

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.02.2020

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.NO.3385 OF 2013

AND

MP.NO.1 OF 2013

The New India Assurance Co. Ltd.,
Branch Office, Kumaran Shopping Complex,
Kumaran Road, Tiruppur. Appellant/3rd Respondent

vs.

1.Tmt.Palaniammal
2.Gidesh ... Petitioner and 1st Respondent
3.Ravindran Respondents/2nd Respondent

PRAYER:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Decree and Judgment dated 19.02.2013 passed in MCOP.No.298 of 2011 on the file of the Motor Accident Claims Tribunal (I Additional District cum Subordinate Court), Tiruppur.

For Appellant : Mr.R.Sivakumar

For Respondents : Mr.MA.P.Thangavel for R1
R2 and R3 - Exparte

J U D G M E N T

The New India Assurance Company, the third respondent in MCOP.No.298 of 2011 on the file of the I Additional District cum Subordinate Court, Tiruppur. has filed the present appeal challenging the award passed by the Tribunal.

2. The first respondent/claimant filed the claim petition under Section 166 (1) of the Motor Vehicles Act, 1988 praying to award compensation of Rs.10,00,000/- for the for the death of her son Kalimuthu in a road accident that took place on 13.08.2010.

3. The case of the first respondent/claimant is that on 13.08.2010, her deceased son was walking on Coimbatore -

Saravanampatti road, along Keeranathampudur road, near KGISL Power House Compound. At about 10.30 pm, a motorcycle bearing Registration No.KL 8 AG 773 ridden by the second respondent in a rash and negligent manner hit him, due to which, he was thrown on the road and died on the spot itself. According to the first respondent/claimant, the accident happened only because of the rash and negligent riding of the rider of the motorcycle. The third respondent is the owner of the motorcycle. Therefore, she filed the claim petition seeking compensation.

4. The learned I Additional District cum Subordinate Judge, Tiruppur after analysing the documents and evidences on record, awarded compensation of Rs.5,98,000/- together with interest at the rate of 7.5% per annum to the first respondent/ claimant. Challenging the said award dated 19.02.2013 passed in M.C.O.P.No.298 of 2011, the appellant/Insurance Company has filed the present appeal.

5. The learned counsel appearing for the appellant/ Insurance Company contended that since the first respondent/ claimant was aged about 68 years, the Tribunal ought to have adopted only multiplier 5. He further contended that the Tribunal ought to have deducted 50% towards the personal expenses of the deceased, since the deceased was a bachelor. He contended that without any basis, the Tribunal fixed the income of the deceased at Rs.4,500/- per month and awarded an exorbitant sum of Rs.5,76,000/- as compensation towards loss of pecuniary benefits. He therefore, prayed for reducing the compensation awarded by the Tribunal.

6. The learned counsel appearing for the first respondent / claimant submitted that the Tribunal after analysing the documentary and oral evidences on record, awarded a reasonable compensation. He therefore prayed for dismissing the appeal.

7. Heard the learned counsel appearing for the appellant/Insurance Company and the learned counsel appearing for the first respondent/claimant and perused the materials available on record.

8. From the claim petition, it is seen that the deceased was aged 36 years, working as a Security in Baask Security Service Private Limited, Coimbatore, earning a sum of Rs.6,000/- per month. In the absence of evidence, considering the year of the accident, Rs.4,500/- is taken up as the monthly notional income. The age of the deceased was 36 years on the date of the accident and the proper multiplier to be adopted is 15 as per the decision rendered in Sarlavarma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121. Since, the deceased died as a bachelor, 50% should be deducted towards

his personal expenses. Loss of dependency is calculated as follows:

$$\begin{aligned} &= \text{Rs.}4,500/- \times 12 \times 15 \times 1/2 \text{ deduction} \\ &= \text{Rs.}8,10,000/- \times 1/2 \text{ deduction} \\ &= \text{Rs.}4,05,000/- \end{aligned}$$

The accident occurred in the year 2010 and hence, Rs.15,000/- awarded towards loss of love and affection is meagre and hence the same is enhanced to Rs.20,000/-. Similarly, Rs.2,000/- and Rs.5,000/- awarded for transportation and funeral expenses are meagre. Therefore, Rs.10,000/- is awarded towards transportation and funeral expenses in total. Thus, the compensation awarded by the Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs.)	Amount awarded by this Court (Rs.)
1	Loss of dependency	5,76,000	4,05,000
2	Loss of love and affection	15,000	20,000
3	Transportation	2,000	Nil
4	Funeral expenses	5,000	Nil
5	Transportation and Funeral expenses	Nil	10,000
	Total	Rs.5,98,000/-	Rs.4,35,000/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.5,98,000/- is hereby reduced to Rs.4,35,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant/Insurance Company is directed to deposit the modified award amount now determined by this Court along with interest and costs, less the amount already deposited if any, to the credit of MCOP.No.298 of 2011 on the file of the Motor Accident Claims Tribunal/I Additional District cum Subordinate Court, Tiruppur within a period of six weeks from the date of receipt of a copy of this Judgment. On such deposit, the first respondent/claimant is permitted to withdraw the modified award amount along with interest and

costs, less the amount if any, already withdrawn. The appellant /Insurance Company is permitted to withdraw the excess amount, lying in the deposit to the credit of MCOP.No.298 of 2011, if the award amount has already been deposited by them. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1. The I Additional District cum Subordinate Court,
The Motor Accidents Claims Tribunal,
Tiruppur,
2. The Section Officer,
VR Section,
High Court of Madras, Chennai.

+1cc to Mr.Ma.P.Thangavel, Advocate in Sr.No.15540

+1cc to Mr.R.Sivakumar, Advocate in Sr.No.15108

C.M.A.No.3385 of 2013
and MP.No.1 of 2013

SVI (CO)
CS/29/01/2021

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