IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON: 30.10.2018

JUDGMENT PRONOUNCED ON: 13.12.2018

CORAM:

THE HONOURABLE MR. JUSTICE R. PONGIAPPAN

Civil Miscellaneous Appeal No.1328 of 2011

1.Poongodi
2.Loganathan
3.Kumar
4.Kanniyappan
5.Tamilselvi ... Appellants/Petitioners

Vs

1.V.Dhanasekaran
2.Bajaj Allianz General Insurance Co Ltd
No.25/26, Prince Towers,
4th Floor,
College Road,
Nungambakkam, Chennai - 6. ... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree made in M.C.O.P.No.734 of 2007 dated 22.11.2010 on the file of the Motor Accident Claims Tribunal (Chief Judge, Small Causes Court) Chennai.

For Appellants : Mr.Terry Chellaraja for Mr. Velu

For Respondents : R1 - Ex-parte

R2 - Mr. S.Arun Kumar

JUDGMENT

Aggrieved over the award dated 22.11.2010, in M.C.O.P.No.734 of 2007 on the file of the Motor Accident Claims Tribunal/ Court of small causes Chennai, the appellants who are the claimants before the Claims Tribunal have filed this Civil Miscellaneous appeal seeking the relief to set aside the award passed by the Claims Tribunal and for enhancing the compensation determined by the Claims Tribunal.

2. For the sake of convenience, the parties are referred to as per the litigative status before the Claims Tribunal.

The case of the Claimants before the Tribunal is as follows:

3. On 12.11.2006 at about 16.30 hours, when the deceased was walking in the left side corner of the ECR Road, near Mahabalipuram, a Motor Cycle bearing registration No. TN 21 L 7709 driven by its driver in a rash and negligent manner, came from the opposite direction and dashed against the deceased. Due to the said accident the Deceased sustained multiple injuries all over the body and immediately, after the accident, when she was taken to Hospital on the way itself she was died. The accident had occurred only due to the rash and negligent act of the driver of the Motor Cycle. For the said accident, the case has been registered against the driver of the Motor cycle in Crime No.575 of 2006. At the time of accident, the deceased was aged about 49 years, she was working as a Tailor and earned Rs.6000/- per month. The claimants are the daughters and sons of the deceased. They filed a claim application before the Claims Tribunal under Section 166 of the Motor Vehicles Act, through which they are claiming a compensation of Rs.5,00,000/- for the death of their mother.

4. Before the Claims Tribunal, the owner of the offending vehicle is arrayed as 1st respondent but, he remained ex parte.

5. The insurer of the offending vehicle, who is the 2nd respondent,by filing a counter denied the accident itself. It is averred that, the accident had occurred only due to the rash and negligent act of the deceased. It is further contended that the claimant should prove that the driver of the offending vehicle having a valid driving license, the driver of the vehicle having only the learners license at the time of accident. According to him, the Claim application filed by the Claimant is liable to be dismissed. The accident had occurred, when at the time the deceased crossing the road without observing the traffic rules and regulations.

6. Before the Claims Tribunal, on the side of the claimants 3 witnesses have been examined as P.W.1 to P.W.3. and 5 documents were marked as Ex.P.1 to Ex.P.5. On the side of the respondent, none have been examined as a witness and no document was marked. Having considered all the above, the Claims Tribunal determined the total compensation as Rs.3,60,000/- and directed the 2nd respondent to pay the same. Now aggrieved over the said award, the claimants are before this Court, with the Civil Miscellaneous Appeal seeking the relief as already stated in the 1st paragraph of this award.

7. In respect to the negligence, the Claims Tribunal has held that the alleged accident had occurred only due to the rash and negligent act of the driver of the Motor Cycle. In this aspect, before the Claims Tribunal P.W.1 who is the 1st claimant in the claim application, gave evidence as at the time of occurrence the driver of the Motor Cycle drove the vehicle in a rash and negligent manner and dashed against the deceased. The said evidence was corroborated through the evidence of one Murugesan who is the witness to the occurrence. Further, in order to substantiate the evidence given by P.W.1, on the side of the claimant, the copy of the First Information Report was marked as Ex.P1. The contention of the First Information Report has corroborated the evidence given by P.W.1 and P.W.2. More over, in order to dispute the evidence given by P.W.1 and P.W.2 on the side of the respondents, the driver of the motor cycle is not examined. Further, no substantial evidence was examined on the side of the respondents, to prove that the accident has not occurred, due to the rash and negligent act of the rider of the motor cycle. Accordingly, the findings arrived at by the Claims Tribunal that the accident had happened, due to the rash and negligent act of the driver of the Motor Cycle is affirmed by this Court.

