

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 01.12.2020	Pronounced on: 08.12.2020
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Coram::

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

C.M.A.No.47 of 2015

1. Mrs.K.Shanthi,
2. V.Kumar,
3. K.Sreeja,

All are residing at No.57/157, Old Mambalam Road,
Saidapet, Chennai - 15. ... Appellants/Petitioners

/versus/

1. M.Gowri,
No.136, Jothi Amman Nagar 7th Street,
Saidapet, Chennai - 15.
(R-1 exparte in the Lower Court).

2. M/s.New India Ass. Co. Ltd.,
No.109, Nungambakkam High Road,
Chennai - 34. ... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicle Act, against the judgment and decree made in M.C.O.P.No.2552 of 2012 on the file of Motor Accident Claims Tribunal, III Judge, Court of Small Causes at Chennai, dated 5th day of August 2013.

For Appellant : Mr.T.G.Balachandran

For R2 : Mr.J.Michael Visuvasam,

For R1 : exparte

J U D G M E N T

(The case has been heard through video conference)

This Appeal is preferred by the claimants for enhancement of compensation.

2. The facts of the case is that, on 02.05.2015, at about 6.30 hours when K.Ajith Kumar, minor son of the claimants Nos.1 & 2 and brother of claimant No.3 aged about 14 years studying 10th standard proceeding in his cycle from V.S.Mudali street and took a turn towards North at Jayaram street, a lorry bearing Registration No.TN-22-X-5765 driven rash and negligently hit the cycle and caused fatal head injury to the minor boy Ajith Kumar.

3. The claim petition for a sum of Rs.10,00,000/- was filed against the vehicle owner and the insurer. The Insurance Company resisted the claim on the ground that, the lorry driver had no valid driving license and the accident occurred due to negligence of the victim. The victim being a minor, non-earning students, the claim of Rs.10,00,000/- is exorbitant. The delay in lodging the F.I.R and the discrepancy in the medical record renders the claimant ineligible to seek compensation.

4. The Tribunal, after considering the evidence placed before it, fixed Rs.15,000/- as annual income of the deceased boy aged 16 and applied multiplier 18 to arrive at a compensation, after granting Rs.75,000/- towards Future Prospects, a sum of Rs.4,75,000/- was awarded. Not satisfied with the quantum, the present appeal is filed on the ground that fixation of notional income at Rs.15,000/- p.a is erroneous. The deceased was studying 10th standard and had a very bright future prospects being a NCC candidate. The award under funeral expense, loss of expectation of life, loss of love and affection are very low and require to be revised and enhanced.

5. The Learned Counsel appearing for the appellant would submit that for female children aged about 12 years, the Hon'ble Supreme Court has fixed notional income of Rs.40,000/- p.a. Whereas, the victim in this case was a minor boy age 16 years and was excellency in NCC, had very bright future prospects. Therefore, fixation of Rs.15,000/- is very low.

6. The Learned Counsel appearing for the respondent would submit that when there is no indication for earning capacity or skill to earn, for the student just completed his 10th standard, fixation of Rs.15,000/- p.a as notional income is fair and required no revision.

7. The accident occurred on 02.05.2012. The negligence on the part of the lorry driver being prima facie established through Ex.P.1 (F.I.R) and Ex.P.3 charge sheet. The Transfer Certificate of the deceased boy is marked as Ex.P.8 which indicates that, he has completed his 10th standard and was qualified to join higher studies. He has proficiency in NCC.

8. The contention of the Leaned counsel for the appellant that, the victim had a very bright future prospects, cannot be ruled out. Therefore, taking note of the fact that the deceased was 16 years old at that time of death to arrive at loss of earning, Schedule-II provides the multiplier. Though the Schedule-II is meant for Section 163 (A) of Motor Vehicle Act, same can be taken into consideration for fixation of just and fair compensation for petition under Section 166 of Motor Vehicle Act also. Victim of the age below 20 years if the

notional income is taken as Rs.40,000/- p.a, after deducting 1/3rd for his personal expenditure and applying multiplier '18', the loss of income is fixed as Rs.4,80,006/-. Therefore, while applying the guidelines of the Hon'ble Supreme Court in National Insurance Company Ltd vs. Pranay Sethi, a sum of Rs.1,20,000/- for loss of consortium, Rs.10,000/- for Transportation, Rs.15,000/- for funeral expenses, Rs.15,000/- for loss of estate is awarded. Accordingly, the compensation is modified and enhanced to Rs.6,40,006/-. The award amount shall be apportioned between the claimants as under:-

1 st claimant	- Rs.4,00,000/-
2 nd claimant	- Rs.2,00,000/-
3 rd claimant	- Rs.40,006/-

9. The award of the Tribunal is modified and enhanced to Rs.6,40,006/- from Rs.4,75,000/-. The Insurance Company/2nd respondent is directed to deposit the amount in the M.C.O.P. account with 7.5% from the date of numbering the petition till the date of deposit, within a period of 8 weeks from the date of receipt of a copy of this order. On such deposit, the claimants are permitted to withdrawn the same on filing proper application. Accordingly, the Civil Miscellaneous Appeal is Allowed. No costs.

Sd/-
Assistant Registrar (CS III)

/TRUE COPY/

Sub-Assistant Registrar

bsm
To:-

1.The Motor Accident Claims Tribunal,
III Judge, Small Causes Court, Chennai.

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

+1CC TO MR.T.G.BALACHANDRAN, ADVOCATE, SR.NO. 40026
+1CC TO MR.J.MICHEL VISUVASAM, ADVOCATE, SR.NO. 39729

C.M.A.No.47 of 2015

PVS (CO)
KKN 19.04.2021