

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.1469 of 2018

V.Anjalai

..Appellant/Petitioner

Vs.

1.M.Thangamariappan

2.Shriram General Insurance Co.Ltd.,
2nd Floor, City Centre,
66, Thirumalaipillai Road
near Vani Mahal, T.Nagar,
Chennai-600 017

..Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 08.08.2017 made in MCOP.No.2089 of 2014 on the file of the Motor Accident Claims Tribunal, Principal District Judge, Cuddalore.

For appellant : : Ms.Ramya V.Rao
for Respondents : : Mr.S.Dhakshinamoorthy for R2.

J U D G M E N T

This Civil Miscellaneous Appeal is filed by the appellant/claimant, challenging the judgment and decree dated 08.08.2017 made in MCOP.No.2089 of 2014 on the file of the Motor Accident Claims Tribunal, Principal District Judge, Cuddalore.

2. For the sake of convenience, the parties are referred to as per their litigative status before the Tribunal. It is a fatal case. The case of the petitioner is that on 04.04.2014 while the deceased V.Pazhani @ Pazhanivel was riding motor cycle bearing Reg.No.TN-31-AA-9831 in the NaduVeerapattu to Cuddalore Road, at about 8 a.m., while going near V.Kattupalayam, the 1st respondent vehicle bearing Reg.No.TN-60-X-1069 came at high speed in the opposite direction, dashed against the above said two wheeler, causing him fatal injuries, resulting in his death subsequently in the hospital. According to the Petitioners, the accident occurred only due to negligence of the 1st respondent's Mini Lorry driver. The deceased was aged 36 years and by carrying on cashewnut vending business was earning Rs.25,000/- per month. The Petitioner, who is the motor of the deceased was

depending on his earning. Thus the Petitioner sought for a sum of Rs.25,00,000/- as compensation from the respondents, who are the owner and insurer of the offending vehicle.

3. On the other hand, opposing the claim of the Petitioner, by filing counter, the 2nd respondent-Insurance company contends that the accident does not occur in the manner alleged by the Petitioner. The negligence of the deceased alone caused the accident. The deceased was not holding valid driving licence at the time of the accident. The brother of the deceased filed MCOP.No.1552 of 2015 seeking compensation and this petitioner has been impleaded as 3rd respondent in the said case. This is the 2nd claim. Therefore, the petition is not maintainable. The accident occurred only due to negligence of the deceased. The claim of the Petitioner about the age, avocation and income of the deceased is denied. The claim of the Petitioner is exorbitant. The petition is liable to be dismissed.

4. Before the Tribunal, this petition and another MCOP.No.3333 of 2014 were taken up for joint trial. On the side of the Petitioners, P.W.1 and P.W.2 deposed and documents Ex.P.1 to Ex.P.7 were marked. On the side of the respondents, neither oral nor documentary evidence was let in.

5. The Tribunal, after analyzing the evidence available on record, found negligence of the 1st respondent vehicle driver alone caused the accident, and passed an award for a sum of Rs.6,60,000/-, payable by the respondents to the Petitioner.

6. Being not satisfied with the quantum of the award, the Petitioner/claimant has come forward with the present appeal.

7. Heard both sides and perused the award passed by the Tribunal carefully.

8. The learned counsel for the Petitioner/claimant contends that the Tribunal failed to appreciate the salary certificate marked as Ex.P.5, wherein, the monthly salary of the deceased was stated as Rs.25,000/-. The Tribunal failed to provide for future prospects. The notional income fixed by the Tribunal is very low. Thus, the petitioner/claimant sought for enhancement of the award amount by entertaining the appeal.

9. Per contra, the learned counsel for the 2nd respondent/Insurance company contends that the deceased himself

being a tortfeasor, the petitioner is not entitled for compensation. The Tribunal, wrongly fixed the negligence on the 1st respondent Lorry driver and passed the award. The quantum of the award itself is on the higher side. There is no need to enhance the award amount. Thus, the 2nd respondent sought for dismissal of the appeal.

10. It is only quantum appeal. Both sides did not seriously challenge the conclusion arrived at by the Tribunal regarding negligence fixed on the Lorry driver as the cause for the accident.

11. Before the Tribunal, the Petitioner deposed as P.W.1, but she is not the eyewitness to the accident. However, P.W.2 who witnessed the accident clearly stated that while going as pillion rider in the two wheeler driven by the deceased, the 1st respondent mini lorry came in the opposite direction at high speed, and dashed against the motor cycle, in which the deceased was riding. According to P.W.2, the accident took place only due to rash and negligent driving of the 1st respondent mini lorry driver. The Police also registered Ex.P.1-FIR against the 1st respondent vehicle driver. To rebut the same, no evidence was let in by the respondent either oral or documentary. In such circumstances, based on P.W.1 evidence and contents of Ex.P.1-FIR, the Tribunal correctly fixed the negligence of the 1st respondent lorry driver alone caused the accident and the same needs no interference.

