in the absence of sufficient proof, the notional monthly income is fixed as Rs.7,500/-, considering the year of 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 the deceased was aged about 21 years on the date of the accident. 50% should be deducted towards his personal expenses, as he died as a Bachelor.

Calculation

Total Income = Rs.7,500/-
 40% Future Prospects = Rs.3,000/-
 Total = Rs.7,500/- + Rs.3,000/- = Rs.10,500/-
 After 50% deduction = Rs.5,250/-

Loss of dependency

= Rs. 5,250/- x 12 x 18 = Rs.11,34,000/-

9. 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 Constitution Bench decision of the Hon'ble Supreme Court in Pranay Sethi's case (Cited supra). The award passed by this Court under various heads is extracted hereunder:

S.No.	Head	Amount granted
1.	Loss of dependency	Rs.11,34,000/-
2.	Loss of estate	Rs.15,000/-
3.	Loss of love and affection	Rs.40,000/-
4.	Funeral expenses	Rs.15,000/-
Total		Rs.12,04,000/-

10. Thus, the compensation awarded by the Tribunal is enhanced from Rs.6,70,000/- to Rs.12,04,000/-, which would carry interest at the rate of 7.5% per annum.

11. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed. No costs.

(ii) The compensation awarded by the Tribunal is enhanced from Rs.6,70,000/- to Rs.12,04,000/-.

(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., 16.10.2019, and the Registry is directed to draft the decree only after the receipt of Court fee.

(iv) The second respondent, National Insurance Company Limited is directed to deposit the enhanced compensation amount i.e., Rs.12,04,000/- (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.3335 of 2012 on the file of the Motor Accident Claims Tribunal, IV Court of Small Causes, 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 order passed by the Tribunal after following due process of law. The ratio of apportionment granted by the Tribunal shall be kept intact.

Sd/-

Assistant Registrar (CCC)

/True Copy/

Sub Assistant Registrar

To

The Motor Accident Claims Tribunal/
IV Court of Small Causes,
Chennai.

Copy To: The Section Officer, V.R.Section,
High Court of Madras, Chennai -104.

+1 cc to M/s.R.Ravichandran, Advocate Sr.No. 87292

+1 cc to M/s.A.Subadra, Advocate Sr.No. 86841

AKM/20.03.2020/4P- 5C/

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