

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.11.2019

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.434 of 2014

1.Anumanthappa
2.Minor Bharathi

... Petitioners/Appellants

vs.

1.M.S.Munisamy
2.The Divisional Manager,
United India Insurance Co. Ltd.,
M.M.Reddy Complex,
Hosur - 635 109.

... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment dated 29.09.2008 in M.C.O.P.No.30 of 2007 on the file of the Motor Accident Claims Tribunal / Subordinate Court, Hosur.

For Appellants : Mr.Mukund R.Pandiyan

For respondents: Mrs.I.Malar for R2
No appearance for R1

J U D G M E N T

The appellants are the claimants in MCOP.No.30 of 2007 on the file of the Motor Accident Claims Tribunal / Subordinate Court, Hosur. They filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.5,00,000/- for the death of one Jayamma, wife of the first claimant and mother of the second claimant in a road accident on 25.06.2005.

2. The case of the claimants in nutshell is as follows:

On 25.06.2005, the deceased Jayamma was walking along Krishnagiri - Denkanikottai road, near Koothanpalli overhead tank and pumpset and at about 12.45 hours, a speeding bus bearing Registration No. TN 29 T 7979, belonging to the first respondent and insured with the second respondent hit her, as a result of which, the deceased Jayamma 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 bus belonging to the first respondent and that since the said bus was insured with the second respondent, the owner and the insurer of the bus 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, United India Insurance Company contested the claim petition on all the grounds available to the insured. The learned Motor Accident Claims Tribunal / Subordinate Judge, Hosur after analysing the evidence on record, awarded a compensation of Rs.2,70,800/- 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. Heard Mr.Mukund R.Pandiyan, learned counsel appearing for the appellants and Mrs.I.Malar, learned counsel appearing for the second respondent / United India Insurance Company. No appearance for the first respondent.

6. In the claim petition, it is contended that the deceased was a daily wage labourer, earning a sum of Rs.5,000/- per month. It is pertinent to point out that the accident took place in the year 2005 and in the facts and circumstances, the notional income fixed by the Tribunal at Rs.1,800/- per month is meagre and hence, a sum of Rs.4,500/- per month is taken up as the notional income of the deceased. The Tribunal did not also award any amount towards the future prospects of the deceased, especially, 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 (SC), 40% should be added towards future prospects of the deceased. Since there are two dependents, 1/3rd of her income should be deducted towards her personal expenses. 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.

Calculation

Notional Income = Rs.4,500/-

40% Future Prospects = Rs.1,800/-

Total = Rs.4,500/- + Rs.1,800/- = Rs.6,300/-

After 1/3 deduction = Rs.4,200/-

Loss of dependency
= Rs.4,200/- x 12 x 17
= Rs.8,56,800/-

7. 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.8,56,800/-
2.	Loss of estate	Rs.15,000/-
3.	Loss of love and affection	Rs.40,000/-
4.	Funeral expenses	Rs.15,000/-
Total		Rs.9,26,800/-

8. Thus, the compensation awarded by the Tribunal is enhanced from Rs.2,70,800/- to Rs.9,26,800/- which would carry interest at the rate of 7.5% per annum.

9. In the result,

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

(ii) The quantum of compensation awarded by the Tribunal is enhanced from Rs.2,70,800/- to Rs.9,26,800/-.

(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 the date of this order and the Registry is directed to draft the decree only after receipt of the Court fee.

(iv) The second respondent / United India Insurance Company is directed to deposit the enhanced compensation amount i.e., Rs.9,26,800/- (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.30 of 2007 on the file of the Motor Accident Claims Tribunal / Subordinate Court, Hosur 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 orders passed by the Tribunal after following due process of law. The ratio of apportionment made by the Tribunal shall be kept intact.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The Motor Accidents Claims Tribunal,
The Subordinate Court,
Hosur.

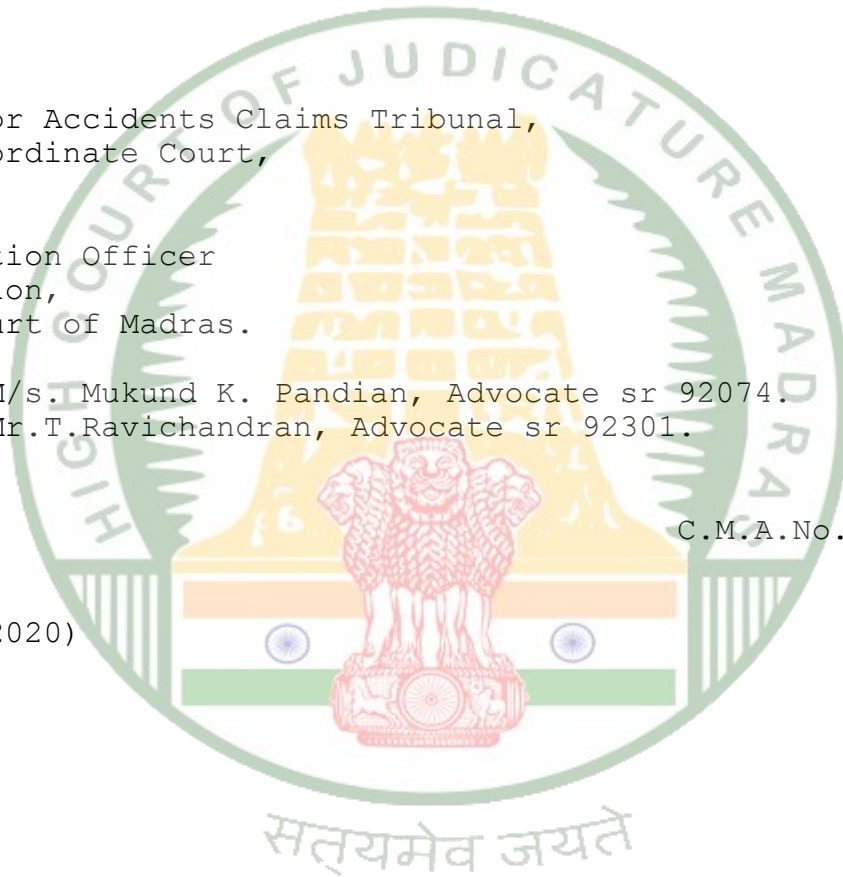
2.The Section Officer
VR Section,
High Court of Madras.

+1 CC to M/s. Mukund K. Pandian, Advocate sr 92074.

+1 CC to Mr.T.Ravichandran, Advocate sr 92301.

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RP(CO)
SP(31/12/2020)



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