

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.1485 of 2018

1.Chitra
2.M.Kaveri
3.Muthu

..Appellants

Versus

1.R.C.Venkatesh
2.S.P.Gunasekaran
3.The New India Assurance Co.Ltd.,
92, East Coast Chambers,
1st Floor, G.N.Chetty Road,
T.Nagar, Chennai.

..Respondents

Civil Miscellaneous Appeal filed under section 173 of Motor Vehicles Act, 1988, against the award and decree dated 14.12.2011 made in M.C.O.P.No.145 of 2008 on the file of the Motor Accident Claims Tribunal, Subordinate Judge Court at Sankagiri.

For Appellants : Mr.M.Aniruthan

For Respondents : Mr.G.Udaya Sankar [for R3]
Ex-parte in lower Court [RR1 and 2]

J U D G M E N T

The petitioners/claimants have filed this appeal against the award and decree dated 14.12.2011 made in M.C.O.P.No.145 of 2008 on the file of the Motor Accident Claims Tribunal, Subordinate Judge Court at Sankagiri.

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 24.12.2005 at 08.15 p.m, while the deceased was riding his two wheeler bearing Registration No.TN.28-K-4858 in Paramathi to Vellore Main Road, while going near Yogalakshmi weigh bridge at Paramathi, the lorry bearing Registration No.TN-47-F-2160 came at high speed, dashed against the two wheeler of the deceased

causing him fatal injuries, resulting in his death on the way to the hospital. The accident occurred only due to the negligence of the 2nd respondent, the erstwhile owner of the lorry which was insured with the 3rd respondent. The deceased was aged 35 years and as a practising advocate was earning Rs.25,000/- per month. The petitioners/claimants who are the wife and parents of the deceased were depending on the earning of the deceased. Thus, the petitioners/claimants seek a sum of Rs.15,00,000/- as compensation from the respondents.

3. On the other hand, opposing the claim of the petitioners/claimants, by filing counter, the 3rd respondent/Insurance Company contends that the accident did not occur in the manner alleged by the petitioners/claimants. The 3rd petitioner/claimant/father of the deceased is not the legal heir and the petition is bad for mis-joinder of parties. The accident occurred only due to rash and negligent driving by the deceased himself. The insurer and insured of the vehicle bearing Registration No.TN-28-K-4858 are necessary parties to the petition. As they are not impleaded, the petition is to be dismissed for non joinder of necessary parties. The claim of the petitioners/claimants about the age and income of the deceased is disputed. The amount claimed by the petitioners/claimants is highly excessive. Thus, the 3rd respondent/Insurance Company sought for dismissal of the petition.

4. Before the Tribunal, the petitioners/claimants examined P.W.1 and P.W.2 and produced documents Exs.P.1 to P.10, to prove their claim. On the side of the respondents neither oral nor documentary evidence was let in. The Tribunal, after analysing the evidence on record, found that the negligence of the 1st respondent vehicle driver alone caused the accident, passed an award for a sum of Rs.7,75,000/- payable by the respondents to the petitioners/claimants. Being not satisfied with the quantum of the award the petitioners/claimants has come forward with the present appeal.

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

6. The learned counsel for the petitioners/claimants contends that the Tribunal failed to consider the evidence on record properly and inspite of deceased being a practising advocate fixed the monthly income very low at Rs.6,000/- even though he was earning Rs.25,000/-. The multiplier adopted by the Tribunal is not correct. The amount provided under different heads is very meagre. Thus, the petitioners/claimants sought for enhancement of the award amount by entertaining the appeal.

7. Per contra, the learned counsel for the 3rd

respondent/Insurance Company contends that the Tribunal has fixed the monthly income of the deceased properly and there is no need to enhance the same. The amount awarded by the Tribunal is just and proper. There is no ground made out by the petitioners/claimants to enhance the same. Thus, the 3rd respondent/Insurance Company sought for dismissal of the appeal.

8. This is a quantum appeal only. Both sides have not seriously contested the conclusion of the Tribunal fixed, the negligence on the 1st respondent - driver as the cause for the accident. The eye-witness to the occurrence, who deposed as P.W.2, clearly stated about the accident. The 1st petitioner who deposed as P.W.1 also stated that on 24.12.2005 as the deceased was proceeding in his two wheeler, the 1st respondent driven lorry bearing Registration No.TN-47-F-2160 came at high speed dashed on the two wheeler of her husband, causing him fatal injuries, resulting in his death on the way to the hospital. The police also registered Ex.P.1 - F.I.R against the 1st respondent only. Further, on completion of investigation the police laid Ex.P.7 - Charge sheet against the 1st respondent only. Thus, the evidence of P.Ws.1 and 2 as well as the contents of Ex.P.1 - F.I.R and Ex.P.7 - Charge sheet clearly prove that the negligence of the 1st respondent resulted in the accident. The respondents have not let in any contra evidence to counter the claim of the petitioners/claimants in that regard. As such, the conclusion of the Tribunal that the negligence of the 1st respondent alone caused the accident is well founded and the same needs no interference.

