

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.09.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

CMA.No.374 of 2014

and

MP.No.1 of 2014

The New India Assurance Co. Ltd.,
Rep. by Divisional Manager,
Officer's line,
Vellore.

...Appellant/2nd Respondent

.Vs.

1.K.Pushpa
2.K.Adalarasu
3.K.Bharathidashan
4.K.Gnanasekar
5.Minor Krishnan
Rep. by his next friend,
mother K.Pushpa
6.M.Satheesh

... Respondent 1 to 5/Claimants

...6th Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 29.10.2012 passed in MCOP.No.66 of 2010 on the file of the Motor Accident Claims Tribunal / Subordinate Judge, Ranipet.

For Appellant : Mr.G.Udaya Sankar

For Respondents: Mr.A.Jayaraman
for Mr.A.Saranraj for R1 to R5

R6 : Exparte

JUDGMENT

The New India Assurance Company Limited, the second respondent in MCOP.No.66 of 2010 on the file of the Motor Accidents Claims Tribunal/ Subordinate Court, Ranipet has filed the present appeal questioning the liability and the quantum of compensation awarded by the Tribunal. The claimants filed the above said claim petition under Section 166 (A) of the Motor Vehicles Act, 1988 seeking compensation of Rs.15,00,000/- for the death of one Kuppan, husband of

first claimant and father of the claimants 2 to 5 in a road accident that took place on 15.06.2008.

2. On 15.06.2008, at about 06.30 am, when the deceased Kuppan was riding his bicycle on Chennai - Bangalore main road, a speeding Eicher van bearing Registration No. KA 02 B 3276 belonging to one M.Satheesh (first respondent in MCOP.No.66 of 2010) hit the bicycle, as a result of which, the deceased Kuppan died on the spot. According to the claimants, the rash and negligent driving of the driver of the Eicher van was the cause of the accident and that since the said Eicher van was insured with the present appellant, both the owner and the insurer of the van are jointly and severally liable to pay compensation to them.

3. The owner of the Eicher van remained absent before the Tribunal and therefore, he was set ex-parte. The present appellant / New India Assurance Company Limited contested the claim petition on all the grounds available to the insured. The learned Motor Accidents Claims Tribunal / Subordinate Judge, Ranipet after analysing the evidence on record, awarded a compensation of Rs.6,65,000/- together with interest at the rate of 7.5% per annum to the claimants. Aggrieved over the orders passed by the Tribunal, the New India Assurance Company Limited has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

4. Mr.G.Udaya Sankar, learned counsel appearing for the appellant contended that though the driver of the Eicher van was acquitted by the learned District Munsif / Judicial Magistrate, Walajapet in CC.No.192 of 2008 and a copy of the Judgment was also marked before the Tribunal, the Tribunal has fixed the responsibility on the owner of the Eicher van bearing Registration No. KA 02 B 3276 and its insurer, the present appellant. He would therefore contend that the Insurance Company is not liable to pay compensation to the claimants.

5. It is pertinent to point out that Criminal Court records are not binding on the Motor Accidents Claims Tribunal for determining the negligence aspect. In the instance case, eye witness to the occurrence was examined as PW2 and the learned Motor Accidents Claims Tribunal / Subordinate Judge, Ranipet after analysing the entire oral and documentary evidence on record had clearly held that the driver of the Eicher van bearing Registration No. KA 02 B 3276 was responsible for the accident. The Tribunal had in fact given cogent reasons for coming to such a conclusion and I do not see any reason to interfere with the findings recorded by the Tribunal.

6. Mr.A.Jayaraman, learned counsel appearing for the respondents 1 to 5 / claimants contended that the award passed by the Tribunal cannot be said to be just in the light of the decision rendered in National Insurance Co. vs. Pranay sethi and others reported in 2017 (2) TNMAC 601(SC). He also relied on the decision in M/s.Bharathi Axa General Insurance Company Limited vs. Jayalakshmi @ Panchalai and others in CMA.No.3629 of 2013 and contended that even though the claimants have not challenged the quantum of compensation awarded by the Tribunal by way of filing an appeal or cross-objection, this Court has got powers and jurisdiction under Order 41 Rule 33 and Section 151 of the Code of Civil Procedure and Article 227 of the Constitution of India to enhance the compensation, if it is found that just compensation was not awarded. His specific contention is that though in the claim petition it is stated that the deceased was earning a sum of Rs.10,000/- per month, the Tribunal has fixed the notional income of the deceased as Rs.4,500/- per month, which is very meagre.

