

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 02.02.2018

Coram

The Honourable Mr. Justice S.BASKARAN

Civil Miscellaneous Appeal No.103 of 2018

1. Poorani
2. Minor Yogapraphanjan
(Minor rep. by NF/Guardian/Mother
the first appellant herein)
3. Marammal
4. Kalanaicker ...Appellants/Petitioner

...vs...

1. K.Govindaraju
2. United India Insurance Co, Ltd.,
Rep. by its Manager,
Sri Saravana Complex,
1st Floor, 18/116, Mettupalayam Road,
Thudialur, Coimbatore-641 034.
... Respondents/Respondents

This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the Fair and Decreetal order dated 11.10.2013 made in MCOP.No.226 of 2012 on the file of the Motor Accident Claims Tribunal/4th Additional District Judge, Bhavani, Erode District.

For Appellants : Mr.C.Kulanthaivel

For Respondent : Mr.T.Ravichandran for R-2

JUDGMENT

This civil miscellaneous appeal arises out of the Judgment and decree dated 11.10.2013 made in MCOP.No.226 of 2012 on the file of the Motor Accident Claims Tribunal/4th Additional District Judge, Bhavani, Erode District.

2. For sake of convenience, the parties will hereinafter be referred to in this judgment as arrayed before the Tribunal.

3. The case of the petitioners is that on 24.06.2012 at about 4.30 p.m., when the deceased Raghu was driving his TVS XL

bearing Registration No.TN-36-M-0811, in Sathi - Athani Main Road, near Sigamani Barber shop, from west to east, on the extreme left side of the road, a Maruthi Car bearing Registration No.TN-23-F-0555, driven at high speed in a rash and negligent manner by the driver came from behind and dashed against the deceased resulting in the victim suffering grievous injuries all over the body. Immediately, the victim was taken to Government Hospital, Sathiyamangalam and thereafter admitted in a private hospital, Coimbatore, where inspite of best treatment given, the victim died. The driver of the first respondent vehicle alone is responsible for the accident. At the time of the accident, the deceased Raghu was aged about 35 years and he was doing agriculture and running rice mill business, earning not less than Rs.10,000/- per month. The first and second petitioners are wife and minor son, while third and fourth petitioners are parents of the deceased Raghu. All the petitioners were depending on the earnings of the deceased and due to the death of said Raghu, the petitioners have lost the only bread winning member of the family. Hence, the petitioners seek compensation of Rs.20,00,000/- from the respondents who are the owner and insurer of the offending vehicle which caused the accident. Hence, the petition.

4. On the other hand, opposing the claim petition, the second respondent/Insurance Company contends that the driver of the first respondent's vehicle was not having any valid license. The respondent further disputed the claim of the petitioner about the manner of accident. Further, the age, occupation and income of the deceased as claimed by the petitioners is also disputed. Further, as the motor cycle, in which, the deceased was travelling was not covered with insurance policy and the petitioners has not produced any record to show that he was having valid driving license at that point of time. Hence, the respondents sought for dismissal of the petition.

5. Before the Tribunal, the petitioners examined P.W.1 to P.W.3 and produced documents Ex.P1 to Ex.P11 to substantiate their claim. On the side of the respondent, neither oral evidence nor documentary evidence was produced.

6. The Tribunal on the basis of available material before it, found the driver of the first respondent vehicle responsible for the accident and awarded a sum of Rs.7,10,000/- as compensation to the petitioners. Being not satisfied with the quantum of compensation awarded by the Tribunal, the petitioners/claimants have come forward with the present appeal.

7. I have heard the learned counsel for the appellants and the learned counsel for the second respondent and perused the

materials available on record.

8. The learned counsel for the petitioners contended that the Tribunal failed to assess the income of the deceased properly and also failed to provide future prospectus as the deceased was aged only 35 years at the time of the accident. The deduction towards personal expenses should have been made as 1/4th and not 1/3rd. The amount provided under various heads by the Tribunal is very low and compensation awarded is not just and proper. Hence, the petitioners/claimants seek enhancement of the quantum of award by entertaining the appeal.

9. Per contra, the learned counsel for the second respondent Insurance Company contends that the Tribunal has properly assessed the evidence available on record and awarded just compensation to the petitioners. The claim of the petitioners for enhancement is unsustainable as the award passed by the Tribunal is properly arrived at just compensation. Thus, the second respondent seeks dismissal of the appeal.

