IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.02.2018

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THE HONOURABLE MR. JUSTICE S.BASKARAN

Civil Miscellaneous Appeal No.1592 of 2011

1.D.Chinnammal
2.D.Nithiya Devi
3.D.Priya Dharshini
4.D.Hari Prasanth
V.Nallammal (Died) ...Appellants/Claimants

..vs..

1.A.Ansar Ali

2.Royal Sundaram Alliance Insurance Company Ltd.,
D-1, II Floor, Amirtha Towers,
KPCC Jn., Opp. Maharaja Grounds.
M.G.Road, Cochin -682 001. ... Respondents/Respondents

This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the Fair and Decreetal order dated 26.10.2010 made in MCOP.No.188 of 2008 on the file of the Motor Accident Claims Tribunal/Additional Sub Court, Erode (Transferred MCOP.No.495 of 2008 of District Court, Erode.)

For Appellants : Mr.N.Manokaran

For Respondents : Mr.N.Vijayaraghavan for R-2

JUDGMENT

This civil miscellaneous appeal arises out of the Fair and Decreetal order dated 26.10.2010 made in MCOP.No.188 of 2008 on the file of the Motor Accident Claims Tribunal/ II Additional Sub Court, Erode (Transferred MCOP.No.495 of 2008 of District Court, Erode.)

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

3. The case of the petitioners is that on 03.01.2008 at about 10.30 a.m., when the deceased Duraisamy and one Chinnasamy were standing on the extreme southern side of Erode to Perundurai Main Road, near Annamar Lodge in front of Ravi Mess, a Van bearing Registration No.KL-09-U-9703, owned by the first respondent and insured with the second respondent, came at high speed, driven in a rash and negligent manner and dashed against the deceased, who suffered severe injuries and immediately he was taken to the Hospital. Subsequently, he died in the Hospital. The first petitioner is the wife, 2nd and 3rd petitioners are unmarried daughters, 4th petitioner is son and 5th petitioner is mother of the deceased and they contend that the negligence of the first respondent vehicle driver alone is responsible for the accident. According to the petitioners, the deceased was aged about 40 years at the time of the accident and he was working as Chief Dying Master at Mahalakshmi Dying Factory and earned a sum of Rs.15,000/- per month. The deceased was only kartha and bread winner of the family. On account of untimely death of him, the entire family collapsed and their future prospectus are affected. Thus, the petitioners sought for compensation of Rs.15,00,000/- from the respondents.

4. On the other hand, the second respondent Insurance company opposed the claim petition by filing detailed counter stating that the accident occurred due to the carelessness of the deceased only. The driver of the van bearing Registration No.KL-09-U-9703 was driven by the vehicle at slow speed observing all the traffic rules and at that time, the deceased suddenly crossed the road from south to north direction. If only the deceased has looked out before crossing the road this accident would not have occurred at all. It is further contended that absolutely there is no fault or mistake on the part of the driver of the offending vehicle. Hence, the second respondent is not liable to pay compensation to the petitioners. In such circumstances, the second respondent insurance company sought for dismissal of the claim petition.

5. Before the Tribunal, the first petitioner examined herself as P.W.1 and two other witnesses examined as P.W.2 and P.W.3 and produced documents Ex.P1 to Ex.P23 to substantiate their claim. On the side of the respondent, neither oral evidence nor documentary evidence was produced.

6. The Tribunal, after considering the pleadings, oral and documentary evidence, concluded that the accident occurred only due to the rash and negligent driving of the driver of the offending vehicle owned by the first respondent and insured with the second respondent and directed the respondents jointly and severally to pay a sum of Rs.6,84,000/- as compensation. The

Tribunal has passed the award as follows:-

Loss of dependency	Rs.	6,24,000.00
Loss of love and affection	Rs.	40,000.00
Loss of consortium	Rs.	10,000.00
Funeral Expenses	Rs.	10,000.00
Total	Rs.	6,84,000.00

Being not satisfied with the quantum of compensation awarded by the Tribunal, the petitioners/claimants filed this present appeal seeking enhancement of Award amount.

7. I have heard the learned counsel appearing for the appellants and the learned counsel appearing for the second respondent and perused the materials available on record.

8. The learned counsel for the appellants/claimants contended that as per Ex.P20 income certificate and Ex.P16 to Ex.P19 and Ex.P21 to Ex.P23 and the evidence of P.W.3, in respect of the monthly income of the deceased was not properly considered by the Tribunal. It is further contended that the Tribunal failed to note that the petitioners have produced Ex.A10 to Ex.A23 to prove the capacity of the deceased to earn a sum of Rs.15,000/- per month. In fact, the deceased spent huge amount towards the educational expenses of his children, while so, fixing the income of Rs.4,000/- is very low. Further, the Tribunal failed to note that the deceased was aged about 49 years, the multiplier method given in the II Schedule need not be strictly followed and in a case of this nature, the Tribunal has to deviate from the II schedule and should award more compensation. The amount awarded under the other conventional heads also very low. Thus, the petitioners/appellants seek to entertain the appeal and enhance the award amount.