9. The petitioners/claimants states that the deceased was aged 35 years and as a practising advocate was earning Rs.25,000/- per month. The petitioners/claimants produced the Bar Counsel enrolment certificate of the deceased as Ex.P.10 and the driving license as Ex.P.8. In Ex.P.2 - Post mortem report the age of the deceased is stated as 35 years and the same is corroborated by Ex.P.3 - Death certificate. Thus, it clear from the same that the deceased was aged 35 years.

10. The petitioners/claimants further stated that the deceased was earning Rs.25,000/- per month as a practising advocate. Neither the bank account statement nor any income tax return or any other proof like the number of cases in which he filed Vakalat is produced before the Court. The Tribunal, as such, fixed the notional monthly income of the deceased at Rs.6,000/-. This, the petitioners/claimants contends is very low and meagre. As such, considering the avocation of the deceased and attendant circumstances, it will be appropriate to fix the notional income of the deceased at Rs.10,000/- per month. As the deceased was aged 35 years, it will be appropriate to add 40% income towards future prospects. Thus, loss of income to the

family is calculated as follows:-

$$\text{Rs.10,000} + (\text{Rs.10,000} \times 40\%) = \text{Rs.14,000/-}$$

As the number of dependants are 3 in numbers, $\frac{1}{3}$ rd of the income is to be deducted towards personal expenses and the correct multiplier to be applied is '16' and not '15' as done by the Tribunal. Thus, the loss of dependancy is calculated as follows:-

$$[\text{Rs.14,000} - (\text{Rs.14,000} \times \frac{1}{3}) \times 12 \times 16] = \text{Rs.17,92,128/-}$$

Thus, a sum of Rs.17,92,128/- is granted as compensation under the head "Loss of Dependancy".

11. In view of the judgment of the Hon'ble 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, funeral expenses and loss of consortium and thus, 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.

12. The learned counsel for the petitioners/claimants contended that due to the sudden demise of their son, the petitioners 2 and 3/claimants 2 and 3 are suffering from loss of love and affection. Considering the circumstances, it will be appropriate to award Rs.10,000/- each to 2nd and 3rd petitioners/claimants for loss of love and affection. Thus, they are entitled for Rs.20,000/- under the head for "Loss of Love and Affection". Likewise, the petitioners/claimants is also entitled for transport charges for which Rs.5,000/- is awarded.

13. Accordingly the Award passed by the Tribunal is modified as follows:-

Sl. No.	Head	Amount granted by the Tribunal (Rs.)	Amount Awarded by this Court (Rs.)
1	Loss of Dependancy	7,20,000.00	17,92,128.00
2	Funeral Expenses	5,000.00	15,000.00
3	Loss of Estate	-	15,000.00
4	Love and Affection	20,000.00	20,000.00
5	Loss of Consortium	25,000.00	40,000.00
6	Transport	5,000.00	5,000.00
7	Total	7,75,000.00	18,87,128.00

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

(i) The Award of the Tribunal is enhanced to Rs.18,87,128/- from Rs.7,75,000/-.

(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 modified Award amount, the 3rd 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) The apportionment of the modified enhanced amount is as follows:-

Petitioner/Claimant 1	-	60%
Petitioners/Claimant 2 and 3	-	20% each

(v) On such deposit, the petitioners/claimants 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/Claimants shall pay necessary court fee before receiving the copy of this decree for the enhanced compensation amount, if necessary.

(vii) In view of the order of this Court dated 28.06.2018 interest is waived off for the delayed period.

No costs.

Sd/-

Assistant Registrar(CS IX)

//True copy//

Sub Assistant Registrar

bri

To

1. The Motor Accident Claims Tribunal,
Subordinate Judge Court, Sankagiri.

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

+1cc to Mr.G.Udayasankar, Advocate SR.No.46419

+1cc to Mr.M.Aniruthan, Advocate SR.No.45948

C.M.A.No.1485 of 2018

CNR(CO)

GN(20/08/2018)