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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.1473 of 2018

1.K.Kaliammal

M.Kuppusamy (Deceased)

..Appellant/Petitioner

Versus

1.Abbas Saifuddin

2.National Insurance Co.Ltd.,

No.751, Anna Salai, Chennai - 2.

Now at: No.46, Moore Street, 2nd Line Beach,
Regina Mansion, Chennai -1.

3. Zenith Industrial Corporation,
No.137/5, Anagappa Naiken Street,
Chennai - 2.

..Respondents/Respondents

Civil Miscellaneous Appeal filed under section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 06.04.2017 made in M.C.O.P.No.6696 of 2015 on the file of the Motor Accident Claims Tribunal, Chief Judge, Small Causes Court, Chennai.

For Appellant : M/s.Ramya V. Rao

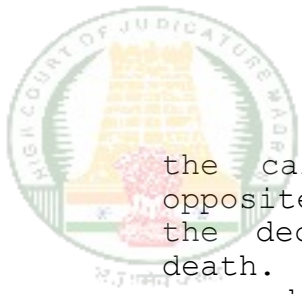
For Respondents : Mr.J.Chandran [for R2]

No Appearance [for RR1 and 3]

J U D G M E N T

The petitioners/claimants have filed this appeal against the judgment and decree dated 06.04.2017 made in M.C.O.P.No.6696 of 2015 on the file of the Motor Accident Claims Tribunal, Chief Judge, Small Causes Court, Chennai.

2. For the sake of convenience, the parties are referred to hereunder according to their litigative status before the Tribunal. The case of the petitioners/claimants is that on 27.04.2015 while the deceased person was riding his motor cycle bearing Registration No.PY-01-U-3398 at Manamai in the ECR Salai opposite to Empire Estate towards Chennai around 10.30 hours,



the car bearing Registration No.TN-07-BJ-4602 came in the opposite direction at high speed, dashed on the motor cycle of the deceased, causing him fatal injuries, resulting in his death. The accident occurred due to the negligence of the 1st respondent vehicle driver. The deceased was aged 20 years and by working as Plumber was earning Rs.21,000/- per month apart from daily batta of Rs.100/-. The petitioners/claimants who are the parents of the deceased were depending on the earning of his son. Due to his sudden demise they have lost the breadwinner of the family. Thus, the petitioners/claimants sought for a sum of Rs.50,00,000/- as compensation from the respondents.

3. On the other hand, opposing the claim of the petitioners/claimants, by filing counter, the 2nd respondent/Insurance Company contends that the petitioners/claimants have to prove that the car bearing Registration No.TN-07-BJ-4602 was insured with the 2nd respondent. The accident did not occur in the manner alleged by the petitioners/claimants. The deceased drove the two wheeler without driving license and the accident occurred only due to his negligence. The claim of the petitioners/claimants about the age, avocation and income of the deceased is not correct. The petitioners/claimants have to prove that the driver of the 1st respondent car possessed valid driving license. The claim of the petitioners/claimants is exorbitant. Thus, the 2nd respondent/Insurance Company sought for dismissal of the petition.

4. Before the Tribunal, the petitioners/claimants examined P.Ws.1 to 3 produced documents Exs.P1 to P9 to prove their claim. On the side of the respondents neither oral nor documentary evidence was let in. After analysing the evidence on record, the Tribunal held that the negligence of the 1st respondent vehicle driver alone resulted in the accident, passed an award for a sum of Rs.10,16,000/- payable by the respondents to the petitioner/claimant. Being not satisfied with the quantum of the award, the petitioners/claimants have come forward with the present appeal.

5. Heard both sides and perused the available materials on record.

6. The learned counsel for the petitioners/claimants contends that the Tribunal erred in fixing the monthly income of the deceased at Rs.8,000/- while he was earning Rs.650/- per day as evidenced by P.W.3 evidence. The Tribunal has wrongly fixed the multiplier '13' by taking into consideration, the age of the 1st petitioner/mother instead of the age of the deceased. The amount provided under different heads is very nominal. The petitioners/claimants sought for enhancement of the award amount by entertaining the appeal.



7. Per contra, the learned counsel for the 2nd respondent/Insurance Company contends that the accident did not occur due to the negligence of the 1st respondent vehicle driver and as such, they are not liable to pay any compensation. The award passed by the Tribunal itself is on higher side. There is no need or scope to enhance the quantum of the award. Thus, the 2nd respondent/Insurance Company sought for dismissal of the appeal.

