

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.12.2020

CORAM:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.M.A.No.1906 of 2015

1.M.Santama
2.M.Dhnajaya
3.J.Orilan
4.G.Savithree

.....Appellants/Claimants

Vs

1. K.Venkatesh Kumar(ex parte before tribunal)

2. Universal Sompo General Insurance Co. Ltd.,
Capitale Towers, V Floor, 'B' Wing,
No.534-555, Anna Salai, Teynampet,
Chennai-18.Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 17.02.2015 made in M.A.C.T.O.P.No.4865 of 2010 on the file of the Motor Accidents Claims Tribunal, Chief Small Causes Court, Chennai.

For Appellant : M/s.Kalai Arasan

For Respondents : R1 exparte

Mrs.R.Sreevidhya for R2

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J U D G M E N T

(This case has been heard through Video Conferencing)

Heard the learned counsel for the appellant and the learned counsel for the second respondent Insurance Company.

2.The appeal is filed by the claimants being not satisfied

with the quantum of the award granted by the Tribunal.

3. The case of the claimants is that on 18.09.2010, when the deceased Yengaiya aged about 58 years was crossing the Rajiv Gandhi Hospital opposite to Jeppier Engineering College, Semmencherry, a motor cycle bearing Registration No.TN-22-BL-5142 rash and negligently dashed against him causing instant death. Claiming that the deceased was earning Rs.450/- per day as Mason, claim petition seeking Rs.6,00,000/- filed by his wife and three children.

4. The petition was resisted by the Insurance Company on the ground that the rider of the two wheeler had no driving license and for the violation of the policy condition under the Motor Vehicle Act, the Insurance Company is not liable to indemnify the vehicle owner, who allowed the rider without license to drive the two wheeler.

5. The Tribunal, on considering the evidence placed before it regarding the insurance coverage to the vehicle and non production of driving license by the offender inspite of notice and the First Information Report, held that the driver of the two wheeler bearing Registration No.TN-22-BL-5142 cause for the accident. He without driving license driven the vehicle rash and negligently and dashed against the deceased Yengaiya.

6. Considering the evidence of PW1 and Post Mortem Certificate held that there is no evidence to indicate that the deceased was earning Rs.450/- per day. However, a notional income of Rs.5,000/- was fixed and multiplier applied to compute the loss of income and awarded a sum of Rs.5,00,000/- as compensation with 7.5% interest per annum.

7. Learned counsel for the appellant would submit that the accident occurred on 18.09.2010. Through P.W.3, the avocation of the deceased has been spoken and proved. Hence, the income of the deceased has to be fixed as per the evidence. On re-appreciating the evidence and hearing the argument of the counsel, this Court on taking note of the guidelines in Pranay Sethy's case and other cases regarding the fixation of notional income of the unskilled, non-salaried persons and taking note of the fact regarding the age and date of the victim fix the notional income of the deceased at Rs.6000/-+10% future prospects Rs.6,600/-, after deducting $1/4^{th}$ for his personal expenditure. The loss of income is computed as $Rs.5050 \times 9 \times 12 = 5,34,600/-$.

Compensation under Various Heads	Award passed by this Court
Loss of income (5050X9X12)	Rs.5,34,600/-
Loss of Estate	Rs. 15,000/-
Funeral Expenses	Rs. 15,000/-
Loss of Consortium for the first claimant	Rs. 40,000/-
Loss of love and affection to the claimants 2 to 4	Rs. 60,000/-
Total	Rs.6,64,600/-

9. The said amount shall be paid by the respondent Insurance Company along with interest at the rate of 7.5% interest per annum from the date of petition till the date of realization. Learned counsel for the respondent Insurance Company reports that already the award amount has been deposited. Hence, the enhanced compensation as ordered shall be deposited by the Insurance Company within a period of six weeks from the date of receipt of a copy of this order. On such deposit, from the enhanced compensation, the first claimant shall entitle to a sum of Rs.1,04,600/- and claimants 2 to 4 shall get Rs.20,000/- each with proportionate interest. The claimants are permitted to withdraw the money on appropriate application.

10. In the result, the Civil Miscellaneous Appeal is allowed. No costs.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

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To

Motor Accidents Claims Tribunal,
Chief Small Causes Court, Chennai.
Chennai.

Copy to

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

CMA No.1906 of 2015

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BDL/06/01/2021



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