9. Per contra, the learned counsel for the second respondent Insurance Company contends that the Tribunal has properly appreciated the evidence available on record and awarded just and proper compensation to the petitioners. The claim of the petitioners for enhancement is unsustainable as the award passed by the Tribunal is properly arrived at. Thus, the second respondent seeks dismissal of the appeal.

10. The petitioners claim that the deceased Duraisamy, who is the husband of the first petitioner and father of the 2nd, 3rd and 4th petitioner and son of the 5th petitioner, met with an accident only due to the negligence of the first respondent's van driver. The petitioners produced Ex.P1 copy of first information report relating to the accident and it is evident

from the same, that a case has been registered against the driver of the van bearing Registration No.KL-09-U-9703. Further, P.W.2 who witnessed the accident categorically stated that the accident occurred only due to the rash and negligent driving of the driver of the first respondent van, while the deceased and one Chinnasamy were standing on extreme southern side of Erode to Perundurai Main Road, near Annamar Lodge in front of Ravi Mess, the Van bearing Registration No.KL-09-U-9703 came at high speed, driven in a rash and negligent manner and hit against the deceased, who suffered severe injuries and he was taken to the Hospital and subsequently he died in the hospital. However, the respondents has not chosen to examine the driver of the first respondent's car or any other witness to contradict the evidence of P.W.2. Further, Ex.P1 first information report specifically states that the driver of the first respondent's car alone is responsible for the accident. In such circumstances, keeping in mind the evidence of P.W.2 eye witness and the fact that Ex.P1 first information report was registered against the driver of the van only, it is clear that the accident occurred only due to the rash and negligent driving by the first respondent car driver. Thus, the finding of the Tribunal in that regard is just and proper and the same needs no interference.

11. According to the petitioners, the deceased was working in a private company and earning a sum of Rs.15,000/- per month. It is also alleged by the petitioners that the deceased owned agricultural properties and earned a sum of Rs.15,000/ per annum from the agricultural production. To prove the income of the deceased, the petitioner examined Proprietor of Mahalakshmi Dying Mills, wherein the deceased was alleged to be working under P.W.3, the said person produced Ex-A20 income certificate of the deceased. P.W.3 stated that the deceased was employed in his concern and the deceased was earning a sum of Rs.15,000/- per month. To prove the fact of P.W.3 carrying on business in the name and style of Mahalakshmi Dying Mills, he produced Ex.A16 to Ex.A19 as well as Ex.A21 to Ex.A23, namely, professional tax receipt, receipt of licence fee and income certificate of deceased. Admittedly, P.W.3 was carrying on the said dying factory business and the deceased was employed under him. However, in the absence of any documents to prove the monthly income of the deceased, it will not appropriate to accept the content of Ex.P20 income certificate on the face of it. In such circumstances, the Tribunal has fixed the notional income of the deceased at Rs.4,500/- per month. The said finding of the Tribunal is opposed by the petitioners before this Court. It is true that P.W.3 has not produced any documents to prove the factum of payment of Rs.15,000/- per month to the deceased. In such circumstances, considering the nature of employment of the deceased, it will be appropriate to fix the notional income of the deceased at Rs.6,500/- per month.

12. According to the petitioners, the deceased was aged about 49 years and the same is evident from Ex.P7 Death Certificate of the deceased. In such circumstances, the correct multiplier to be applied is 13. As such it would be appropriate to add 25% of the income as future prospects. Thus, the monthly income of the deceased would be Rs.6,000/- + Rs,1625/-(25%) Rs. 8,125/- per month. There are four petitioners, who claims to be a dependents on the income of the deceased, 1/3rd amount is to be deducted towards his personal expenses. As such the loss of income calculated is as follows:- Rs.8125/- - 1/3rd amount (towards personal income) of Rs.2031/- = Rs.6,094/- x 12 = Rs.73,128/- x 13 = Rs.9,50,664/-. Thus, the loss of income comes to Rs.9,50,664/- rounded to Rs.9,51,000/-.

13. 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 and funeral expenses, this Court is inclined to modify the compensation as under:-

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

14. Accordingly, the compensation warded by the Tribunal is modified as follows:-

Sl No	Heads	Amount awarded by the Tribunal	Awarded by this Court
1.	Pecuniary Loss of income	6,24,000.00	9,51,000.00
2.	Loss of Consortium	10,000.00	15,000.00
3.	Loss of love and affection	40,000.00	40,000.00
3.	Loss of Estate	-	15,000.00
4.	Funeral Expenses	10,000.00	15,000.00
	Total	6,84,000.00	10,36,000.00

15. In view of the above modification, the civil miscellaneous appeal is partly allowed. No costs. The second respondent/Insurance Company is directed to deposit the entire enhanced award amount of Rs.10,36,000/- 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 equal share of the award amount. The petitioners/claimants are permitted to withdraw

their respective share with accrued interest by filing necessary application before the Tribunal.

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Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To
The II Additional Sub-ordinate Judge,
The Motor Accident Claims Tribunal
Erode.

Copy to:-

The Section Officer,
V.R.Section,
High Court, Madras - 104.

+1cc to Mr.N.Manokaran, Advocate, S.R.No.8168
+1cc to Mr.N.Vijayaraghavan, Advocate, S.R.No.8093

C.M.A.No.1592 of 2011

Sv(CO)
Kak(22/03/2019)