7. It is pertinent to point out that the claimants did not adduce any documentary evidence to show that the deceased was actually earning a sum of Rs.10,000/- per month. It is stated that the deceased was a motor mechanic and an agriculturist. The Tribunal has fixed the monthly income of the deceased as Rs.4,500/-. The accident took place on 15.06.2008 and therefore the notional income of the deceased shall be fixed at Rs.6,500/- per month. The age of the deceased was 48 years and as per the decision laid down in National Insurance Co. vs. Pranay sethi and others reported in 2017 (2) TNMAC 601 (SC), 25% should be added towards future prospects of the deceased. Since there are five persons depending on the income of deceased, 1/4 is deducted towards the personal expenses of the deceased. As the age of the deceased was 48 years on the date of the accident, the proper multiplier to be adopted in the instant case is 13 as per the decision rendered in Sarlavarma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121. The "loss of dependency" is calculated as follows:

Calculation

Notional Income = Rs.6,500/-
25% Future Prospects = Rs.1,625/-
Total = Rs.6,500/- + Rs.1,625/- = Rs.8,125/-
After 1/4 deduction = Rs.6094/-

Loss of dependency

= Rs.6094/- x 12 x 13
= Rs.9,50,664/-

8. Apart from the above said amount, the 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.9,50,664/-
2.	Loss of estate	Rs.15,000/-
3.	Loss of love and affection	Rs.40,000/-
4.	Funeral expenses	Rs.15,000/-
Total		Rs.10,20,664/-

9. Thus, the quantum of compensation awarded by the Tribunal is enhanced from Rs.6,65,000/- to Rs.10,20,664/- which would carry interest at the rate of 7.5% per annum.

10. In the result,

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

(ii) However, the quantum of compensation awarded by the Tribunal is enhanced from Rs.6,65,000/- to Rs.10,20,664/-.

(iii) The respondents 1 to 5 / claimants are directed to pay the court fee for the enhanced compensation amount, within a period of three weeks from today i.e., 17.09.2019 and the Registry is directed to draft the decree only after receipt of the Court fee.

(iv) The appellant / New India Assurance Company Limited is directed to deposit the compensation awarded by this court i.e., Rs.10,20,664/- (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.66 of 2010 on the file of the Motor Accidents Claims Tribunal / Subordinate Court, Ranipet within a period of four weeks from the date of receipt of a copy of this order.

(v) On such deposit being made, the respondents 1 to 5 / claimants are at liberty to withdraw the same as per the orders passed by the Tribunal after following due process of law. The apportionment made by the Tribunal shall be kept intact.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

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To

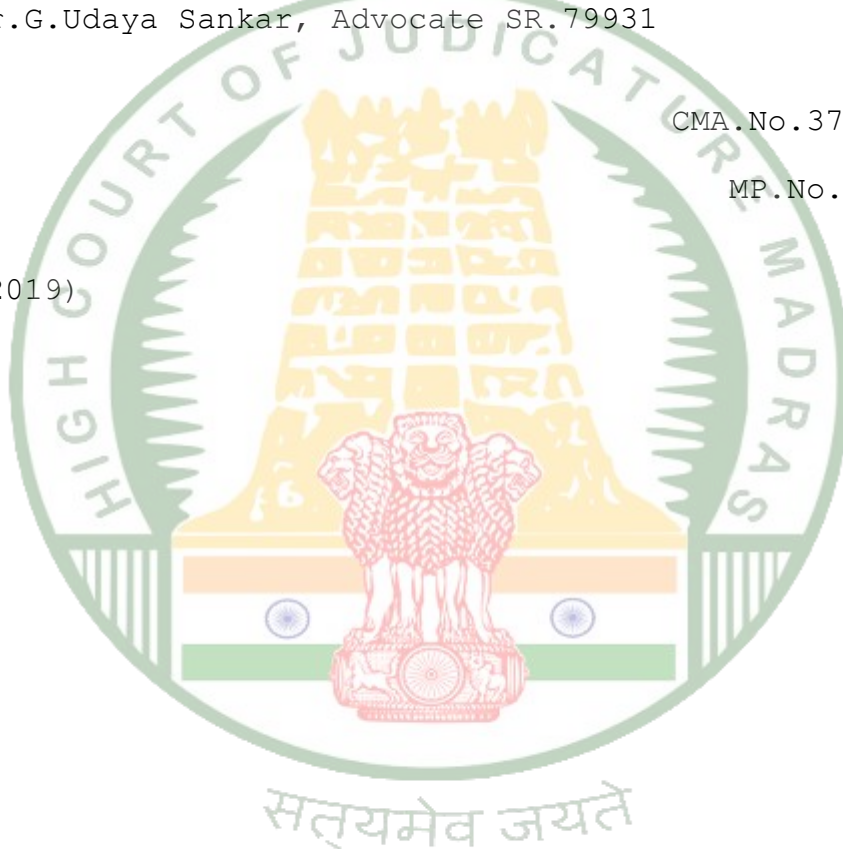
The Motor Accidents Claims Tribunal,
The Subordinate Court,
Ranipet.

Copy to: The Section Officer,
VR Section, High Court, Madras-104.

+lcc to Mr.A.Saranraj, Advocate SR.80465
+lcc to Mr.G.Udaya Sankar, Advocate SR.79931

CMA.No.374 of 2014
and
MP.No.1 of 2014

SV(CO)
CB(03/12/2019)



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