

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.1217 of 2015

S.Mythili ..Appellant/Petitioner

Versus

1.K.Suresh

2.Iffco-Tokio General Insurance Company Ltd,
No.28, North Usman Road, T.Nagar,
Chennai - 600 017. ..Respondents/Respondents

Civil Miscellaneous Appeal filed under 173 of Motor Vehicles Act 1988, against the judgment and decree dated 28.02.2014 made in M.C.O.P.No.1032 of 2011 on the file of the Motor Accident Claims Tribunal, II Additional District Judge Court, Triuvallur at Poonamallee.

For Appellant : Mr.P.Natarajan

For Respondents : Mr.J.Michael Visuvasam [for R2]

J U D G M E N T

The Appellant/Petitioner has filed this appeal against the judgment and decree dated 28.02.2014 made in M.C.O.P.No. 1032 of 2011 on the file of the Motor Accident Claims Tribunal, II Additional District Judge Court, Triuvallur at Poonamallee.

2. For the sake of convenience, the parties are referred to hereunder according to their litigative status before the Tribunal.

3. The case of the petitioner is that on 15.10.2011 at about 9.50 hours when the deceased Senthivel was crossing the CTH Road near Ambattur Post Office from North-South, the 1st respondent motor cycle bearing Registration No.TN-20-BP-0205 came at high speed from West-East dashed against the said Senthivel causing him fatal injuries; resulting in his death. The accident occurred only due to rash and negligent driving of the 1st respondent driver only. Hence, the 1st respondent, the

owner and 2nd respondent, the insurer are liable to pay compensation. The deceased was aged 45 years and was working as a Junior Assistant in Government of Tamil Nadu, earning Rs.13,000/- per month. The petitioner is the wife of the deceased and was depending on her husband's income. Hence, the petitioner seeks a sum of Rs.26,00,000/- as compensation from the respondents.

4. 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. On the fatal day, the deceased crossed the CTH Road from North-South without observing the road rules and as such the rider of the two wheeler dashed against the petitioner; resulting in the accident. The accident occurred only due to the negligence of the deceased pedestrian. The age, occupation and income of the deceased as alleged by the petitioner is not correct. The petitioner has to prove the rider of the two wheeler he possessed valid driving license. The claim of the petitioner is exorbitant. Hence, the 2nd respondent/Insurance Company sought for dismissal of the petition.

5. Before the Tribunal, the petitioner examined herself as P.W.1 and two other witnesses as P.W.2 and P.W.3 and produced documents Exs.P.1 to P.21 to prove her claim. On the side of the 2nd respondent, neither oral nor documentary evidence was let in. The Tribunal, on appreciation of the evidence available on record found that the 1st respondent driver alone was responsible for the accident and directed the 2nd respondent/Insurance Company to pay a sum of Rs.17,77,575/- as compensation to the petitioner. Being not satisfied with the quantum of the award, the petitioner has come forward with the present appeal.

6. The learned counsel for the petitioner contends that the Tribunal failed to consider the evidence on record properly. The deceased being a permanent Government Servant drawing a sum of Rs.12,496/- per month, ought to have fixed the monthly income accordingly, but failed to do so. The Tribunal failed to provide any amount for future prospects of the deceased. The amount provided under different heads is very low. Thus, the petitioner seeks to enhance the quantum of the award by allowing the appeal.

7. Per contra, learned counsel for the 2nd respondent/Insurance Company contended that the Tribunal, based on the available evidence has awarded a just and fair compensation and there is no ground made out to enhance the same. Further, the deceased also contributed to the occurrence, by way of his negligence and as such contributory negligence is

to be fixed. Thus, the 2nd respondent/Insurance Company sought for dismissal of the appeal.

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

9. The petitioner/appellant who is the wife of the deceased clearly stated that her husband who was working as a Junior Assistant in Government of Tamil Nadu met with an accident on 15.10.2011 at 09.50 a.m, while crossing the CTH Road near Ambattur Post Office. The Police also registered a case against the rider of two wheeler who dashed against the deceased as evidenced by Ex.P.1 - F.I.R and Ex.P.2 - Rough Sketch, wherein the occurrence spot is shown as the middle of the road. The claim of the petitioner is supported by the evidence of P.W.2 also. In the absence of any contrary evidence produced or adduced on the side of the 2nd respondent and on the basis of P.W.1 and P.W.2 oral evidence as well as Ex.P.1 - F.I.R and Ex.P.2 - Rough Sketch, it is clear that the accident occurred only due to negligence of the 1st respondent motor cycle rider.

10. The petitioner/appellant has produced copy of the driving license of the two wheeler rider as Ex.P.20 and copy of the Insurance Policy taken by the 1st respondent with the 2nd respondent for the said two wheeler as Ex.P.19. It is therefore clear that the offending vehicle was driven by the 1st respondent and the said vehicle belonging to the 1st respondent and insured with the 2nd respondent at the time of the accident. Hence, the respondents are jointly and severally liable to pay the amount.

