IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.09.2017

CORAM :

THE HONOURABLE MR. JUSTICE R.SUBBIAH
and
THE HONOURABLE MR.JUSTICE P.VELMURUGAN

CMA.No.3882 of 2011
and MP.No.1 of 2014

1. D.Sitaravamma
2. D.Geetha
3. Y.Ushashree ... Appellants

Vs.

1.D.Alamelu

2.The New India Ass. Co. Ltd.,
Motor III Party claims office,
No.45, Moore Street, Chennai-1. ... Respondents

PRAYER : Petition filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 28.10.2010 made in MCOP.No.591 of 2006 on the file of the Additional District and Sessions Judge, Fast Track Court No.I, Poonamallee.

For appellant : Mr.UM.Ravichandran.

For respondents: Mr.M.Krishnamoorthy for R2.
R1- No appearance.

JUDGMENT

(Judgment of this Court was made by P.VELMURUGAN, J.)

The Civil Miscellaneous Appeal is filed against the order dated 28.10.2010 made in MCOP.No.591 of 2006 on the file of the Additional District and Sessions Judge, Fast Track Court No.I, Poonamallee, for enhancing the compensation awarded to the appellants.

2. The case of the appellants before the Tribunal is that on 22.03.2006 at about 16.30hrs, when the deceased was standing by the northern side of the Neelakanda Metha street to cross the road from north to south, the motor cycle bearing registration No.TN09 AH 1981 ridden by its rider in a rash and negligent manner, came in a high speed and dashed against the deceased and caused the fatal accident. The first appellant is the wife of the deceased and the appellants 2 and 3 are the daughters of the

deceased. While the deceased was alive he was running a partnership business and also having agricultural land and having other sources of income and the deceased only supported the appellants. Due to the death of the deceased/Harinath Reddy the dependants are suffering from financial loss and other guidances. Hence, the claimants claimed compensation to the tune of Rs.1,50,00,000/- and restricted their claim to Rs.1,30,00,000/-.

3. The case of the second respondent before the Tribunal is that the first respondent is the owner of the vehicle and remained exparte. The vehicle involved in the accident was not insured with the second respondent and the second respondent is not liable to pay the compensation. The second respondent is the insurance company. The said motorcycle was not involved in the said accident, this is the vehicle set up case with collusion among the appellants and the rider of the motorcycle. The appellants are influential persons, with the influence of local police set up a false case against the first respondent vehicle. The appellants filed fake petitions to cheat the insurance company to make money. The claim made by the claimants are higher side and hence, the appeal is liable to be rejected.

4. The Tribunal has framed the following points for consideration:-

1. Whether the accident had occurred due to rash and negligent act of the first respondent's driver and 1st petitioners' husband Harinath Reddy (deceased) died due to the above accident?
2. Whether the claimants are entitled to get compensation from the 2nd respondent? If it is so what is the quantum of compensation?
3.

5. In order to prove the case of the claimants, before the Tribunal the claimants have examined PW1 to PW4 and marked the documents viz Exs.P1 to P13. On the side of the respondents neither the oral or documentary evidence was produced.

6. After considering the oral and documentary evidences, the Tribunal has awarded a sum of Rs.18,66,300/- towards compensation with the interest at the rate of 7.5% from 06.11.2006 i.e., the date of filing of the petition. Aggrieved against the award passed by the Tribunal, the claimants have filed the present appeal for enhancing the quantum of compensation. The respondent has not challenged the award passed by the Tribunal.

