



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 17.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

CMA.No.2361 of 2010 and
M.P.No.1 of 2010

The United India Insurance Co. Ltd.,
No.38, Anna Salai,
Chennai-2.

... Appellant/ 2nd respondent

Vs.

1. S.Ekavalli
2. S.Sekar
3. S.Sankar
4. S. Selvakumar
5. Rajasekar, aged 13 years
6. S.Anjumadevi, aged 10 years

(Mnor petitioners 5 & 6 are rep. by
their mother and next friend S.Ekavalli

... Respondents 1 to 6/Claimants

7. M. Sundaram

... 7th respondent/1st respondent

This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 29.09.2009 passed in M.C.O.P.No.2968 of 2005 by the II Judge, Motor Accidents claims Tribunal, Court of Small Causes, Chennai.

For Appellant : Mr.S.Arunkumar

J U D G M E N T

Aggrieved over the orders passed by the Tribunal, the Insurance company is before this court to scale down the compensation awarded by the Tribunal.

2. The claimants have filed a claim petition before the Tribunal seeking compensation of Rs.9,00,000/- for the death of one S.Selvam, husband of the first claimant and the father of the claimants 2 to 4 in a road accident that took place on 18.06.2005.



3. The brief case of the claimants is as follows: On 18.06.2005 at about 1.00 a.m. the deceased Selvam was walking as a pedestrian on the Walltax Road and while nearing Elephant Gate Police station, an Autorickshaw bearing registration No.TN-04-J8923 hit the deceased from behind, thereby he succumbed to the injuries. According to the claimants, the rash and negligent driving of the driver of the Autorickshaw was the cause of accident and since the first respondent/ owner of the vehicle insured his Autorickshaw with the second respondent/ insurance company, both of them are liable to pay compensation.

4. The claim petition was resisted by the insurance company by filing counter affidavit.

5. Before Tribunal, the first claimant and one another witness were examined as PW1 and PW2 respectively and Ex.P1 to Ex.P10 were marked. On the side of the respondents, no oral and documentary evidence was adduced.

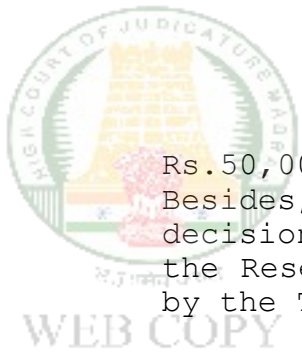
6. After analysing the evidence on record, the Tribunal has awarded a sum of Rs.5,44,500/- as compensation to the claimants under various heads as extracted hereunder.

Sl No	Heads	Amount in Rs.
1	Loss of dependency (4000x12 - 1/3 x 15)	4,80,000
2	Funeral expenses	2,000
3	Loss of Estate	2,500
4	Loss of consortium to first claimant	10,000
	Loss of love and affection	50,000
	Total	5,44,500

Aggrieved over the compensation awarded by the Tribunal, the insurance company has filed the present appeal to scale down the compensation.

7. Heard the learned counsel for the appellant and I have perused the materials on record.

8. The grounds for appeal is that the Tribunal has fixed the monthly income of the deceased as Rs.4,000/- per month, without any basis and also wrongly adopted the multiplier "15" without following the decisions rendered by the Honourable Supreme Court. Further, without any documentary proof to show the age of the claimants, the Tribunal has awarded a sum of



Rs.50,000/- to the claimants towards "Love and affection". Besides, awarding interest at 9.5% per annum is contrary to the decisions of the Honourable Supreme Court and the guidelines of the Reserve Bank of India. Therefore, the compensation awarded by the Tribunal has to be scaled down.

9. Now the point for consideration is whether the compensation awarded by the Tribunal has to be scaled down.

10. Point

It is not disputed by the appellant/ insurance company that at the time of accident, the deceased Selvam was aged 45 years. The contention of the claimants is that the deceased was a richshaw man and was earning a sum of Rs.200/- per day. By considering the fact that as a Cycle Rickshaw rider, the deceased can earn a sum of Rs.4,000/- per month, the Tribunal has rightly fixed the monthly income of the deceased at Rs.4,000/-. To this amount, 25% should be added, as per the decision of the Constitution Bench of the Honourable Supreme Court of India in National Insurance Company Limited Vs. Pranay Sethi and others reported in 2017 (2) TNMAC 601 which comes to Rs.5,000/-. Further, 1/3 of the income of the deceased should be deducted towards his personal expenses. The proper multiplier to be adopted in the instant case is 14, as per the decision in Sarala Verma and others Vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121. Thus, Loss of dependency is calculated as $(5000 - 1/3 = 3333 \times 12 \times 14)$ Rs.5,59,944/-. In addition to that, as per the decision rendered by the Constitution Bench of the Honourable Supreme Court in National Insurance Company Limited Vs. Pranay Sethi and others reported in 2017 (2) TNMAC 601, the claimants are also entitled to Rs.40,000/- Rs.15,000, Rs.15,000/- towards "Love and affection", "Loss of Estate" and "Funeral Expenses" respectively. Thus, the claimants are entitled to a total compensation of Rs.6,29,944/- $(5,59,944 + 40,000 + 15000 + 15000 = 6,29,944)$ which is extracted here under.

Sl.N o	Heads	Amount
1	Loss of dependency $(5000 - 1/3 \times 12 \times 14)$	5,59,944
2	Love and affection	40,000
3	Loss of Estate	15,000
4	Funeral Expenses	15,000
	Total	6,29,944



However, the tribunal has awarded only a sum of Rs.5,44,500/-.. At this juncture, it is relevant to point out that the claimants did not file any appeal or cross objections as against the orders passed by the tribunal. In the facts and circumstances of the case, I do not find any reason to interfere with the award passed by the tribunal.

12. In the result,

(i) The appeal is dismissed. No costs. The compensation awarded by the tribunal is upheld. The connected miscellaneous petition is closed.

(ii) The appellant is directed to deposit the compensation as awarded by the Tribunal with accrued interest, within a period of six weeks from the date of receipt of a copy of this order, less the amount already deposited.

(iii) On such deposit being made by the insurance company, the claimants are at liberty to withdraw the same, after following due process of law, as per the apportionment made by the Tribunal.

Sd/-

Assistant Registrar(I)

//True Copy//

Sub Assistant Registrar

mst

To

1.The Motor Accidents Claims Tribunal,
II Court of Small Causes, Chennai.

2.The Section Officer,
V.R.Sectin, High Court,
Madras-104.

+1cc to Mr.S.Arun kumar, Advocate, S.R.No.9765

CMA. No.2361 of 2010

M.P.No.1 of 2010

CP(CO)
CB(27/09/2021)