

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.122 of 2018

1.Madhesh
2.Kavitha
3.Sudha
4.Ashokan
5.Ananth @ Anandhan

..Appellants

Versus

1.Murugan

2.National Insurance Co.Ltd.,
Divisional Office - 1,
Saradha College Road,
Salem-7.

..Respondents

Civil Miscellaneous Appeal filed against the judgment and decree dated 16.06.2017 made in M.C.O.P.No.2603 of 2015 on the file of the Motor Accident Claims Tribunal, III Additional District Judge, Salem.

For Appellants : Mr.K.Kuppusamy

For Respondents : Mr.J.Chandran [for R2]

J U D G M E N T

The petitioners/appellants have filed this appeal against the judgment and decree dated 16.06.2017 made in M.C.O.P.No.2603 of 2015 on the file of the Motor Accident Claims Tribunal, III Additional District Judge, Salem.

2. For the sake of convenience, the parties are referred to hereunder according to their litigative status before the Tribunal.

3. The case of the petitioner is that on 23.10.2015 at about 14.15 p.m as the deceased Alamelu was walking on the road near Jayam Doll Mill in Dharmapuri to Salem Main Road, the driver of the 1st respondent car bearing Registration No.TN-25-F-8332 came at high speed dashed against the deceased resulting in her suffering fatal injuries, resulting in her death on the way to hospital. The accident occurred only due to rash and negligent driving of the 1st respondent car driver. At the time of the accident, the deceased was aged 51 years and by working

as coolie was earning Rs.10,000/- per month. The petitioners are husband and children of the deceased. Hence, the petitioners seek a sum of Rs.10,000/- as compensation from the respondents who are the owner and insurer of the vehicle.

2. On the other hand, opposing the claim petition, by filing counter, the 2nd respondent/Insurance Company contends that the accident did not occur in the manner alleged by the petitioners. The accident took place only because the deceased Alamelu without noticing the traffic, suddenly crossed the highway inviting the occurrence to take place. The claim of the petitioners regarding the age, avocation and income of the deceased is denied. The driver of the 1st respondent vehicle did not act in a negligent manner and he is in no way responsible for the accident. Thus, the 2nd respondent/Insurance Company seeks dismissal of the petition.

3. Before the Tribunal, the petitioners examined P.W.1 and P.W.2 and produced documents Exs.P.1 to P.4 to prove their claim. On the side of the respondents, neither oral nor documentary evidence was let in. The Tribunal, on the basis of available materials on record, found negligence on the part of the 1st respondent's driver alone caused the accident and awarded a sum of Rs.3,49,000/- as compensation to the petitioners. Being not satisfied with the quantum of the award, the petitioners have come forward with the present appeal.

4. The learned counsel for the petitioners contends that the Tribunal ought to have fixed the notional income of the deceased at Rs.5,000/- per month, but erred in fixing the same at Rs.3,000/- only. The Tribunal, ought to have awarded at least 10% of the monthly income towards future prospects of the deceased who was a self employed person aged about 51 years. The Tribunal, ought to have deducted 1/4th of the income towards personal expenses of the deceased insisted of 1/3rd as the dependent family members are more than 4 in number. Thus, the petitioners seek to enhance the quantum of the award by allowing the appeal.

5. Per contra, learned counsel for the 2nd respondent/Insurance Company contends that the Tribunal failed to appreciate the evidence properly and awarded a sum which is highly exorbitant as compensation to the petitioners. The Tribunal, failed to fix the negligence on the part of the deceased, who also contributed to the accident. Hence, the 2nd respondent/Insurance Company seeks dismissal of the appeal.

6. The petitioners contends that the accident occurred only due to rash and negligent driving of the vehicle by the 1st respondent driver. The eye-witness to the occurrence who deposed as P.W.2 clearly stated that on 23.10.2015 as he was proceeding

in two wheeler towards Omalur in Dharmapuri to Salem Road, a lady was walking along the left side of the road and at that time a van came at high speed dashed against the said lady walking along the left side of the road; resulting in her death. The police also registered the case against the 1st respondent's driver only as evidenced by Ex.P.1 - F.I.R. The respondents have not chosen to let in any oral nor documentary evidence to contradict the version of the petitioners as stated above. It is therefore clear, that the Tribunal is justified in fixing the negligence on the part of the 1st respondent's vehicle driver alone as the cause for the accident.

7. The petitioners stated that the deceased earned Rs.10,000/- by grouping and selling the waste paper and bottles. However, there is no proof for the same. As per Ex.P.2 - Post Mortem Report, the age of the deceased is found to be 51 years. In the absence of any other documentary proof, the Tribunal correctly fixed the age of the deceased as 51 years, on the basis of Ex.P.2 - Post Mortem report.

8. As stated earlier there is no proof for the avocation and monthly income of the deceased and the Tribunal fixed the notional income at Rs.3,000/- per month. However, considering the fact that the accident took place on 23.10.2015 it will be appropriate to fix the notional income of the deceased at Rs.6,500/- per month. Being a self employed person and aged 51 years, it will be appropriate to add 10% of the same towards future prospects. Thus, the monthly income is calculated as $[(Rs.6500 + 10\%(6500)) = Rs.7150/-]$.

