

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.11.2019

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.435 of 2014

- 1.Muniammal
- 2.Venkatammal
- 3.Minor Subramani ... Appellants/Petitioners
(Minor represented by next friend
/ mother Muniammal)

vs.

1. Omkar Carriers & Movers Pvt. Ltd.,
Plot No.696, Sanghi Nagar Road,
Near Gandhi Cheruvu X Road,
Andhrapradesh.
2. The Divisional Mmanager,
The New India Assurance Company Limited,
3.8.10, Anasuya Complex, Opp.TTD Kalyana Mandapam,
Himayathnagar,
Hyderabad-500 029. ...Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 08.04.2010 made in M.C.O.P.No.961 of 2007 on the file of the Motor Accidents Claims Tribunal/Principal District Judge, Krishnagiri.

For Appellants : Mr.Mukund Pandiyan

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

JUDGMENT

The appellants are the claimants in M.C.O.P.No.961 of 2007 on the file of the Motor Accidents Claims Tribunal/Principal District Judge, Krishnagiri. They filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.8,00,000/- for the death of one Munusamy, son of the first claimant, brother of the claimants 2 and 3, in a road accident on 08.09.2006.

2. The case of the claimants is that on 08.09.2006, the deceased Munusamy was standing with other persons at Thambiganapalli S.C.Colony, on Krishnagiri - Kuppam Road and at about 1.00 p.m., a speeding Lorry, bearing Registration No.AP-29-T-8787 hit the deceased, as a result of which, the deceased Munusamy 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 lorry bearing Registration No.AP-29-T-8787 belonging to the first respondent and that since the said lorry was insured with the second respondent, the owner and the insurer of the lorry are jointly and severally liable to pay compensation.

4. The owner of the lorry remained absent before the Tribunal and therefore he was set exparte. 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/ Principal District Judge, Krishnagiri, after analysing the evidence on record, awarded a compensation of Rs.3,39,000/- 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 Pandiyan, learned counsel appearing for the appellants / claimants contended that though the claimants have specifically contended that the deceased was earning a sum of Rs.6,000/- per month as a Painter, the Tribunal has 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. He therefore prayed for enhancement of compensation.

6. Per contra, Mr.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. The deceased Munusamy was a painter by profession and was aged 20 years, therefore, the notional income fixed by the Tribunal at Rs.3,000/- per month is meagre and 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 the deceased as a bachelor, 1/2 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 1/2 deduction = Rs.4,200/-

Loss of dependency

= Rs.4,200/- x 12 x 18
= Rs.9,07,200/-

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.9,07,200/-
2.	Loss of estate	Rs.15,000/-
3.	Loss of love and affection	Rs.40,000/-
4.	funeral expenses	Rs.15,000/-
Total		Rs.9,77,200/-

9. Thus, the compensation awarded by the Tribunal is enhanced from Rs.3,39,000/- to Rs.9,77,200/- 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.3,39,000/- to Rs.9,77,200/-.

(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 is directed to deposit the enhanced compensation amount i.e., Rs.9,77,200/- (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.961 of 2007 on the file of the Motor Accidents

Claims Tribunal/Principal District Judge, 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(CO)

//True copy//

Sub Assistant Registrar

ssn

To

1. The Motor Accidents Claims Tribunal,
Principal District Judge,
Krishnagiri.
2. Omkar Carriers & Movers Pvt. Ltd.,
Plot No.696, Sanghi Nagar Road,
Near Gandhi Cheruvu X Road,
Andhrapradesh.
3. The Section Officer,
V.R. Section,
High Court of Madras,
Chennai.

+1cc to M/s.R.Sreevidhiya, Advocate SR.No.93309

+1cc to Mr.Mukund Pandiyan, Advocate SR.No.92806(12/03/2020)

C.M.A.No.435 of 2014

NR(CO)
GMY(12/02/2020)

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