11. The deceased was employed as Junior Assistant in the Government of Tamil Nadu and is stated to be 45 years at the time of the accident. It is clear from Ex.P.21 - Copy of the Service Register of the deceased that the date of retirement is 30.04.2024 and the Gross Salary is Rs.12,496/- per month. The deceased was stated to be permanent employee of the Government of Tamil Nadu and he being aged 45, it will be appropriate 30% of the income is to be added as future prospects. Hence, the loss of dependency as calculated as follows:-

Rs.12496 + 30% Future Prospects (3748) = Rs.16245

Income Tax 10% = 1625

16245 - 1625 = 14620

The petitioner being the only dependent, 1/3rd is to be deducted towards his personal expenses and as the deceased was aged 45 and the multiplier to be applied is 14.

1/3rd deduction towards personal expenses,

14620 - 1/3 rd deduction(4873)

14620 - 4873 = 9747

By applying multiplier of 14,

Rs.9747 x 12 x 14 = Rs.16,37,496/-

Thus, a sum of Rs.16,37,496/- is granted as compensation under the head "Loss of dependency". The Tribunal as per Ex.P.17 - Medical Bills awarded medical expenses as Rs.3,93,115/- and the same is to be confirmed.

12. In respect of awarding compensation under conventional heads, as per the Constitution Bench judgment of the Supreme Court reported in 2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and Others], towards loss of estate, loss of consortium and funeral expenses, this court is inclined to award the following amounts as compensation:-

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

	Rs.70,000.00

13. Accordingly, the compensation awarded by the Tribunal stands modified as follows:

Sl. No.	Head	Amount granted by the Tribunal	Amount awarded by this Court
1	Loss of dependency	Rs.13,49,460.00	Rs.16,37,496.00
2	Funeral Expenses	Rs.5,000.00	Rs.15,000.00
3	Loss of Consortium	Rs.25,000.00	Rs.40,000.00
5	Loss of Estate	-	Rs.15,000.00
6	Transport	Rs.5,000.00	Rs.5,000.00
7	Medical Expenses	Rs.3,93,115.00	Rs.3,93,115.00
8	Total	Rs.17,77,575.00	Rs.21,05,611.00

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

- (i) The award of the Tribunal is enhanced to Rs.21,05,611/- from Rs.17,77,575/-.
- (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 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, the petitioner/appellant is 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. No costs.

Sd/-
Assistant Registrar(CS VII)

//True copy//

Sub Assistant Registrar

bri

To

1.The II Additional District Judge,
Motor Accident Claims Tribunal,
Triuvallur, Poonamallee.

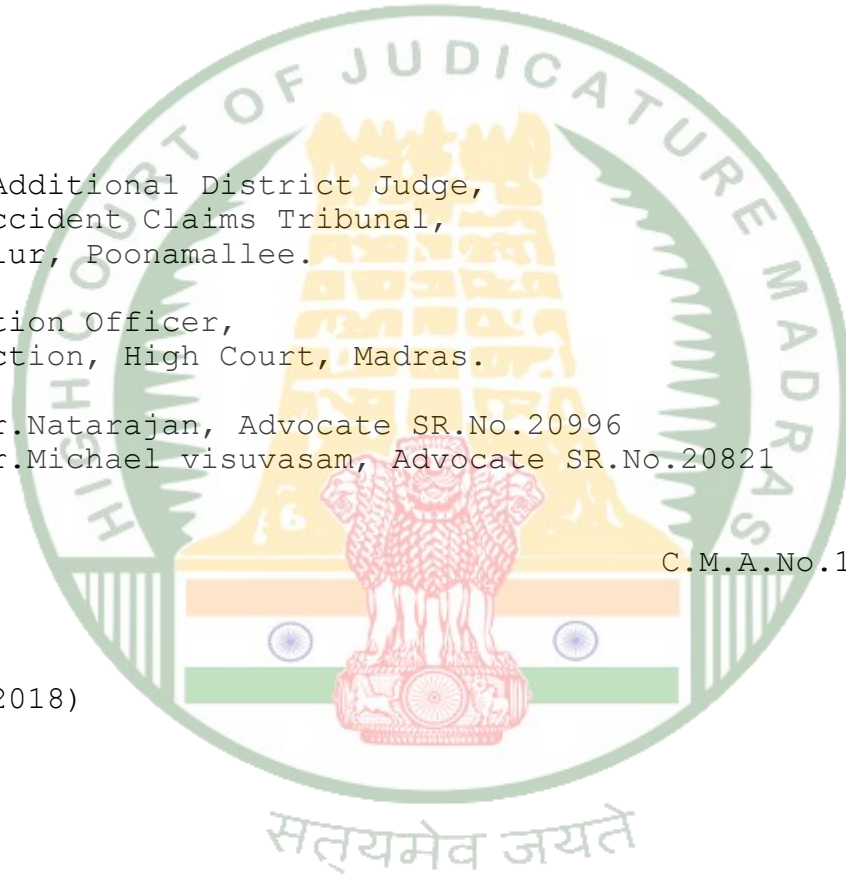
2.The Section Officer,
V.R.Section, High Court, Madras.

+lcc to Mr.Natarajan, Advocate SR.No.20996

+lcc to Mr.Michael visuvasam, Advocate SR.No.20821

C.M.A.No.1217 of 2015

MG(CO)
GN(04/04/2018)



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