9. Even though, the petitioners are 5 in number as they are majors and the 2nd and 3rd petitioners are married, the dependants are only 3 in number, thus, it will be appropriate to deduct 1/3rd of the income towards personal expenses of the deceased and the multiplier is to be applied is '11'. As such, the loss of dependency is calculated as follows:-

$[(Rs.7150 - 1/3(Rs.7150))] = Rs.4767/-$

$Rs.4767 * 12 * 11 = Rs.6,29,244/-$

Thus, a sum of Rs.6,29,244/- is granted as compensation under the head "Loss of Income".

10. In respect of awarding compensation under conventional heads, as per the Constitution Bench judgment of the Supreme Court reported in 2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and Others], the compensation has to be awarded towards loss of estate, loss of consortium and funeral expenses. Hence, this court is inclined to grant a sum of Rs.15,000/- each towards loss of estate and funeral expenses and for loss of consortium a sum of Rs.40,000/- is awarded.

11. 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 Income	Rs.2,64,000.00	Rs.6,29,244.00
2	Funeral Expenses	Rs.15,000.00	Rs.15,000.00
3	Loss of Consortium	Rs.25,000.00	Rs.40,000.00
4	Loss of Estate	-	Rs.15,000.00
5	Love and Affection	Rs.40,000.00	-
6	Transport	Rs.5,000.00	-
7	Total	Rs.3,49,000.00	Rs.6,99,244.00

12. In the result, the Civil Miscellaneous Appeal is Partly Allowed as follows:-

- (i) The award of the Tribunal is enhanced to Rs.6,99,244/- from Rs.3,49,000/-.
- (ii) The award amount will carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.
- (iii) In view of the above enhanced award amount, the 2nd respondent/Insurance Company is directed to deposit the award amount, less the amount, if any, already deposited, along with accrued interest within a period of six weeks from the date of receipt of a copy of this judgment.
- (iv) Since there is enhancement in the award amount each appellants/claimants are entitled to 20% of the award amount.
- (iv) On such deposit, the petitioners/appellants are permitted to withdraw the amount awarded as above by filing proper application before the Tribunal. The Tribunal shall pass appropriate directions for the disbursal of the amount as stated supra on the filing of such application.
- (vi) Petitioners/Appellants shall pay necessary court fee before receiving the copy of this Decree for the enhanced compensation amount.

No costs.

s/d-
Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

bri

To

1.The III Additional District Judge,
Salem.

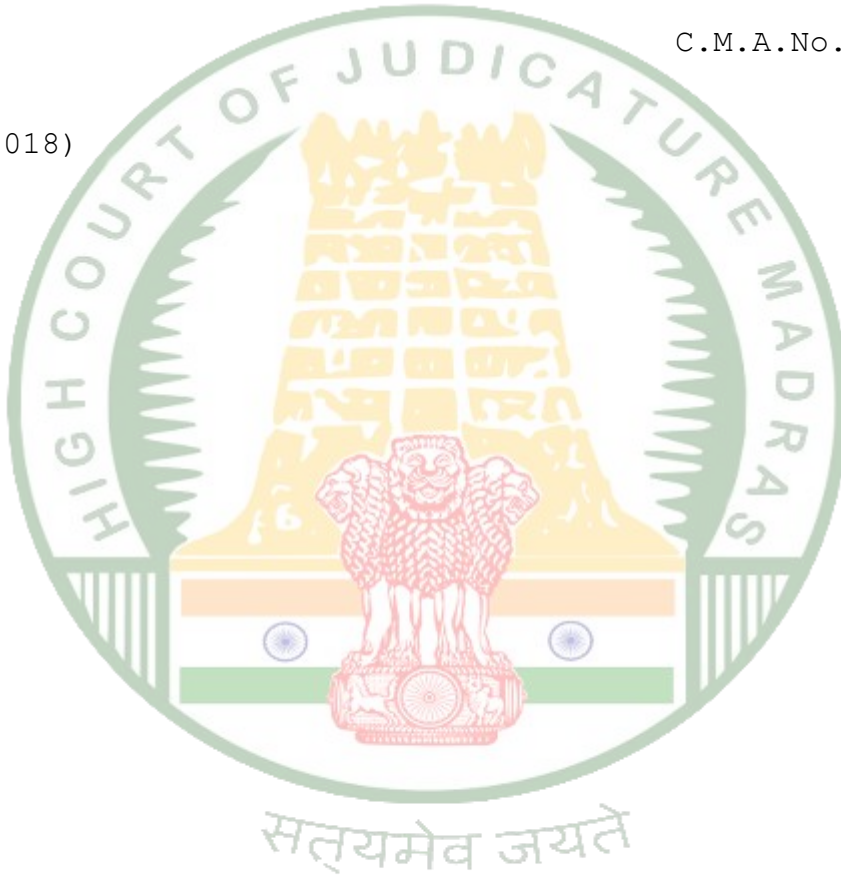
2.The Section Officer,
V.R.Section, High Court, Madras.

+1 CC to Mr.K. Kuppusamy, Advocate sr 19336.

+1 CC to Mr.J. Chandran, Advocate sr 18767.

C.M.A.No.122 of 2018

CNR (CO)
SP (29/06/2018)



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