

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.11.2019

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.433 of 2014

1.Nagarathinamma
2.Minor Anusha
3.Minor Asha
4.Minor Nagabushan
5.Appaiya @ Venkatasamy
6.Lakshamma
7.Minor Gunaseela
8.Minor Naveen Kumari ... Appellants/Claimant
(Minor 7 and 8 represented by Next friend 5th Appellant)

vs.

1. R.Mahendra
2. The Branch Manager,
The New India Assurance Company Ltd.,
Branch Office,
K.G.Swamy Complex,
No.14/7, Bagalur Street,
Hosur-109. ... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment dated 21.11.2008 made in M.C.O.P.No.673 of 2006 on the file of the Motor Accidents Claims Tribunal/Chief Judicial Magistrate, Krishnagiri.

For Appellants : Mr.Mukund R.Pandiyan

For Respondents : Mrs.R.Sreevidhya for R2
No Appearance for R1

JUDGMENT

The appellants are the claimants in M.C.O.P.No.673 of 2006 on the file of the Motor Accidents Claims Tribunal/Chief Judicial Magistrate, 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

Vijay, husband of the first claimant, father of the claimants 2 to 4 and son of the claimants 5 and 6 and the brother of the claimants 7 and 8, in a road accident on 10.11.2005.

2. The case of the claimants is that on 10.11.2005, the deceased Vijay was walking on the left side of Hosur - Thali Road and at about 7.30 p.m., a J.C.B. vehicle bearing Registration No.KA-05-C-1350 hit the deceased, as a result of which, the deceased Vijay sustained fatal injuries 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 JCB vehicle bearing Registration No.KA-05-C-1350 belonging to the first respondent and that since the said JCB vehicle was insured with the second respondent, the owner and the insurer of the JCB are jointly and severally liable to pay compensation.

4. The first respondent remained absent before the Tribunal and therefore, he was set ex-parte. The second respondent, the New India Assurance Company Limited., contested the claim petition on all the grounds available to the insured and the learned Motor Accidents Claims Tribunal / Chief Judicial Magistrate, Krishnagiri, after analysing the evidence on record, awarded a compensation of Rs.4,50,000/- together with interest at the rate of 7.5% per annum to the claimants. Not being 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 claimants have specifically contended that the deceased was earning a sum of Rs.10,000/- per month, the Tribunal fixed the notional income of the deceased only as Rs.3,000/- per month. He further contended that no amount was awarded towards future prospects of the deceased and prayed for enhancement of compensation.

6. Per contra, Mrs.R.Sreevidhya, learned counsel appearing for the 2nd respondent / Insurance Company 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 orders and therefore, the same need not be disturbed at this stage.

7. In the claim petition it is contended that the deceased Vijay was working for Shakthi Management Services, earning a sum of Rs.10,000/- per month. However, no proof of income was produced by the claimants. The deceased was aged 25

years on the date of accident and the notional income fixed by the Tribunal at Rs.3,000/- per month appears to be meagre. Hence, a sum of Rs.6,000/- per month is taken up as the notional income of the deceased. 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 (SC), 40% should be added towards future prospects of the deceased. Since there are eight dependents, 1/4th of the income of the deceased should be deducted towards his personal expenses. The proper multiplier to be adopted in the instant case is 18 as per the decision rendered in Sarlaverma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121.

Calculation

Notional Income = Rs.6,000/-
 40% Future Prospects = Rs.2,400/-
 Total = Rs.6,000/- + Rs.2,400/- = Rs.8,400/-
 After 1/4 deduction = Rs.6,300/-

Loss of dependency

= Rs.6,300/- x 12 x 18
 = Rs.13,60,800/-

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, 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.13,60,800/-
2.	Loss of estate	Rs.15,000/-
3.	Loss of love and affection	Rs.40,000/-
4.	funeral expenses	Rs.15,000/-
Total		Rs.14,30,800/-

9. Thus, the compensation awarded by the Tribunal is enhanced from Rs.4,50,000/- to Rs.14,30,800/- which would carry interest at the rate of 7.5% per annum.

10. In the result,

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

(ii) The compensation awarded by the Tribunal is enhanced from Rs.4,50,000/- to Rs.14,30,800/-.

(iii) The appellants / claimants are directed to pay the court fee for the enhanced compensation amount, if any, and the Registry is directed to draft the decree only after

receipt of the Court fee.

(iv) The 2nd respondent / Insurance Company Ltd., is directed to deposit the enhanced compensation amount i.e., Rs.14,30,800/- (less the amount already deposited if any) 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 M.C.O.P.No.673 of 2006 on the file of the Motor Accident Claims Tribunal / Chief Judicial Magistrate, Krishnagiri, within a period of four weeks from the date of receipt of a copy of this Judgment.

(v) On such deposit being made, the appellants / 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

//True Copy//

Sub Assistant Registrar

ssn

To

1.The Chief Judicial Magistrate,
The Motor Accidents Claims Tribunal,
Krishnagiri.

Copy to: The Section Officer,
V.R.Section,
High Court of Madras,
Chennai.

+1cc to Mrs.R.Sreevidhya, Advocate SR.93308

+2cc to Mr.Mukund R.Pandiyan, Advocate SR.92806, 92807

सत्यमेव जयते

C.M.A.No.433 of 2014

SV(CO)

CB(04/02/2020)

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