

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 14.02.2018

Coram

The Honourable Mr. Justice S.BASKARAN

C.M.A.No.1509 of 2016

- 1.Sasikala
- 2.Prithvi

...Appellants/Petitioner

..vs..

1. L.Ravichandran
2. The New India Insurance Co. Ltd.,
Gobi Branch Office No.720802
No.12, New Hospital Road,
Gobi - 638 452

... Respondents/Respondents

This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 25.02.2016 in M.C.O.P.No.58 of 2010 on the file of the Motor Accident Claims Tribunal (Subordinate Judge Court) at Mettur, in so far as it relates to the quantum of compensation.

For Appellants : Mr.G.K.Ilanthiraiyan
for M/s. Sai Bharath & Ilan

For Respondent : Ms.R.Sreevidhya for R2

JUDGMENT

This civil miscellaneous appeal arises out of the Judgment and decree 25.02.2016 made in M.C.O.P.No.58 of 2010, on the file of the Motor Accident Claims Tribunal, Subordinate Judge Court, Mettur, in so far as it relates to the quantum of compensation.

2 For the sake of convenience, the parties will be hereinafter referred to in this judgment as arrayed before the Tribunal.

3 The case of the petitioners/claimants is that on 15.12.2009, the deceased along with the petitioners and others were preceding to Rameshwaram in Tamilnadu State Express Transport Corporation bus bearing Reg.No.TN 01 6511. When they were going on Karur to Dindigul National Highways 7, near Venjamangudalore Arch, aruvakurichi Taluk, the right side front

wheel of the bus got punctured. The driver parked the bus on the extreme left side of the road and switched on the park lamp. After the passengers got down from the bus, the conductor was disbursing the bus fare to the passengers, so as to enable them to proceed further on a different bus. The deceased and his brother got down from the bus to collect the bus fare, the petitioners/claimants were inside the bus. At that time, around 11.40 p.m., the lorry bearing Reg.No.TN 38 AU 0589 came at high speed from north to south and without noticing the bus standing with punctured tire, dashed on the rear side of the bus resulting the bus moving ahead and hitting the persons who were standing in front of the bus for collecting the balance amount. As a result of the same, the deceased Thangaraj and three other persons got injured and died subsequently. The brother of the deceased who suffered injuries is still taking treatment. The accident occurred due to rash and negligent driving of the first respondent lorry driver. At the time of accident, the deceased was aged about 45 years and by working as Post Graduate Teacher in Boys Government Higher Secondary School, Vanavasi, Mettur, earned a monthly salary of Rs.31,028/-. Due to the sudden death of the said Thangaraj, the petitioners who are the wife and son of the deceased have lost bread winner of the family and also lost love and affection of head of the family. Thus, the petitioners/claimants seeks a sum of Rs.45,00,000/- as compensation from the respondents who are the owner and insurer of the vehicle.

4 On the other hand, opposing the claim petition by filing counter, the learned counsel for the second respondent/Insurance Company contends that the negligence of the driver of the bus bearing Reg.No.TN 01 6511 in stopping the vehicle at the middle of the road is the only reason for the accident. The Tamilnadu State Express Transport Corporation is a necessary party to the proceedings. The claim of the petitioners/claimants about the monthly salary of the deceased is disputed. Hence the learned counsel for the second respondent/Insurance Company seeks dismissal of the claim petition.

5 To substantiate their claim before the Tribunal, the first petitioner examined himself as P.W.1 and examined P.W.2 and produced Ex.P1 to Ex.P19 to prove their claim. On the side of the respondents, neither oral evidence was let in nor documents were marked.

6 The Tribunal, on the basis of available materials on record, found that the negligence of the first respondent lorry driver alone is the cause for accident and awarded a sum of Rs.22,78,472/- as compensation to the petitioners/claimants.

7 The learned counsel for the petitioners/claimants contended that the Tribunal after fixing the age of the deceased wrongly applied the multiplier as 13 instead of applying 15. The Tribunal failed to appreciate the fact that the deceased was working as P.G. Assistant in Government Higher Secondary School. He was under verge of promotion as Head Master of the School. The Tribunal also failed to note that the deceased was having further 13 years of service and as such the Tribunal failed to assess the future prospective of the deceased properly. The award of the Tribunal under various heads is on the lower side. Hence the learned counsel for the petitioners/claimants seeks to enhance the award passed by the Tribunal by entertaining this appeal.

