

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.09.2019

CORAM:

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

CMA.NO.767 OF 2014

1.Aleema Bi Syed
2.Jaipunnisa
3.Syed Munab
4.Syed Inyathullah
5.Syed Hussain
6.Syed Khader

...Appellants

.Vs.

1.Perumal

2.The Divisional Manager,
United India Insurance Co. Ltd.,
No.46, Katpadi road,
Vellore.

... Respondents

PRAYER:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 29.04.2005 passed in MCOP.No.1136 of 2003 on the file of the Motor Accidents Claims Tribunal/District Court, Thiruvannamalai.

For Appellants : Mrs.A.Subasdra
for Ms.M.Malar

For Respondents : Mr.M.J.Vijayaraghavan for R2
R1 — Exparte

J U D G M E N T

The appellants are the claimants in MCOP.No.1136 of 2003 on the file of the Motor Accidents Claims Tribunal/District Court, Thiruvannamalai. 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 Syed Moosa aged about 78 years in a road accident that took place on 06.09.2003.

2. The case of the claimants is that on 06.09.2003, at about 08.30 am, the deceased was riding his bicycle on Sangilikuppam

Kommanthal road and that when he was nearing Pandiyapuram Parikalpattu Chuttur road, a speeding bus bearing Registration No. TN 25 D 6305 belonging to the first respondent and insured with the second respondent hit the bicycle, as a result of which, the deceased sustained injuries all over his body. It is also contended by them that he was immediately rushed to the nearby hospital from where he was referred to Government Hospital at Vellore. However, he succumbed to injuries on 22.09.2003.

3. According to the claimants, the accident took place due to the rash and negligent driving of the driver of the bus bearing Registration No. TN 25 D 6305 belonging to the first respondent and that since the said bus was insured with the second respondent, both of them are jointly and severally liable to pay a compensation of Rs.5,00,000/- to them.

4. The first respondent, owner of the bus remained absent before the Tribunal and therefore, he was set ex-parte. The second respondent, United India Insurance Company Limited contested the claim petition on all the grounds available to the insurer. The learned Motor Accidents Claims Tribunal/District Judge, Thiruvannamalai after analysing the evidence on record, awarded a compensation of Rs.52,000/- together with interest at the rate of 9% per annum to the claimants. Not 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. Mrs.A.Subadra, learned counsel appearing for the appellants/claimants would contend that though it is specifically contended by the claimants that the deceased was a Maulvi in a Mosque, earning a sum of Rs.3,000/- per month, the Tribunal has fixed the annual income of the deceased as Rs.15,000/-. He would further contend that very meagre amount was awarded under the head "funeral expenses" and no amounts were awarded towards "loss of love and affection" and "loss of estate". She therefore prayed for enhancement of compensation.

6. Per contra, Mr.M.J.Vijayaraghavan, learned counsel appearing for the second respondent / United India Insurance Company Limited contended that since the claimants did not adduce any satisfactory evidence to show that the deceased was earning a sum of Rs.3,000/-, the Tribunal rightly fixed the annual income of the deceased as Rs.15,000/-. As per the II Schedule appended to the Motor Vehicles Act, 1988. He would further contend that the Tribunal has also awarded a compensation of Rs.52,000/- as per well laid principles which were in vogue at the time of passing of the award and therefore, the same need not be disturbed at this stage.

7. A perusal of the records shows that the deceased was aged

78 years on the date of the accident. Though there are six claimants in the present claim petition, it is seen from the evidence on record that some of them were not depending on the income of the deceased. However, they are the legal heirs of the deceased Syed Moosa. The accident took place during the year 2003 and when it is contended by the claimants that the deceased was a Maulvi, his income should have been fixed at Rs.3,000/- per month. As the age of the deceased was 78 years on the date of the accident, the proper multiplier to be adopted in the instant case is 4 as per the decision rendered in Sarlavarma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121 and after deducting 1/3 of the deceased's income towards his personal income, a sum of Rs.2,000/- is taken up for calculating "loss of dependency".

Loss of dependency

$$= \text{Rs.}2,000/- \times 4 \times 12$$

$$= \text{Rs.}96,000/-$$

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. The award passed under various heads is extracted hereunder:

S.No.	Head	Amount granted
1.	Loss of dependency	Rs. 96,000/-
2.	Loss of estate	Rs. 15,000/-
3.	Loss of love and affection	Rs. 40,000/-
4.	Funeral expenses	Rs. 15,000/-
Total		Rs.1,66,000/-

9. Thus, the compensation awarded by the Tribunal is enhanced from Rs.52,000/- to Rs.1,66,000/- which would carry interest at the rate of 7.5% per annum.

10. In the result,

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

(ii) The compensation awarded by the Tribunal is enhanced from Rs.52,000/- to Rs.1,66,000/-.

(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 the receipt of Court fee.

(iv) The second respondent, United India Insurance Company Limited is directed to deposit the enhanced compensation amount i.e., Rs.1,66,000/- (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.1136 of 2003 on the file of the Motor Accident Claims Tribunal/District Court, Thiruvannamalai within a period of six 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 apportionment granted before the Tribunal after following due process of law.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accidents Claims Tribunal,
The District Court,
Thiruvannamalai.
2. The Section Officer,
VR Section, High Court,
Madras-104.

+1cc to Mr.M.J.Vijayaraghavan, Advocate, S.R.No.77188

+1cc to Ms.M.Malar, Advocate, S.R.No.77421

CMA.No.767 of 2014

SS(CO)
CS/03/06/2020

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