7. The learned counsel for the appellants would submit that the Tribunal has failed to consider the avocation and income of

the deceased and also made an observation that the appellants 2 and 3 are not the dependants and the compensation awarded by the Tribunal is very low. Therefore, the claimants have preferred the present appeal, the claimants through documentary evidences established that the deceased was having three types of source of income (i)income from partnership firm (ii)income from the share in profit of the firm and (iii)income from the agricultural lands. The Tribunal has not properly considered the share in profit from the income of the firm and income from the agricultural lands. The appellants have marked the income tax returns filed by the deceased and also examined the wife of the deceased/first appellant before the Tribunal as PW1. One of the partners of the Firm and Auditor of the Firm were examined. The Tribunal has not considered the oral and documentary evidences placed by the appellants and the award passed by the Tribunal does not reflect just and reasonable compensation and the same is liable to be enhanced. The Tribunal has wrongly adopted the multiplier method and failed to consider the future prospects and also the dependency of the deceased.

8. The learned counsel for the second respondent/insurance company has not raised any objection regarding the accident and liability to pay compensation. Regarding the multiplier, the learned counsel would fairly concede the fact that at the time of accident the deceased was 54years and the Tribunal adopted multiplier of 10. As per Sarala Varma and others V. Delhi Transport Corporation and another reported in 2009 (2) TNMAC 1 SC the multiplier adopted should be 11 instead of 10 as fixed by the tribunal. Regarding the quantum, he would submit that Exs.P6 to P8 are Saral Forms of the deceased for the assessment years 2004-2007 and Exs.P9 to P11 are the Saral Forms of M/s.S.K.Construction for the assessment years 2004-2007. No document such as Bank statement of the deceased have been produced to prove the income of the deceased from M/s.S.K.Construction and interiors. In Clause 25 of the Saral Forms the income claimed to be exempt from income tax is shown as NIL. The claimant's failed to produce the extent of land owned by the deceased and the relevant documents viz., title deeds, chitta and adangal extract of the agricultural land for agricultural income apart from mentioning the same in the Saral Forms. Considering the age of the deceased no future prospects will be applied. Hence, the Tribunal has correctly considered the oral and documentary evidence placed before the Tribunal and awarded correct compensation i.e., the compensation awarded by the Tribunal is just and reasonable and there is no reason to interfere with the award passed by the Tribunal and prays for dismissal of the appeal.

9. Heard the rival submissions made on both sides and perused the available records.

10. On considering the oral and documentary evidences placed before the Tribunal, award passed by the Tribunal and grounds of appeal raised by the claimants, the points arise for consideration are that (i)whether the Tribunal has considered the income of the deceased correctly and (ii)the compensation awarded by the Tribunal is just and reasonable?

Point No.1

11. The claimants are the wife and daughters of the deceased respectively, at the time of accident, the deceased was aged about 54years, the second respondent has not disputed the accident and the liability to pay the compensation. Under the said circumstances, this Court has to consider, the fact as to whether the Tribunal has correctly considered the documents filed by the claimants/appellants before the Tribunal. According to the claimants, the deceased was aged about 54years and he was a partner in M/s.SK.Construction and interiors and also he was working in the said partnership firm and earning income both from partnership firm and the agricultural lands, the Tribunal failed to consider the above said facts. The first claimant was examined as PW1, on perusal of the proof affidavit filed by PW1, she has not specifically spoken about the income of the deceased under each heads. The Auditor who was examined as PW3 has also not clearly spoken about the correct income of the deceased and stated that on perusal of the the returns filed before the income tax department and the available challan in the office, he has given his opinion based on the available documents. Ex.P6 to Ex.P8 are the Saral Forms of the deceased and Ex.P9 to Ex.P11 are the Saral Forms of M/s.SK.Construction, except the above said documents no other documents of the deceased was produced to prove the income of the deceased from M/s.SK.Construction and interiors. In order to prove the income from the agricultural sources, the claimants have not produced any copy of title deeds, patta, chitta and adangal showing the extent of land was owned by the deceased and the income derived out of the agricultural land. PW1 and the other witnesses have also not specifically spoken about the income from the each sources and in the absence of the claimants to prove the income of the deceased from various sources, as the manner known to law, the income fixed by the Tribunal does not warrant any interference.

