

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.1549 of 2017

1.M.Gangammal
2.K.Munusamy

...Appellants/Petitioners

vs

1.V.Ratnajee
2.United India Insurance Co.Ltd.,
No.38, Anna Salai, Chennai-2
Now at No.134, Greams Road
Silingi Building, Chennai-600 006

..Respondents

Civil Miscellaneous Appeal filed against the judgment and decree dated 31.03.2010 made in M.C.O.P.No.2097 of 2006 on the file of Motor Accident Claims Tribunal, II Fast Track Court, Small Causes at Chennai.

For appellants : : Mr.A.A.Venkatesan

for Respondents : : Ms.R.Rathnathara for R2.

JUDGMENT

This Civil Miscellaneous Appeal is filed by the appellants/claimants, challenging the judgment and decree dated 31.03.2010 made in M.C.O.P.No.2097 of 2006 on the file of Motor Accident Claims Tribunal, II Fast Track Court of Small Causes at Chennai.

2. For the sake of convenience, the parties are referred to as per their litigative status before the Tribunal. The case of the petitioners is that on 27.01.2006, at 10.30 hours, when the deceased Padayappa was sleeping on the left extreme side of the Manali Express Road, a lorry bearing Reg.No.TN-AP-16-W-1324 owned by the 1st respondent and insured with the 2nd respondent came from east to west at high speed and the driver lost control of the vehicle and ran over the deceased, resulting in his death. It is the contention of the Petitioners that the accident occurred only due to the negligence of the 1st respondent driver. It is further stated that at the time of the accident, the deceased was 8 years old and the petitioners are the parents of the deceased. Hence, the petitioners sought compensation of Rs.5,00,000/- from the respondents for the death of their son.

3. On the other hand, the 2nd respondent opposed the petition by filing counter stating that the negligence of the 1st respondent driver is not the cause for the accident and the claim of the petitioners about the age of the deceased and the relationship between them is also denied. It is further stated that as the 1st respondent driver is not responsible for the accident, they being the insurer, is not liable to pay any compensation. Hence, they seek dismissal of the petition.

4. Before the Tribunal, the petitioners examined P.W.1 to 4 and produced Ex.P.1 to P.6 to prove their case. On the side of the 2nd respondent,

neither oral witness nor documentary evidence was let in. The tribunal, after taking into consideration the available evidence on record, held that the 1st respondent vehicle driver's negligence alone is the cause for the accident and awarded Rs.1,65,000/- to the Petitioners. Aggrieved over the quantum of the award passed by the Tribunal, the Petitioners/appellants have come forward with this appeal.

5. The learned counsel for the Petitioners/appellants contended that the Tribunal erred in awarding compensation for a sum of Rs.1,65,000/- as against the claim of Rs.5,00,000/- for the death of appellants' son aged 8 years. The amount awarded under different heads are very nominal. The Tribunal failed to award any amount under the head "Loss of expectation of life". The Petitioners thus seek for enhancement of award amount.

6. Per contra, the learned counsel appearing for 2nd respondent- Insurance Company submits that the Tribunal after taking into consideration all the facts and circumstances of the case, granted compensation of Rs.1,65,000/- and the same requires no interference by this Court. The learned counsel further submitted that the award passed by the tribunal can be confirmed and the appeal may be dismissed.

7. Heard both sides and perused the records carefully.

8. The Petitioners claim that on 27.01.2006, at 10.30 hours, when the deceased Padayappa was sleeping on the left extreme side of the Manali Express Road, a lorry bearing Reg.No.TN-AP-16-W-1324 owned by the 1st respondent and insured with the 2nd respondent came from east to west at high speed and the driver lost control of the vehicle and ran over the deceased, resulting in his death. It is the contention of the Petitioners that the accident occurred only due to the negligence of the 1st respondent driver. Before the tribunal, P.W.2 and P.W.3 who are the eyewitnesses to the accident deposed regarding the accident. From the evidence of the eyewitness of the accident, who deposed as P.W.2 and P.W.3 and the evidence of P.W.4 Inspector of Police, who investigated the accident, it is clear that on 27.01.2006, when the deceased was sleeping near Ramakrishna Nagar Bus stop at Manali, a lorry bearing Reg.No.AP 16 W 1324 owned by the 1st respondent came at high speed, and in a rash and negligent manner and dashed against the deceased who was sleeping. Further, it is evident from Ex.P.1-FIR as well as Ex.P.6-Charge sheet that the case has been registered against 1st respondent vehicle driver only. On the other hand, there was no evidence on the side of the 2nd respondent to disprove the claim of the petitioners about the negligence of the 1st respondent vehicle driver as the cause for the accident. In such circumstances, on the basis of the oral evidence of P.W.2 to 4 as well documentary evidence produced as Ex.P.1 to P.6, it is clear that due to negligence on the part of 1st respondent driver alone, the accident occurred.

9. The petitioners who are the parents of the deceased Padayappa claim that their son was aged 8 years and was working as cooly and was earning Rs.100/- per day. It is seen from Ex.P.2 Post mortem Certificate and Ex.P.3 death certificate that the deceased was aged 8 years at the time of the accident. The Tribunal, held that as a minor child, it is not acceptable that the deceased was working as a cooly and was earning Rs.100/- per day and fixed Rs.15,000/- as annual income. However, this court deems it fit to fix the notional income of the deceased at Rs.2,500/- per month and it will be appropriate to deduct 1/3rd towards his personal expenses. The age of the deceased child being 8, the correct multiplier to be applied is 15. Hence, the loss of dependency is calculated as under:-

$$2500 - 1/3 (830) = 1670 \times 12 \times 15 = \text{Rs.}3,00,600/-$$

Thus, a sum of Rs.3,00,600/- is awarded under the head "loss of dependency" to the petitioners/appellants. Further, a sum of Rs.15,000/- is awarded towards funeral expenses and Rs.15,000/- towards loss of estate. Accordingly, the total compensation awarded by this court is as follows:-

Loss of dependency - Rs.3,00,600/-

Loss of estate - Rs. 15,000/-

Funeral expenses - Rs.15,000/-

Total - Rs.3,30,600/-

10. Accordingly, the compensation awarded by the Tribunal stands modified as follows:

Sl. No.	Head	Amount granted by the Tribunal	Amount awarded by this Court
1	Loss of dependency	Rs. 1,50,000/-	Rs. 3,00,600/-
2	Funeral expenses	Rs. 5,000/-	Rs. 15,000/-
3	Loss of love and affection	Rs. 10,000/-	---
4	Loss of estate	---	Rs. 15,000/-
	Total	Rs. 1,65,000/-	Rs. 3,30,600/-

11. In the result, the Civil Miscellaneous Appeal is Partly Allowed. The Appellants/Petitioners are entitled to enhanced award of Rs.3,30,600/- from Rs.1,65,000/-. The award amount will carry interest at the rate of 7.5% per annum from the date of claim petition till the date of realisation. In view of the above modified enhanced award amount, the 2nd respondent/Insurance Company is directed to deposit the award amount with proportionate interest and costs, less the amount, if any, already deposited, within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the appellants/Petitioners are permitted to withdraw the amount awarded as above in equal share, by filing proper application before the Tribunal, less the amount if any already withdrawn, with accrued interest. The Tribunal shall pass appropriate directions for the disbursal of the amount as stated supra on the filing of such application. No costs.

05.02.2018

Index:Yes/No
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To

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

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



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S.BASKARAN, J.

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