8. In respect to the liability, the learned Presiding Officer Claims Tribunal has held that the respondents 1 and 2 are jointly and severally liable to pay the compensation. In this regard, in order to dispute the said findings on the side of the respondent nobody have been examined. Even though, there is a contention in the counter affidavit that the driver of the Motor Cycle is not having any valid license, in order to prove the same, no evidence was produced on the side of the respondents. It is the settled issue, only the insurer is having the duty to show that the owner of the offending vehicle violated the policy conditions. But, in this case without examining any Officer from the Motor Vehicle Department and also without any document, we cannot come to the conclusion that the owner of the Motor Cycle violated the policy conditions. Accordingly, this Court affirmed the findings of the Claims Tribunal, in respect to the liability.

9. In respect to the quantum of compensation, the learned Counsel appearing for the appellant would contend that, without following the ratio laid down by our Honourable Apex Court, the Claims Tribunal fixed the monthly income of the deceased as Rs.3,500/-. In this respect, P.W.1 has stated in her evidence, as the deceased was earning Rs.6,000/- per month by doing the tailor work. Further, in order to prove the said evidence, copy of the Certificate issued by PW 3 was marked as Ex.P.6. As per the certificate, the deceased undergone training in tailoring. Hence, in the above circumstances, we have to decide the monthly

income of the deceased, based on the above circumstances. It is an admitted fact that the alleged accident had occurred in the year of 2006. In Syed Sadiq case, our Honourable Apex Court has held Rs.6,000/- is the appropriate monthly income to the vegetable vendor. In this case, eventhough the claimants have not produced any documents to show the employment of the deceased, considering the fact that the deceased is Tailor, it is appropriate to fix Rs.4,000/- is the monthly income of the deceased.

10. Coming to the point of Future Prospects, it is necessary to follow the Judgment of the Constitution Bench in the case of National Insurance Company Limited Vs Pranay Sethi and Others reported 2007 ACJ 2700, in which our Honourable Apex Court has held that if a person is a self-employed and she is in the age of 40 - 50 years, 25% of the monthly income should be taken into account for calculating the Future Prospects. In this case, on going through the postmortem certificate, it appears that, at the time of accident, the deceased was aged about 49 years. Therefore, total monthly income of the deceased is calculated as follows

Total Monthly Income	::	Rs.4,000 + Rs.1,000 (25%)
	::	Rs.5,000/-

11. Coming to the point of deduction, it is necessary to see the Sarla Verma case, in which our Hponourable Apex Court has held, if the size of the family is 4 to 6 members 1/4th of the monthly income is to be deducted towards the personal income of the deceased. Applying the said principle in this case, after deducting the personal expenses, the monthly loss to the family of the deceased is Rs. 3,750/-. Now, coming to the point of the multiplier in Sarala Verma case, it was held that if the deceased is aged about 46 to 50 years, 13 is the appropriate multiplier for calculating the pecuniary loss. Accordingly, in this case the pecuniary loss is calculated as follows.

Loss of Income :: Rs.3,750 x 12 (months) x 13 (multiplier)
:: Rs.5,85,000/-

12. In respect to the conventional heads in the Pranay Sethi case, our Honourable Apex Court has held that the dependents of the deceased is entitled to receive Rs.15,000/- each under the head of loss of estate and funeral expenses.

13. In the light of the above discussion, this Court modified the award as follows

Rs.5,85,000/- +RS. 30,000/-
= 6,15,000/-

14. Hence, the compensation arrived at by the Claims Tribunal is modified to the extent of Rs.6,15,000/- and the claimants are entitled to get equal share. The rate of interest awarded by the Tribunal at 7.5% per annum remains unaltered. The Insurance Company is directed to deposit the entire award amount along with interest and costs after deducting the amount already deposited if any, within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, after collecting the Court fee for the enhanced compensation, the Tribunal is directed to transfer the said amount to the Bank account of the appellants through RTGS/NEFT within a period of one week.

15. In the result, the Civil Miscellaneous appeal is partly allowed. There shall be no order as to costs.

Sd/-
Assistant Registrar(Insp.Cell)

//True Copy//

Sub Assistant Registrar

sbn

1. The Chief Judge, Motor Accident Claims Tribunal,
Small Causes Court, Chennai.

+1 cc to M/s.S.Arunkumar, Advocate, Sr.No. 87016

Judgment in
Civil Miscellaneous Appeal No.1328 of 2011

CSL/02.07.2019