

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.09.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

CMA.No.365 of 2014

The Divisional Manager, National Insurance Company Ltd.,
Jawaharlal Nehru Street, Pondicherry.

... Appellant/2nd Respondent

Vs.

1. R.Dhanasekar
2. D.Kalaiselvi
3. Minor D.Priyadharshini
rep. by her father Dhanasekar
... Respondents 1 to 3/Petitioner
4. V.Ramakrishnan
...4th Respondent/1st Respondent

Prayer This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the orders dated 27.08.2013 passed in M.C.O.P.No.1426 of 2010 by the I Additional District Judge/ Motor Accident Claims Tribunal, Cuddalore.

For Appellant : Mr.D.Baskaran

For Respondents : Mr.R.Kumaravel (for R1 to R3)
No appearance for R4

J U D G M E N T

The Divisional Manager, National Insurance Company Limited, Puducherry, who is the 2nd respondent in MCOP No.1426 of 2010 on the file of the I Additional District Judge/ Motor Accident Claims Tribunal, Cuddalore has filed the present appeal questioning the quantum of compensation awarded by the Tribunal.

2. The respondents/claimants filed the above said claim petition seeking compensation of Rs.50,00,000/- for the death of one Ranjithkumar, son of the claimants No. 1 and 2 and brother of the claimant No.3 in a road accident that took place on 08.02.2010. The case of the claimants is that when the deceased Ranjithkumar was riding his two wheeler along Bharathi Road, Cuddalore, a speeding tanker lorry bearing registration No.TN-32-Q 3945, belonging to the 4th respondent, hit the two wheeler, as a result of which he fell

down and died instantaneously on the spot. According to the claimants the rash and negligent driving of the driver of the tanker lorry was the cause of accident and that since the owner of the tanker lorry/4th respondent insured his vehicle with the appellant, both of them are jointly and severally liable to pay compensation to them.

3. The I Additional District Judge/ Motor Accident Claims Tribunal, Cuddalore, after analysing the evidence on record, awarded a compensation of Rs.10,12,000/- together with interest at the rate of 7.5% p.a. to the claimants. Aggrieved over the orders passed by the Tribunal, the Insurance Company has filed the present suit.

4. Mr.D.Baskaran, learned counsel appearing for the appellant contended that though the deceased died as a bachelor, the Tribunal had deducted 1/4 from the income of the deceased towards his personal expenses and therefore, the award passed by the Tribunal cannot be sustained.

5. Per contra, Mr.R.Kumaravel, learned counsel appearing for the claimants contended that the claimants 1 to 3 were depending on the income of the deceased and therefore, the Tribunal was right in deducting 1/4 th from his income towards his personal expenses.

6. 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), when a person died as a bachelor, 50% of income should be deducted towards personal expenses of the deceased. Therefore, the tribunal was wrong in deducting 1/4 towards personal income of the deceased.

7. It is contended by the claimants that the deceased was working in a private concern earning a sum of Rs.15,000/- per month. However, no proof of income was adduced by the claimants. The learned counsel appearing for the claimants contended that the deceased was a Diploma holder in mechanical engineering and therefore, he would have definitely earned a sum of Rs.15,000/- per month. In the absence of proof of income, the tribunal had fixed notional income of the deceased as Rs.6,000/- per month. The accident took place in the year 2010 and considering the qualification of the deceased, the monthly income of the deceased is fixed at Rs.6,500/-. 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. The deceased was aged 23 years on the date of accident and therefore, 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. Thus, loss of dependency

is calculated as follows.

Notional income - 50% (6500-3250) - Rs.3250
Add: 40% future prospects (3250+1300) - Rs.4550
Proper multiplier - 18
Loss of dependency (4550 x 12 x 18) - Rs.9,92,800

Apart from this amount, the claimants are also entitled to Rs.15,000/- Rs.15,000/- and Rs.40,000/- 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 (4550x12x18)	9,82,800
2	Loss of estate	15,000
3	Funeral expenses	15,000
4	Loss of love and affection	40,000
	Total	10,52,800

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

8. In the result,

(i) The civil miscellaneous appeal is dismissed.
No costs.

(ii) The compensation awarded by the tribunal is enhanced from Rs.10,12,000/- to Rs.10,52,800/-.

(iii) The appellant/insurance company is directed to deposit the enhanced compensation amount of Rs.10,52,800/- together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit (less the amount already deposited by them), within 4 weeks from the date of receipt of a copy of this order.

(iv) On such deposit being made by the appellant/insurance company, the claimants are entitled to withdraw the same, after following due process of law and as per the apportionment made by the tribunal.

Sd/-

Assistant Registrar (CCC)

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Sub Assistant Registrar

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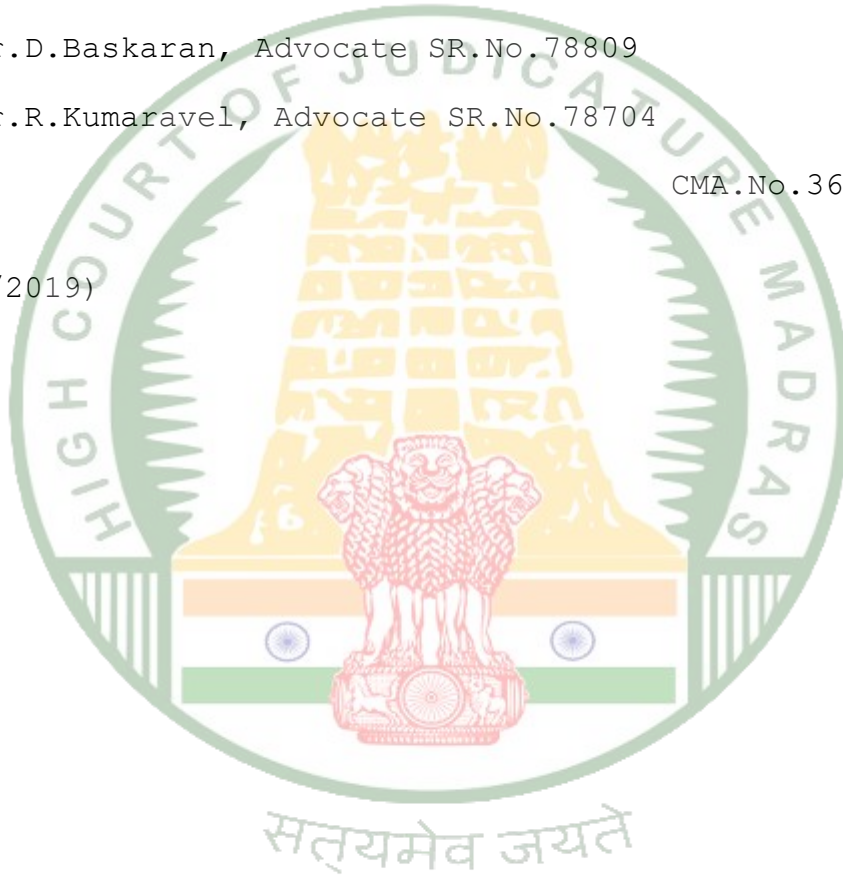
1. The I Additional District Judge,
Motor Accident Claims Tribunal, Cuddalore
2. The Divisional Manager, National Insurance Company Ltd.,
Jawaharlal Nehru Street,
Pondicherry.
3. The Section Officer,
VR Section, High Court, Madras-104

+1cc to Mr.D.Baskaran, Advocate SR.No.78809

+1cc to Mr.R.Kumaravel, Advocate SR.No.78704

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NRL (CO)
GMY (09/12/2019)



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