IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 28.08.2018
CORAM:
THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN
Civil Miscellaneous Appeal No.1302 of 2016

1.N.Vaijayanthimala

2.V.N.Vani .. Appellants

Vs.

1.N.Ravichandran
(R1-Exparte before Tribunal, hence notice may be dispensed with)

2.National Insurance Co. Ltd.,
No.190, Anna Salai, Chennai-6. .. Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the decree and judgment dated 10.10.2012 passed in M.C.O.P.No.987 of 2006 by the Motor Accidents Claims Tribunal (XVI Additional Court), Chennai-1.

For Appellants : Mr.A.N.Vishwanatha Rao

For Respondents: Mr.R.Ravichandran (for R2)

R1 - Exparte

JUDGMENT

Being dissatisfied with the quantum of compensation of Rs.14,34,000/- awarded by the Tribunal in M.C.O.P.No.987 of 2006, the appellants have filed the present appeal.

2. Brief facts are that on 16.7.2005 at about 6.45 hours, the deceased Narayanasamy was riding his motorcycle bearing registration No.TN-09 AE 3063 from Aminjikarai to Valasaravakkam and when he was proceeding at Nerkundram on Poonamallee High Road, a lorry bearing registration No.TN-60 C 1072, owned by the first respondent and insured with the second respondent, came from behind driven by its driver in a rash and negligent manner dashed against the motorcycle and caused the death of the deceased. Stating that the accident occurred due to rash and negligent driving of the driver of the first respondent's lorry, the appellants, who are wife and daughter of the deceased have

filed the claim petition claiming compensation of Rs.20,00,000/-.

3. Denying the manner of accident, the second respondent insurance company filed counter stating that the accident not occurred due to the rash and negligent driving of the driver of the first respondent and that the total compensation of Rs.20,00,000/- claimed by the appellants is highly excessive.

4. To prove the claim, on the side of the appellants, two witnesses were examined and Exs.P1 to P15 were marked. No oral and documentary evidence was adduced on the side of the second respondent insurance company.

5. The Tribunal, upon consideration of oral and documentary evidence, held that the accident occurred due to rash and negligent driving of the driver of the lorry. Taking the monthly income of the deceased at Rs.15,000/- and deducting one-third towards personal expenses and adopting multiplier 11, the Tribunal awarded Rs.13,20,000/- towards loss of dependency. Adding conventional damages, the Tribunal awarded total compensation of Rs.14,34,000/-. Being dissatisfied with the quantum, the appellants have filed the present appeal.

6. I heard Mr.A.N.Vishwanatha Rao, learned counsel for the appellants and Mr.R.Ravichandran, learned counsel for the second respondent and perused the entire materials available on record.

7. It is not necessary for this Court to narrate entire facts in detail qua negligence and liability. It is for the reasons that these things are recorded by the Tribunal that the accident occurred due to rash and negligent driving of the driver of the first respondent lorry, which was insured with the second respondent. Therefore, this Court is of the view that the second respondent being the insurer of the offending lorry is liable to pay the compensation to the appellants.

8. The only point to be considered in this appeal is whether the appellants are entitled for enhancement of the compensation as prayed for.

9. According to the appellants, at the time of accident, the deceased was doing the business of manufacturing and supplying of cleaning materials and was earning Rs.75,000/- per month. In her evidence, P.W.1 deposed that her husband was earning Rs.75,000/- per month by doing business and he was an income tax assessee. In

her evidence, P.W.1 further deposed that her husband availed housing loan and was repaying Rs.15,000/- per month. She had also produced Exs.P9 and P10-bank statements.

10. The Tribunal has taken the monthly income of the deceased at Rs.15,000/- per month. According to the appellants, an amount of Rs.15,000/- taken by the Tribunal is very low. The appellants have produced Ex.P11-housing loan account to show that the deceased was repaying Rs.15,000/- per month towards loan. When a person has the capacity to pay Rs.15,000/- per month as loan, definitely, his earning will be more. The second respondent has not produced any contra evidence to show that the earning capacity of the deceased is very low. Considering the avocation of the deceased, it would be appropriate to fix the monthly income of the deceased at Rs.20,000/-.

11. Since the deceased was doing business at the time of accident, he would have earned more amount had he been alive. Therefore, it would be appropriate to give 10% increase towards future prospects. Adding 10% of salary towards future prospects, the monthly income of the deceased is fixed at Rs.22,000/-. Deducting one-third towards personal expenses, the contribution to the family is calculated at Rs.14,667/- per month i.e., Rs.1,76,004/- per annum.

12. At the time of accident, the deceased was aged 54 years. For the age group 50 - 55, the multiplier to be adopted is "11". Adopting multiplier 11, the loss of dependency is calculated at Rs.19,36,044/-.

13. As far as conventional damages are concerned, the Tribunal awarded Rs.50,000/- towards loss of consortium; Rs.50,000/- towards loss of love and affection; Rs.4,000/- towards medical expenses and Rs.10,000/- towards funeral and transportation expenses. Since the accident is of the year 2005, Rs.50,000/- each awarded by the Tribunal for loss of consortium and loss of love and affection is slightly on the higher side and the same is reduced to Rs.25,000/- each. Amounts of Rs.4,000/- for medical expenses and Rs.10,000/- for funeral expenses awarded by the Tribunal are maintained.

14. In view of the above discussion, the total compensation of Rs.14,34,000/- awarded by the Tribunal is enhanced to Rs.20,00,000/- as under:

Heads	Rs.
Loss of dependency	19,36,044.00

Heads	Rs.
Loss of consortium	25000
Loss of love and affection	25000
Medical expenses	4000
Funeral and transport charges	10000
Total	20,00,044.00
Rounded off to	20,00,000.00

15. The Tribunal apportioned the compensation of Rs.14,34,000/- as under:

1st appellant ... Rs.6,34,000/-
2nd appellant ... Rs.8,00,000/-

The said apportionment of the Tribunal is maintained. Apart from the above, the enhanced amount of Rs.5,66,000/- is apportioned as under:

1st appellant ... Rs.4,00,000/-
2nd appellant ... Rs.1,66,000/-

16. In the result, the Civil Miscellaneous Appeal is allowed with proportionate cost. The compensation of Rs.14,34,000/- awarded by the Tribunal is enhanced to Rs.20,00,000/- payable with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit. The second respondent is directed to deposit the entire compensation with interest as aforesaid within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the appellants are permitted to withdraw their respective shares along with accrued interest as apportioned.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

vs
To
The Motor Accidents Claims Tribunal,
XVI Additional Judge, Chennai.

+1cc to Mr.A.N.Vishwanatha Rao , Advocate SR.No. 59260
+1cc to Mr.R.Ravichandran , Advocate SR.No. 59737

Civil Miscellaneous Appeal No.1302 of 2016

A.SK(12/02/2019)