

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.09.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

CMA.No.704 of 2014

B.Bala Subramaniam

...Appellant/ Petitioner

.Vs.

1.M/s.Euro Leder Fashion Ltd.,
No.99, GST road,
Pallavaram,
Chennai - 600 043.

2.M/s.Bajaj Allianz General Insurance Co. Ltd.,
No.25/26, Prince Tower,
College road,
Nungambakkam,
Chennai - 600 034.

... Respondents/ Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 24.08.2012 passed in MCOP.No.2738 of 2009 on the file of the Motor Accidents Claims Tribunal / XV Additional Judge, Chennai.

For appellant : Mrs.Subadra
for Mr.F.Terry Chellaraja

For Respondents : No appearance

J U D G M E N T

The appellant is the claimant in MCOP.No.2738 of 2009 on the file of the Motor Accidents Claims Tribunal / XV Additional Court, Chennai. He filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 and Rule 3 of the MACT Rules seeking compensation of Rs.2,00,000/- for the death of his mother Kamalammal aged about 59 years in a road accident that took place on 24.04.2009.

2. The case of the claimant is that on 24.04.2009, at about 10.30 am, when the deceased Kamalammal was a pedestrian on GST road at Guduvancherry, a speeding car bearing Registration No. TN 22 AE 717 belonging to the

first respondent and insured with the second respondent hit her, as a result of which, she sustained grievous injuries and died in the Hospital on 29.04.2009. According to the claimant, the rash and negligent driving of the driver of the car bearing Registration No. TN 22 AE 717 was the cause of the accident and hence, the owner and the insurer of the car are jointly and severally liable to pay compensation to him.

3. The first respondent, owner of the car remained absent before the Tribunal and therefore, he was set ex-parte. The second respondent, Bajaj Allianz General Insurance Company Limited contested the claim petition on all the grounds available to the insured. The learned Motor Accidents Claims Tribunal / XV Additional Judge, Chennai after analysing the evidence on record, awarded a compensation of Rs.1,50,000/- together with interest at the rate of 7.5% per annum to the claimant. Not satisfied with the quantum of compensation awarded by the Tribunal, the claimant has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

4. Mrs.Subadra, learned counsel appearing for the appellant / claimant contended that when the deceased Kamalammal was married and had a son, the Tribunal was wrong in deducting 50% of her income towards her personal expenses. Her further contention is that very meagre amounts were awarded under the heads "funeral expenses" and "loss of love and affection" and that no amount was awarded under the head "loss of estate".

5. No appearance on behalf of the respondents.

6. A perusal of the records shows that the deceased was a vegetable vendor by profession, earning a sum of Rs.6,000/- per month. Therefore, the notional income of the deceased is taken up at Rs.6,000/- per month. 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 the age of the deceased was 59 years on the date of the accident, 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 and 1/3 should be deducted towards the personal expenses of the deceased. The "loss of dependency" is calculated as follows:

Calculation

Notional Income = Rs.6,000/-
10% Future Prospects = Rs.600/-
Total = Rs.6,000/- + Rs.600/- = Rs.6,600/-
After 1/3 deduction = Rs.4,400/-

Loss of dependency

= Rs.4,400/- x 12 x 9
= Rs.4,75,200/-

7. Apart from the above said amount, the appellant / claimant is 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 under various heads is extracted hereunder:

S.No.	Head	Amount granted
1.	Loss of dependency	Rs.4,75,200/-
2.	Loss of estate	Rs.15,000/-
3.	Loss of love and affection	Rs.40,000/-
4.	Funeral expenses	Rs.15,000/-
Total		Rs.5,45,200/-

8. Thus, the compensation awarded by the Tribunal is enhanced from Rs.1,50,000/- to Rs.5,45,200/- which would carry interest at the rate of 7.5% per annum.

9. In the result, सत्तमापेन जगते

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

(ii) The compensation awarded by the Tribunal is enhanced from Rs.1,50,000/- to Rs.5,45,200/-.

(iii) The appellant / claimant is 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, Bajaj Allianz General Insurance Company Limited is directed to deposit the enhanced compensation amount i.e., Rs.5,45,200/- (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.2738 of 2009 on the file of the Motor Accident Claims Tribunal / XV Additional Court, 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 appellant / claimant is at liberty to withdraw the same, after following due process of law.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

The Motor Accidents Claims Tribunal,
The XV Additional Court,
Chennai.

+lcc to M/s.M.Malar, Advocate SR.No. 87087

CMA.No.704 of 2014

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srg 05/10/2020

सत्यमेव जयते

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