

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.09.2019

CORAM:

THE HONOURABLE MRS.JUSTICE.R.HEMALATHA

CMA.NO.66 OF 2014

A.Lakshmi

... Appellant

Vs.

1. M/s.Parveen Travels Limited,
No.228, Maraimalaiadaiam Salai,
Muthamizh Nagar, Puducherry-6.
2. M/s.New India Assurance Company Limited,
Farden Apartments, First Floor,
No.68, Purasawalkam High Road,
Chennai-7.

... Respondents

This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988 against the orders dated 12.07.2013 passed in MCOP No.3346 of 2008 by the Special Subordinate Judge-I/ Motor Accident Claims Tribunal, Chennai

For Appellant : Mr.T.G.Balachandran

For Respondents : Mr.S.Jayasankar (for R2)
No appearance for R1

JUDGMENT

The appellant is the claimant in MCOP No.3346 of 2008 on the file of the Special Subordinate Judge-I/ Motor Accident Claims Tribunal, Chennai. He filed the above said claim petition under Section 166 of the Motor Vehicles Act seeking compensation of Rs.8,00,000/- for the death of her son Raja, aged 32 years, in a road accident that took place on 03.08.2008.

2. The case of the appellant/claimant is that on 3.8.2008 at about 19.00 hours, the deceased Raja was riding his motorcycle bearing registration No.TN=07-AA-6991 along ECR Road, Thiruvannamiyur and when he was nearing Thiruvannamiyur bus depot, a speeding omni bus bearing registration No.PY-01-AL-2477 hit the motorcycle, as a result of which, he sustained multiple injuries

and died on the spot. According to the claimant, the rash and negligent driving of the driver of the omni bus was the cause of accident and that since the owner of the omni bus, the first respondent insured his vehicle with the 2nd respondent, the New India Assurance Company Limited, both of them are jointly and severally liable to pay compensation to them.

3. The owner of the Omni bus remained absent before the Tribunal and therefore, he was set exparte. The 2nd respondent, New India Assurance Company Limited contested the claim petition.

4. The learned Special Subordinate Judge-I/ Motor Accident Claims Tribunal, Chennai, after analysing the evidence on record, awarded a compensation of Rs.2,40,000/- to the claimant together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit. Not satisfied with the quantum of compensation awarded by the Tribunal, the claimant has filed the appeal seeking enhancement of compensation.

5. Mr.T.G.Balachandran, learned counsel appearing for the appellant/claimant contended that though the deceased was aged 32 years on the date of accident, the Tribunal has applied multiplier ' 5', taking into account the age of the mother of the deceased, which is contrary to the law laid down in Sarlavarma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121. He also contended that very meagre amounts were awarded under other heads and no amounts were awarded towards " Loss of love and affection" and " Funeral Expenses ". His next contention is that, the Tribunal had also fixed the monthly income of the deceased as Rs.3,500/-, especially when in the claim petition, it is clearly stated that the deceased was earning a sum of Rs.12,500/- per month. Therefore, he prayed for enhancement of compensation.

6. Per contra, Mr.S.Jayachandran, learned counsel appearing for the 2nd respondent, New India Assurance Company Limited contended that the Tribunal after considering all the aspects of the case, had awarded a just compensation and therefore, the same need not be disturbed at this stage.

7. It is contended by the claimants that the deceased was a painting contractor in a private concern earning a sum of Rs.12,500/- per month. However, no proof of income was adduced by the claimants. In the absence of proof of income, Rs.7,500/- per month is fixed as notional income of the deceased, since the accident took place in the year 2008. As per the decision of the Constitution Bench of the Hon'ble Supreme Court of India in National Insurance Company Limited Vs. Pranay Sethi and others reported in 2017 (2) TN MAC 609 (SC), 40% should be added towards future prospects. The deceased was aged 32 years on the

date of accident and therefore, proper multiplier to be adopted in the instant case is '18', as per the decision rendered in Sarlavarma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121. However, the Tribunal had wrongly adopted multiplier '5'. In the instant case, the deceased was died as a bachelor. Therefore, as per the decision of the Constitution Bench of the Hon'ble Supreme Court of India in National Insurance Company Limited Vs. Pranay Sethi and others reported in 2017 (2) TN MAC 609 (SC), 50% of income should be deducted towards personal expenses of the deceased. Thus, loss of dependency is calculated as follows.

Notional income -	- Rs.7,500
Add: 40% future prospects (7500+3000)	- Rs.10,500
Deduction 50%	- Rs.5,250
Proper multiplier	- 16
Loss of dependency (5250 x 12 x 16)	- Rs.10,08,000/-

Apart from this amount, the claimant is also entitled to Rs.15,000/- towards "loss of estate", "funeral expenses" and "loss of love and affection" respectively, as per the decision in National Insurance Company Limited Vs. Pranay Sethi and others reported in 2017 (2) TN MAC 609 (SC) (cited supra). The revised compensation awarded under various heads is extracted hereunder.

Sl.No	Heads	Amount
1	Loss of dependency (5250x12x16)	10,08,000
2	Loss of estate	15,000
3	Funeral expenses	15,000
4	Loss of love and affection	40,000
	Total	10,78,000

This amount would carry interest at the rate of 7.5% per annum from the date of claim petition.

8. In the result,

(i) The civil miscellaneous appeal is allowed. No costs.

(ii) The compensation awarded by the tribunal is enhanced from Rs.2,40,000/- to Rs.10,78,000/-

(iii) The New India Assurance company Limited is directed to deposit the enhanced compensation amount of Rs.10,78,000/- together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit (less the amount already deposited by them), within 4 weeks from the date of receipt of a copy of this order.

(iv) On such deposit being made by the New India Assurance Company Limited, the claimant is entitled to withdraw the same, after following due process of law.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mst

To

1. The Special Subordinate Judge-I/
Motor Accident Claims Tribunal,
Chennai.

+1cc to Mr.S.Jayasankar, Advocate, S.R.No.81425

+1cc to Mr.T.G.Balachandran, Advocate, S.R.No.81043

CMA.66 of 2014

RR(CO)
CS/26/04/2021