10. I have considered the rival submissions.

11. The petitioners examined the eye witness to the occurrence as P.W.2 and according to him, the accident occurred only due to the negligence of the driver of the Maruthi Car bearing Registration No.TN-23-F-0555. The petitioners also produced the copy of the first information report marked as Ex.P1, copy of the charge sheet marked as Ex.P6, copy of the observation mahazar marked as Ex.P2, copy of the rough sketch marked as Ex.P3 and Motor Vehicle Inspector report marked as Ex.P4 to prove their claim. It is evident from Ex.P6, that charge sheet has been laid against the driver of the first respondent vehicle only. The respondents have not produced any contra evidence to disbelieve the same. In such circumstances, in view of the oral evidence by the eye witness P.W.2 and the fact that the case has been registered against the driver of the first respondent vehicle only, as evidenced by Ex.P1 and Ex.P6, the finding of the Tribunal that the negligence of the first respondent driver alone caused the accident is just and proper and the same is confirmed.

12. The petitioners have sought for compensation of Rs.20,00,000/- for the death of one Raghu. It is evident from Ex.P5 Postmortem report that the age of the deceased was 35 years. In the petition also, his age is mentioned as 35 years. Hence, the age of the deceased is fixed at 35. Since the deceased was aged about 35 years, the multiplier to be applied in this case is 16.

13. According to the petitioners, the deceased Raghu was doing agricultural work and also running rice mill business on his own and earning a sum of Rs.10,000/- per month. To prove the avocation and income of the deceased, the petitioners examined P.W.3 who was carrying on business in the name of Mani Rice Mill stating that the deceased Raghu used to supply 150 bags rice to his Mill. To prove the fact of running the rice mill, P.W.3 produced Ex.P11 registration certificate of Mani Rice Mill. However, there is no proof about the income derived from the business carried on by Raghu and in such circumstances, the Tribunal fixed the notional income of the deceased at Rs.5,000/-. However, considering the fact that the deceased was agriculturist and also carried on rice mill business, it will be appropriated to fix the notional income at Rs.9,000/- per month and deducting 1/3rd amount towards personal expenses, his contribution to the family were comes to Rs.6,000/- per month. Accordingly, the loss of income is calculated as follows:-

$$\text{Rs.6,000/-} \times 12 = 72,000\text{-} \times 16 = \text{Rs.11,52,000/-}$$
Thus, the total loss of income comes to Rs.11,52,000/- per annum.

14. Following the Apex Court decision reported in 2017 (2) TN MAG 609 (SC) NATIONAL INSURANCE CO. LTD., Vs. PRANAY SETHI AND OTHERS, towards loss of estate, loss of consortium and funeral expenses, this Court is inclined to modify the compensation as under:-

Loss of Consortium	=	Rs.40,000.00
Loss of Estate	=	Rs.15,000.00
Funeral Expenses	=	Rs.15,000.00

Accordingly, the compensation awarded by the Tribunal is modified as follows:-

Sl No	Heads	Amount awarded by the Tribunal	Awarded by this Court
1.	Loss of income	6,80,000.00	11,52,000.00
2.	Loss of consortium	5,000.00	40,000.00
3.	Loss of love and affection	20,000.00	-
4.	Funeral Expenses	5,000.00	15,000.00
5.	Loss of Articles	2,000.00	-
6.	Transportation Expenses	5,000.00	-
7.	Loss of Estate	-	15,000.00
	Total	7,17,000.00	12,22,000.00

15. In view of the above modification, the civil miscellaneous appeal is partly allowed with costs. The second respondent/Insurance Company is directed to deposit the entire enhanced award amount of Rs.12,22,000/- with interest at the rate of 7.5% p.a. after deducting the amount that has already been deposited by them within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the first and second petitioners/claimants are entitled to 40% each of the award amount and the third and fourth petitioners/claimants entitled to 10% each of the award amount. The 1st, 3rd and 4th petitioners/claimants are permitted to withdraw their respective share with accrued interest by filing necessary application before the Tribunal. The Minor 2nd petitioner share amount shall be deposited in any one of the Nationalized Bank till he attain majority. The first petitioner is entitled to withdraw the accrued interest once in three months. The petitioners are not entitled to interest for the default of period of 1405 days. The petitioners are directed to pay the balance court fee within a period of two weeks from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

The Motor Accident Claims Tribunal,
IV Additional District Judge,
Fast Track Court,
Bhavani, Erode District.

Copy To

The Section Officer,
VR Section, High Court, Madras-104.

+1cc to Mr.T.Ravichandran, Advocate, S.R.No.8588

C.M.A.No.103 of 2018

RJ(CO)
CS/08/05/18