8. This is only a quantum appeal. Both side did not seriously dispute or contest the conclusion of the Tribunal fixing negligence of the 1st respondent vehicle driver as the cause for the accident. The 1st petitioner/claimant who deposed as P.W.1 stated about the accident which took place on 27.04.2015. However, she has not witnessed the occurrence. The petitioners/claimants examined the eye-witness to the occurrence as P.W.2 and he clearly stated about the manner in which the accident occurred. According to P.W.2, it was only due to rash and negligent driving of the car bearing Registration No.TN-07-BJ-4602 the accident occurred. The Police also registered Ex.P.1 -F.I.R against the driver of the 1st respondent vehicle. As such, it is clear from P.W.2 evidence and contents of Ex.P.1 - F.I.R that the negligence of the 1st respondent vehicle driver alone caused the accident. There is no contra evidence let in by the respondents to disprove the petitioners/claimants claim. As such, the Tribunal is just and correct in concluding that the negligence of the 1st respondent-vehicle driver alone caused the accident.

9. The fact that the offending vehicle belongs to the 1st respondent and the same was insured with the 2nd respondent is not disputed. As such, they are liable to pay compensation. The petitioners/claimants claim that the deceased was aged 20 years and he was employed as a Plumber, earning Rs.21,000/- per month, apart from Rs.100/- as batta per day. The petitioners/claimants would not produce any document to prove the age of the deceased. As such, on the basis of Ex.P.2 - Post mortem certificate as well as Ex.P.3 - Death certificate the age of the deceased is fixed as 20 years.

10. The parents who filed the petition stated that the deceased was employed as a Plumber earning Rs.21,000/- per month. Subsequently, the 2nd petitioner/father also passed away. The petitioners/claimants examined P.W.3 who stated that the deceased was employed as a Plumber and he was paid Rs.650/- as daily wages. However, no document was produced by P.W.3, to show that the deceased worked under him and he was paid Rs.650/- per day. In such circumstances, it will be appropriate to fix the notional income of the deceased at Rs.300/- per day and as such, the monthly income of the deceased will be Rs.9,000/-. As the deceased was aged 20 years it will be appropriate to add 40% of



the income as future prospects. Thus, the monthly income of the deceased will be $[(Rs.9000 + (Rs.9000 \times 40\%)] = Rs.12,600/-$. As the deceased was a Bachelor, 50% of the income is to be deducted towards personal expenses. Further, for the said age group the correct multiplier to be applied is '18'. Thus, the loss of dependency will be,

$$[(Rs.12,600 \times 50\%) \times 12 \times 18] = Rs.13,60,800/-$$

Thus, a sum of Rs.13,60,800/- is granted as compensation under the head "Loss of Dependency".

11. The Tribunal has awarded amount for funeral expenses at Rs.25,000/-. In view of the judgment of the Supreme Court reported in 2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and Others], the compensation to be awarded towards loss of estate Rs.15,000/- is granted and towards funeral expenses the award is modified and a sum of Rs.15,000/- is granted.

12. The learned counsel for the petitioners/claimants contends that the 1st petitioner having lost his son is suffering due to loss of Love and Affection and she is entitled for higher amount towards the same. In support of that the learned counsel relied upon the Ruling of the Kerala High Court in the case of [1.Valsamma and others Vs. V.A.Baiju, 2. Rev.FR.Joseph Vattakalam, and 3.The National Insurance Co.Ltd., - MACA.Nos.711 and 921 of 2010]. Thus, considering the circumstances of the case, it will be appropriate to provide Rs.25,000/- towards loss of Love and Affection instead of Rs.50,000/- provided by the Tribunal. The sum of Rs.5,000/- provided towards Transportation is proper and the same is confirmed. Accordingly, the compensation awarded by the Tribunal stands modified as follows:-

Sl. No.	Head	Amount granted by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)
1	Loss of Pecuniary	9,36,000.00	13,60,800.00
2	Funeral Expenses	25,000.00	15,000.00
3	Loss of Estate	-	15,000.00
4	Love and Affection	50,000.00	25,000.00
5	Transportation	5,000.00	5,000.00
	Total	10,16,000.00	14,20,800.00

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

(i) The award of the Tribunal is enhanced to Rs.14,20,800/- from Rs.10,16,000/-.

(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.



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(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) On such deposit, 1st petitioner/claimant - mother is permitted to withdraw the amount awarded as above by filing proper application before the Tribunal. The Tribunal shall pass appropriate directions for the disbursement of the amount as stated supra on the filing of such application.

(v) The 1st petitioner/claimant - mother is not entitled to any interest for the condoned delay (default), period, if any.

(vi) 1st Petitioners/claimants shall pay necessary court fee before receiving the copy of this judgment for the enhanced compensation amount, if required.

No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1. The Chief Judge,
Motor Accident Claims Tribunal,
Small Causes Court,
Chennai.
2. The Section Officer,
V.R.Section, High Court, Madras.(2 copies)

+1cc to Mr.J.Chandran, Advocate sr.no.45621
+1cc to Mr.A.N.Viswanatha Rao, Advocate sr.no.45602

C.M.A.No.1473 of 2018

br(co)
nr 19/12/2018