

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 13.11.2019
CORAM:
THE HONOURABLE MRS.JUSTICE R. HEMALATHA
C.M.A.No.48 of 2014

1.Alamelu
2.Shanthi
3.Gomathi
4.Mahalakshmi (minor)
5.Abirami (Minor)
(Minors represented by their mother
and next friend, Alamelu)
6.Chinnapillai
... Appellants

vs.

1.P.Senthil (not necessary, hence given up)
2.National Insurance Co. Ltd.,
No.751, Anna Salai,
Chennai - 600 002.
... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment dated 05.09.2013 in M.C.O.P.No.2500 of 2012, on the file of the Motor Accident Claims Tribunal / II Judge, Court of Small Causes, Chennai.

For Appellants : Mrs.M.Sudha for
Mr.C.Munusamy,

For respondents : Mr.D.Bhaskaran for R2
No appearance for R1

J U D G M E N T

The appellants are the claimants in MCOP.No.2500 of 2012 on the file of the Motor Accident Claims Tribunal / II Judge, Court of Small Causes, Chennai. They filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 and Rule 3 of MACT Rules seeking compensation of Rs.15,00,000/- for the death of one M.Govindarasu, husband of the first claimant, father of the claimants 2 to 5 and son of the claimant 6 in a road accident on 29.11.2011.

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

On 29.11.2011, the deceased M.Govindarasu was walking along Chennai - Trichy National Highways, near Vandipalayam Pazhamalai Tea Stall and at about 09.30 hours, a speeding lorry bearing Registration No. TN 28 AK 7488, belonging to the first respondent and insured with the second respondent hit him, as a result of which, the deceased M.Govindarasu 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 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 first respondent remained absent before the Tribunal and therefore, he was set ex-parte. The second respondent / National Insurance Company contested the claim petition on all the grounds available to the insured. The learned II Judge / Motor Accident Claims Tribunal, Court of Small Causes, Chennai after analysing the evidence on record, awarded a compensation of Rs.7,11,600/- 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 Mrs.M.Sudha, learned counsel appearing for the appellants and Mr.D.Bhaskaran, learned counsel appearing for the second respondent / National Insurance Company. No appearance for the first respondent.

6. In the claim petition, it is contended that the deceased was a mason, earning a sum of Rs.500/- per day. It is pertinent to point out that the accident took place in the year 2011 and in the facts and circumstances, the notional income fixed by the Tribunal at Rs.6,500/- per month is meagre and hence, a sum of Rs.7,500/- 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 58 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), 10% should be added towards future prospects of the deceased. Since there are six dependents, 1/5th of his income should be deducted towards his personal expenses. The proper multiplier to be adopted in the instant case is 9 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.7,500/-
10% Future Prospects = Rs.750/-
Total = Rs.7,500/- + Rs.750/- = Rs.8,250/-
After 1/5 deduction = Rs.6600/-

Loss of dependency

= Rs.6600/- x 12 x 9
= Rs.7,12,800/-

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 consortium" 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.7,12,800/-
2.	Loss of estate	Rs.15,000/-
3.	Loss of consortium	Rs.40,000/-
4.	Funeral expenses	Rs.15,000/-
Total		Rs.7,82,800/-

8. Thus, the compensation awarded by the Tribunal is enhanced from Rs.7,11,600/- to Rs.7,82,800/- which would carry interest at the rate of 7.5% per annum.

9. In the result,

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

(ii) The quantum of compensation awarded by the Tribunal is enhanced from Rs.7,11,600/- to Rs.7,82,800/-.

(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 / National Insurance Company is directed to deposit the enhanced compensation amount i.e., Rs.7,82,800/- (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.2500 of 2012 on the file of the Motor Accident Claims Tribunal / II Judge, Court of Small Causes, Chennai 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.

Sd/-
Assistant Registrar (Audit)

/true copy/
Sub Asst. Registrar

mbi

To

1. The II Judge, Court of Small Causes
The Motor Accidents Claims Tribunal,
Chennai.
2. The Section Officer
VR Section,
High Court of Madras.

+1 cc to M/s.C.Munusamy Advocate sr94149
+1 cc to M/s.D.Bhaskaran Advocate sr94426

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C.M.A.No.48 of 2014

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