

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.02.2020

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.3090 of 2011
and
M.P.No.1 of 2011

The Divisional Manager,
National Insurance Company Limited,
Officers Line, Near Lakshmi Theatre,
Vellore. ... Appellant/2nd Respondent

Vs.

1.Chinthamani
2.Jayakodi ... Respondents 1 & 2/
Claimants
3.M.T.A.Mani ... 3rd Respondent/
1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 27.06.2011 made in M.A.C.T.O.P.No.796 of 2008 on the file of Motor Accident Claims Tribunal, District Judge, Tiruvannamalai.

For Appellant : Mr.M.Krishnamoorthy
For R1 and R2 : Mr.S.Umapathy
For R3 : Given up

JUDGMENT

The National Insurance Company Limited/second respondent in MACTOP.No.796 of 2008 on the file of the Motor Accidents Claims Tribunal/ District Court, Tiruvannamalai has filed the present appeal questioning the liability and the quantum of compensation awarded by the Tribunal. The claimants filed the above said claim petition under Section 166 (A) of the Motor Vehicles Act, 1988 seeking compensation of Rs.10,00,000/- for the death of one Venkatraman, son of first claimant in a road accident that took place on 12.07.2008.

2. On 12.07.2008, at about 09.10 a.m., when the deceased was going in a Hero Honda Splender with registration No.TN-24-C-

7440 from his home in Periyathallapadi to a shop in Ganapaty Nagar, Periyathallapadi Village, Uthangarai Taluk, when a Minidoor Tempo Van bearing registration No.TN-30-6973 came from opposite direction with high speed and in a rash and negligent manner and hit against the deceased Venkatraman who sustained injuries in his backside head, right thigh, right leg and nose and all over his body and he was taken to Government Hospital, Uthangarai and the Doctor referred him to Krishnagiri Hospital for further treatment, before going for further treatment, he died at the hospital. According to the claimants, the rash and negligent driving of the driver of the Minidoor Tempo Van was the cause of the accident and that since the said Minidoor Tempo Van was insured with the present appellant, both the owner and the insurer of the van are jointly and severally liable to pay compensation.

3. The present appellant /National Insurance Company Limited, contested the claim petition on all the grounds available to the insured. The learned Motor Accidents Claims Tribunal / District Judge, Tiruvannamalai after analysing the evidence on record, awarded a compensation of Rs.4,91,000/- together with interest at the rate of 7.5% per annum to the claimants. Aggrieved over the award passed by the Tribunal, the National Insurance Company Limited has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

4. Mr.M.Krishnamoorthy, learned counsel appearing for the appellant contended that the Tribunal has fixed the responsibility on the owner of the Minidoor Tempo van bearing Registration No.TN-30-6973 and its insurer, the present appellant. He would therefore contend that the Insurance Company is not liable to pay compensation to the claimants.

5. It is pertinent to point out that Criminal Court records are not binding on the Motor Accidents Claims Tribunal for determining the negligence aspect. In the instance case, occurrence witness was examined as PW2 and the learned Motor Accidents Claims Tribunal / District Judge, Tiruvannamalai after analysing the entire oral and documentary evidence on record had clearly held that the driver of the Minidoor Tempo van bearing Registration No.TN-30-6973 was responsible for the accident. The Tribunal had in fact given cogent reasons for coming to such a conclusion and I do not see any reason to interfere with the findings recorded by the Tribunal.

6. Mr.S.Umapathy, learned counsel appearing for the respondents 1 and 2 / claimants contended that the award passed by the Tribunal cannot be said to be just in the light of the decision rendered in National Insurance Co. vs. Pranay sethi and others reported in 2017 (2) TNMAC 601(SC). He also relied

on the decision in M/s.Bharathi Axa General Insurance Company Limited vs. Jayalakshmi @ Panchalai and others in CMA.No.3629 of 2013 and contended that even though the claimants have not challenged the quantum of compensation awarded by the Tribunal by way of filing an appeal or cross-objection, this Court has got powers and jurisdiction under Order 41 Rule 33 and Section 151 of the Code of Civil Procedure and Article 227 of the Constitution of India to enhance the compensation, if it is found that just compensation was not awarded. His specific contention is that though in the claim petition it is stated that the deceased was earning a sum of Rs.7,000/- per month, the Tribunal has fixed the notional income of the deceased as Rs.3,000/- per month, which is very meagre.