12. The Petitioner who deposed as P.W.1 stated that her deceased son was aged 36 years and by carrying on cashewnut business, was earning Rs.25,000/- per month. The Petitioner has not produced any document regarding the date of birth of the deceased. As such, considering the particulars in Ex.P.2, Post Mortem Certificate, the Tribunal fixed the age of the deceased as 40 years.

13. The Petitioner states that the deceased was carrying on the business of cashewnut vending and earned Rs.25,000/- per month. To prove the same, Ex.P.5-salary certificate was produced. It is clear from the same that the Petitioner was only employed in M/s.Lakshmi Cashewnut. However, the Petitioner has not examined the Proprietor of the said concern or the person who issued the said salary certificate. As such, the salary certificate cannot be taken into consideration. In such circumstances, considering the fact that the accident occurred during 2014 and other attendant circumstances, it will be

appropriate to fix the monthly income of the deceased at Rs.8,000/- instead of Rs.6500/- fixed by the Tribunal. As the deceased was aged 40 years, it will be appropriate to add 25% of the income towards Future Prospects.

14. The learned counsel for the Petitioner/claimant contends that following the Sarla Verma case, [Sarla Verma Vs. Delhi Transport Corporation [2009 (2) TNMAC 1 (SC)] as the dependant was a widowed mother only, 1/3rd of the income has to be deducted towards personal expenses. The contention of the learned counsel for the claimant is acceptable and therefore, in the case on hand, 1/3rd of the income is to be deducted towards personal expenses of the deceased. For the age group of 40, the correct multiplier to be applied is 15. Thus, the pecuniary loss to the petitioner is calculated as under:-

Monthly salary-Rs.10,000/-

Add: 25% future prospects - Rs.8,000/- + 25% (2000) = 10,000

Deduction: 1/3rd - 10,000 - 1/3 = 6667

6667 x 12 x 15 = 12,00,060/-

15. Loss of love and affection:- As the Petitioner being the mother of the deceased Pazhani @ Pazhanivel and having no other children, she has lost love and affection of her son in her old age and as such, she is entitled to Rs.25,000/- towards "loss of love and affection."

16. Conventional heads : Following the Apex court decision reported in 2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and Others], the compensation towards conventional heads, is as under:-

Funeral expenses -15,000/-

Loss of estate -15,000/-

17. Thus the award passed by the Tribunal, is modified as under:

Sl.No	Heads	Amount awarded by the Tribunal	Amount awarded by this court
1.	Loss of dependency	5,85,000/-	Rs.12,00,060/-
2.	Loss of love and affection	50,000/-	Rs. 25,000/-
3.	Funeral and Transport Expenses	25,000/-	Rs. 15,000/- + 10,000/-
4.	Loss of estate	--	Rs. 15,000/-
	Total	6,60,000/-	Rs.12,65,060/- rounded off to Rs.12,65,000/-

18. In the result,

(i) This Civil Miscellaneous is Partly Allowed;

(ii) The award amount is enhanced to Rs.12,65,000/- from Rs.6,60,000/-.

(iii) The award amount will carry interest at the rate of 7.5% per annum from the date of petition till the date of realisation.

(iv) The 2nd respondent/Insurance company is directed to deposit the award amount along with proportionate accrued interest and cost within a period of six weeks from the date of receipt of a copy of this order, less the amount, if any already deposited.

(v) On such deposit, the appellant/claimant is entitled to withdraw the same by filing necessary application before the Tribunal. As per order passed in CMP.No.6667 of 2018 in CMA.SR.28046 of 2018, the appellant/claimant shall forego interest for the delay of 98 days in filing CMA.

(vi) No costs. The appellant shall pay necessary additional court fee before obtaining copy of the decree.

-s/d-

Assistant Registrar(CS-IV)

True Copy

Sub-Assistant Registrar

nvsri

To

1.The Motor Accident Claims Tribunal, Principal District Judge, Cuddalore.

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

+2 Ccs to Mr.A.N. Viswanatha Rao, Advocate sr 45422.

+1 CC to Mr.S. Dhakshanamurthy, Advocate sr 45971.

C.M.A.No.1469 of 2018

SP(14/09/2018)