

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 19.11.2019
CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.2273 of 2014

1.Vasantha
2.Periyannan ... Appellants/Petitioners
vs.

1.Rangasamy
2.The Manager,
New India Assurance Co. Ltd.,
Old No.114, New No.204,
Katcheri road, Mylapore,
Chennai-4. ... Respondents/ Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment dated 31.10.2013 in M.C.O.P.No.348 of 2009 on the file of the Motor Accident Claims Tribunal / Principal District Judge, Namakkal.

For Appellants : Mr.C.Kulanthaivel

For respondents : Mr.M.Krishnamoorthy for R2
No appearance for R1

J U D G M E N T

The appellants are the claimants in MCOP.No.348 of 2009 on the file of the Motor Accident Claims Tribunal / Principal District Court, Namakkal. They filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.1,05,00,000/- for the death of one Thenkathir, son of the claimants in a road accident on 02.12.2005.

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

On 02.12.2005, the deceased Thenkathir was riding his two wheeler bearing Registration No.TN 10 L 6993 along Kodambakkam Highways and at about 11.15 pm, a speeding mini bus bearing Registration No. TNU 3759, hit the two wheeler, as a result of which, the deceased Thenkathir sustained fatal injuries and died in the Hospital on 07.12.2005.

3. According to the claimants, the accident took place

due to the rash and negligent driving of the driver of the mini bus belonging to the first respondent and that since the said mini bus was insured with the second respondent, the owner and the insurer of the mini bus are jointly and severally liable to pay compensation.

4. The owner of the mini bus remained absent before the Tribunal and therefore, he was set exparte. The learned Principal District Judge / Motor Accident Claims Tribunal, Namakkal after analysing the evidence on record, awarded a compensation of Rs.30,75,000/- 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. Heard Mr.C.Kulanthaivel, learned counsel appearing for the appellants and Mr.M.Krishnamoorthy, learned counsel appearing for the second respondent / New India Assurance Company. No appearance on behalf of the first respondent.

6. In the claim petition, it is contended that the deceased was a Computer Software Engineer, earning a sum of Rs.40,000/- per month. The salary certificate (Ex.P13), pay slip (Ex.P14) and Income Tax Statement (Ex.P15) shows that the deceased was earning a sum of Rs.35,000/- per month and the same is taken up as the monthly income of the deceased. The Tribunal did not award any amount towards future prospects of the deceased, especially, when the deceased was aged 26 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), 40% should be added towards future prospects of the deceased. Since the deceased died as a bachelor, 50% of his income should be deducted towards his personal expenses. The proper multiplier to be adopted in the instant case is 17 as per the decision rendered in Sarlavarma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121. The "loss of dependency" is calculated as follows:

Calculation

Monthly Income = Rs.35,000/-
40% Future Prospects = Rs.14,000/-
Total = Rs.35,000/- + Rs.14,000/- = Rs.49,000/-
After 50% deduction = Rs.24,500/-

Loss of dependency

= Rs.24,500/- x 12 x 17
= Rs.49,98,000/-

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 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.49,98,000/-
2.	Loss of estate	Rs.15,000/-
3.	Loss of love and affection	Rs.40,000/-
4.	Funeral expenses	Rs.15,000/-
Total		Rs.50,68,000/-

8. 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.30,75,000/- to Rs.50,68,000/- which would carry interest at the rate of 7.5% per annum.

(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 first and the second respondents are jointly and severally directed to deposit the enhanced compensation amount i.e., Rs.50,68,000/- (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.348 of 2009 on the file of the Motor Accident Claims Tribunal / Principal District Court, Namakkal 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(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1.The Motor Accidents Claims Tribunal,
The Principal District Court,
Namakkal.

Copy to:

The Section Officer, VR Section, High Court, Madras.

+1cc to Mr.C.Kulanthaivel , Advocate SR.No. 96137

+1cc to Mr.M.Krishnamoorthy , Advocate SR.No. 96205

C.M.A.No.2273 of 2014

A.SK(08/09/2020)



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