7. It is pertinent to point out that the claimants did not adduce any documentary evidence to show that the deceased was actually earning a sum of Rs.7,000/- per month. It is stated that the deceased was a flower vendor. The Tribunal has fixed the monthly income of the deceased at Rs.4,500/- and he could have contributed a sum of Rs.3,000/- to his family after meeting his personal expenses. The accident took place on 12.07.2008 and therefore the notional income of the deceased shall be fixed at Rs.3,000/- per month. The age of the deceased was 24 years and the proper multiplier to be adopted in the instant case is 13 as per the decision rendered in Sarlavarma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121. The "loss of earnings" is calculated as follows:

Calculation

$$\begin{aligned}\text{Notional Income} &= \text{Rs.3,000/-} \\ &= \text{Rs.3,000/-} \times 12 \times 13 \\ &= \text{Rs.4,68,000/-}\end{aligned}$$

8. Apart from the above said amount, the Tribunal has awarded a sum of Rs.20,000/- towards "loss of love and affection" the same is hereby confirmed. The Tribunal has awarded a sum of Rs.2,000/- towards "Funeral Expenses" the same is hereby enhanced to Rs.10,000/-. The Tribunal has awarded a sum of Rs.500/- each towards "Transport Charges" and "Damages to cloth and articles" this Court is hereby enhanced to Rs.1,000/- each for the same. The award passed by this Court under various heads is extracted hereunder:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of earning capacity	4,68,000/-	4,68,000/-	confirmed
2.	Loss of love and affection	20,000/-	20,000/-	confirmed

3.	Funeral Expenses	2,000/-	10,000/-	enhanced
4.	Transportation	500/-	1,000/-	enhanced
5.	Damages to Clothes and Articles	500/-	1,000/-	enhanced
	Total	Rs.4,91,000/-	Rs.5,00,000/-	enhanced by Rs.9,000/-

9. Thus, the quantum of compensation awarded by the Tribunal is enhanced from Rs.4,91,000/- to Rs.5,00,000/- which would carry interest at the rate of 7.5% per annum.

10. In the result,

(i) The Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

(ii) However, the quantum of compensation awarded by the Tribunal is enhanced from Rs.4,91,000/- to Rs.5,00,000/-.

(iii) The respondents 1 and 2 / claimants are directed to pay difference of Court fee for the enhanced compensation amount, within a period of three weeks from today and the Registry is directed to draft the decree only after receipt of the Court fee.

(iv) The appellant / National Insurance Company Limited is directed to deposit the compensation awarded by this court i.e., Rs.5,00,000/- (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.796 of 2008 on the file of the Motor Accidents Claims Tribunal / District Judge, Tiruvannamalai within a period of six weeks from the date of receipt of a copy of this order.

(v) On such deposit being made, the respondents 1 and 2 / claimants are at liberty to withdraw the same as per the orders passed by the Tribunal after following due process of law. The apportionment made by the Tribunal shall be kept intact.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

sbn

To

1.The Motor Accident Claims Tribunal,
District Court,
Tiruvannamalai.

Copy To:

The Section Officer,
V.R Section,
High Court, Madras.

+1 cc to M/s.M.Krishna Moorthy, Advocate Sr.No. 12542

+1 cc to M/s.S.Umapathy, Advocate Sr.No.12197

C.M.A.No.3090 of 2011
and
M.P.No.1 of 2011

VSNI (CO)
RMP (02/03/2021)



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