8 Per contra, the learned counsel for the second respondent/Insurance Company contends that the Tribunal has wrongly appreciated the available material on record and awarded higher amount as compensation. The Tribunal ought to have considered the vagaries of life and should have fixed the amount of compensation at lower level. Hence the learned counsel for the second respondent/Insurance Company seeks dismissal of the appeal.

9 The petitioners/claimants claimed that they themselves along with the deceased were proceeding from Salem to Rameshwaram in the bus bearing Reg.No.TN 01 6511 on 15.12.2009. As stated above, when the bus was stopped for replacing the punctured wheel, the deceased who got down from the bus, was standing in front of the bus to collect the balance amount. At that time, the first respondent lorry dashed on the rear side of the bus resulting in the bus moving ahead and hitting the deceased and others causing death to them. The police have registered Ex.P1 FIR against the driver of the first respondent lorry only. The first petitioner/claimant, who deposed as P.W.1 was sitting in the bus, witnessed the accident. The police on completion of investigation has laid charge sheet Ex.P6 against the driver of the offending vehicle only. The accident spot is clearly established by Ex.P5, Rough Sketch. Thus it is clear from the oral and documentary evidence of P.W.1 and Ex.P1 FIR and also Ex.P6 charge sheet that the negligence of the first respondent lorry driver alone resulted in the accident. As such the finding of the Tribunal that the negligence of the first respondent lorry driver caused the accident is just and proper and the same needs no interference.

10 The deceased Thangaraj was stated to be aged 45 years and he was working as PG Assistant Teacher in the Government Boys Higher Secondary School, Vanavasi. It is clear from the Ex.P9 secondary school leaving certificate of the deceased Thangaraj, that his date of birth was 10.04.1964. It is also

clear from Ex.P2 Postmortem report that the deceased was aged 45 years and as such the age of the deceased can rightly be fixed as 45 years. Admittedly, the deceased was employed as PG Assistant Teacher in Government Boys Higher Secondary School, Vanavasi. As per Ex.P19 salary certificate, the deceased was earning Rs.31,028/- p.m. Hence the monthly salary of the deceased is fixed as Rs.31,028/-. Since the deceased was aged about 45 years and he being a permanent employee of the Government School, 30% of his income is to be added towards future prospects and that the loss of dependency is calculated as follows:

(Salary+Future prospects (30% of the salary))x 2/3 x months x multiplier

(Rs.31028 + Rs.9308)x2/3x12x14 = Rs.45,17,632/-

11 Following the Apex Court decision reported in 2017 (2) TN MAG 609 (SC) NATIONAL INSURANCE CO. LTD., Vs. PRANAY SETHI AND OTHERS, towards loss of estate, loss of consortium, funeral expenses and transport expenses this Court is inclined to modify the compensation as under:-

Loss of consortium	=	Rs.40,000.00
Funeral Expenses	=	Rs.15,000.00
Loss of Estate	=	Rs.15,000.00
Transport Expenses	=	Rs.10,000.00

12 Accordingly, the compensation granted by the Tribunal is modified as follows:-

S1 No	Heads	Amount awarded by the Tribunal	Awarded by this Court
1.	Loss of Dependency	20,97,472.00	45,17,632.00
2.	Loss of consortium	75,000.00	40,000.00
3.	Love and affection	75,000.00	-
4.	Funeral Expenses	20,000.00	15,000.00
5.	Extra nourishment	-	-
6.	Damages for clothing and articles	1000.00	-
7.	Loss of estate	-	15,000.00
8.	Transport Expenses	10,000.00	10,000.00
	Total	22,78,472.00	45,97,632.00

13 In view of the above modification, the civil miscellaneous appeal is allowed. No costs. The second respondent/Insurance Company is directed to deposit the entire enhanced award amount of Rs.45,97,632/- with interest at the rate of 7.5% p.a. after deducting the amount that has already been deposited by them within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the petitioners/claimants are entitled to get 50% each and are permitted to withdraw their respective share amount with proportionate interest and costs, by filing necessary application before the Tribunal. The petitioners/claimants are directed to pay the deficit Court fee, if any, for the enhanced award amount within a period of 10 days from the date of receipt of a copy of this order.

s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The Motor Accident Claims Tribunal
(Subordinate Judge)
Mettur.
2. The Section Officer,
V.R.Section, High Court, Madras. (2 copies)

+1 Cc to M/s. Sai Bharath & Ilan, Advocate sr 11348.

+1 CC to Mrs.R. Sreevidya, Advocate sr 11590.

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NMI (CO)
SP(12/04/2018)

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