Point No.2

12. As far as the multiplier adopted by the Tribunal is concerned, the Tribunal has adopted the multiplier 10 as per the schedule of the Motor Vehicle Act. As per the decision of the Hon'ble Supreme Court in Sarala Varma and others V. Delhi Transport Corporation and another reported in 2009 (2) TNMAC 1 SC the multiplier should be 11 instead of 10. The Tribunal has calculated the average income of the deceased at Rs.3,63,260/- p.a. and deducted half of the income i.e.,Rs.1,81,630/- towards

his personal expenses, since 2nd and 3rd appellants are married and they are well settled along with their respective husband's and not considered them as dependants of the deceased.

13. On perusal of the records, the claimant's 2 and 3 are the daughters, in the absence of male legal heir viz., son, the parents will naturally support their daughters. Under the said circumstances, in this particular case, the daughters can be treated as dependants of the deceased only for the purpose of deducting personal expenses of the deceased. Thus, considering the facts that there are three dependants of the deceased 1/3rd of the income of the deceased should be deducted towards personal expenses of the deceased. At the time of accident the age of the deceased was above 50years, therefore compensation on the head of income for future prospects will not be applicable.

14. As far as various heads on non-pecuniary compensation awarded by the Tribunal is concerned, the Tribunal has awarded Rs.10,000/- towards funeral expenses and this Court enhances the same to Rs.25,000/-. The Tribunal has awarded Rs.10,000/- towards loss of consortium and this Court enhances the same to Rs.50,000/-. The Tribunal has awarded Rs.30,000/- towards love and affection and this Court enhances the same to Rs.50,000/-.

15. The age of the deceased at the time of accident is 54years and as per the Sarala Varma case (cited supra) the multiplier 11 has to be adopted. Accordingly, the loss of dependency would be (2/3rd of the annual income of the deceased) Rs.2,42,174 x 11 = Rs.26,63,914/-. This point is answered accordingly.

16. The compensation claimed by the claimants, the compensation awarded by the Tribunal and the compensation enhanced by this Court are as follows :-

Heads	Amount claimed by Claimant (Rs.)	Amount awarded by Tribunal (Rs.)	Amount awarded by this Court (Rs.)
Funeral Expenses and Transportation charges	50,000	10,000	25,000
Loss of consortium	1,00,000	10,000	50,000
Loss of estate of the deceased	5,00,000	--	--
Loss of pecuniary benefits of the legal heirs	1,43,50,000	--	--
Love and affection	--	30,000	50,000
Loss of dependency	--	18,16,300	26,63,914

Heads	Amount claimed by Claimant (Rs.)	Amount awarded by Tribunal (Rs.)	Amount awarded by this Court (Rs.)
Total	1,50,00,000	18,66,300	27,88,914
Claim is restricted to Rs.	1,30,00,000	--	--

17. In the result, the civil miscellaneous appeal is partly allowed and the award passed by the Tribunal is enhanced as shown above. No costs. Consequently, connected miscellaneous petition is closed.

18. The second respondent is directed to deposit the compensation with interest at 7.5%p.a. from the date of petition before the Tribunal, less the amount already deposited if any, along with proportionate interest and cost to the credit of the claim petition, within a period of six weeks from the date of receipt of copy of this judgment. The claimants are entitled to the enhanced compensation in which the 1st claimant/first appellant being the wife of the deceased is entitled to Rs.20,00,000/- and the claimants 2 and 3/appellants 2 and 3 are being the daughters of the deceased are entitled to the balance amount equally. The claimants/appellants are permitted to withdraw the deposited amount along with the proportionate interest of their respective shares, less the amount already withdrawn by them, if any, through RTGS by filing necessary application before the Tribunal.

s/d-
Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

tsh
To
1. The Additional District & Sessions Judge,
Fast Track Court No.I, Poonamallee.

+1 CC to Mr.M. Krishnamoorthy, Advocate sr 63242.
+1 CC to Ms.U.M. Ravichandran, Advocate sr 63190.

CMA.No.3882 of 2011

CNR(CO)
sp(12/10/2017)