

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 11.09.2018

CORAM:

THE HONOURABLE MR. JUSTICE R. PONGIAPPAN

Civil Miscellaneous Appeal No.1739 OF 2011
&
Connected Miscellaneous Petitions

1. Muniraj
S/o Gurla Chetti

2. Valliammal
W/o Muniraj

Both are residing at
Anna Nagar
Mathur Post
Pochampalli Taluk
Krishnagiri

Appellants/Petitioners

Vs

1. T.S. Balachandar
S/o T.G. Srinivasa Mudhaliar
Krishnagiri Dist

2. M/s. National Insurance Company Ltd
Branch Office
Hosur, Krishnagiri Dist

Respondents /Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 01.03.2011 made in MCOP No.528 of 2007 on the file of Motor Accidents Claims Tribunal/Principal District Court, Krishnagiri.

For Appellant : Mr. Mani

For Respondents : R1 - Served
R2 - Mr. G. Udaya Chandran

J U D G M E N T

Aggrieved over the award passed by the Claim Tribunal/Principal District Court, Krishnagiri in MCOP No.528 of 2007, the appellants who are the claimants in the claim

petition filed this appeal, in which they are seeking the relief to enhance the claim amount awarded by the Tribunal. In the Claim Tribunal, the appellants had filed a claim petition under Section 166 of MV Act, in which they prayed for the compensation of Rs.19,00,000/- for the death of Rajamanickam. The appellants 1 and 2 are herein are the parents of the deceased Rajamanickam. After elaborate enquiry, the claim Tribunal awarded Rs.3,93,000/- as a total compensation with interest at the rate of 6% per annum, against which the present appeal has been filed.

2) In the claim Tribunal, the case of the appellants 1 and 2 is as follows.

2.1. On 29.11.2006 at about 7.00 hours, the deceased Rajamanickam was proceeding in his Motor cycle bearing Reg.No. TN 29 AA 2274 along with the pillion rider one Rangasamy in extreme left side of the road in Giddampatti Rayakotta Road, while nearing the land of Vasu, the Driver of the mini bus bearing Reg.No.TN 24 X 1341 owned by the 1st respondent and insured with the 2nd respondent came in a rash and negligent manner with a great speed and dashed against the Motor cycle driven by the deceased Rajamanickam. As a result, the deceased fell down and died on the spot itself. For the said accident, a case has been registered against the driver of the mini bus in Cr.No.434 of 2006 under Sections 279, 337 and 304 (ii) of IPC by Rayakotta police station.

3) On the other hand, opposing the claim of the petitioner by filing a Counter, the 2nd respondent Insurance Company denied the accident itself and stated only due to the rash and negligent driving of the deceased the accident occurred. It is contended and not admitted that the deceased Rajamanickam was hale and healthy at the time of his death and that he has not contributed major income to his family. The age, avocation and income of the deceased are also denied. The claim the appellants is an exorbitant. Thus the 2nd respondent sought for dismissal of the claim petition.

4) Before the Tribunal, the 1st petitioner Muniraj examined himself as PW 1 and one Rangasamy who is the pillion rider in the Motorcycle at the time of accident was examined as PW 2. On the side of the claimants, 9 documents were marked as Ex.P.1 to Ex.P.9. On the side of the respondents, the driver of the minibus was examined as RW1. No documentary evidence was let in on the side of the respondents. The 1st respondent remained exparte. The Tribunal on the basis of the available records found that the 1st respondent mini bus driver has caused the accident and passed the award for Rs.3,93,000/- as a total Compensation to the claimants. Further, the Tribunal directed the 2nd respondent to pay the compensation. Aggrieved over the said findings, the claimant has come forward with the present

appeal praying to enhance the compensation amount.

5) The learned Counsel for the claimants would contend that the Tribunal failed to note the actual income of the deceased for calculating the just compensation. In this regard, the evidence given by the PW 1 was not taken into account and passed an award with meager compensation. Further it was contended at the time of accident, the deceased was working as a PACL Agent and earned Rs.1500/- per month further he was earned Rs.3500/- per month through the selling of vegetables.

6) Per contra, the learned Counsel appearing for the 2nd respondent would contend that the findings arrived by the Tribunal with regard to the negligence is not correct, further, the income determined by the Claim Tribunal in order to arrive the compensation is found correct. According to him, the award passed by the claim Tribunal does not need any interference.

7) Now on go through the findings arrived by the claim Tribunal, it is true in the Claim Tribunal, it was held that during the time of accident, the driver of mini bus driven the bus in a rash and negligent manner and dashed against the 2 wheeler driven by the deceased. Moreover, in the trial Court in order to prove the negligence of the driver of the mini bus, the pillion rider of the Motorcycle was examined as PW 2. He has narrated the occurrence as stated by the claimants. Further, in order to support the evidence given by PW 2, copy of the First Information Report in Cr.No.434 of 2006 dated 15.06.2010 is marked as Ex.A.1. In the said circumstances, in order to repudiate the evidence given by PW 1 and PW 2, on the side of the respondent, the driver of the mini bus was examined as RW 1. When at the time of giving evidence, he categorically mentioned that at the time of accident, the deceased alone driven the Motorcycle, in a rash and negligent manner. However in his cross examination, he specifically stated that he lodged the complaint before the police for the alleged accident, but in order to prove the said evidence, he has not been produced the copy of the complaint given before the police officer. So the evidence given by RW 1 is not materially substantiated. Accordingly, this Court accepts the evidence given by PW 1 and PW 2 and also affirms the view taken by the claim Tribunal and held that due to the rash and negligent act of the driver of the mini bus, the accident is occurred.

8) Secondly, on go through the quantum arrived by the Tribunal, it was held that the Tribunal determined the income of the deceased is Rs.3,500/- per month. On the other hand, the 1st appellant in this case gave evidence that the deceased was working as an Agent in PACL Company and earned Rs.1500/- per month. Further he has stated that apart from the said income, he

was earning Rs.3500/- per month through the selling of vegetables, but in order to substantiate the said evidence, no documents were produced on the side of the petitioner to show the income of the deceased. Only the Identity Card issued by the PACL Company was marked as Ex.A.7. However, our Honourable Apex court in the year of 2006 itself in Syad Sathick case fixed the income of a vegetable vendor is Rs.6,500/- per month. In this case also, the father of the deceased has stated that the deceased was earning Rs.5000/- per month. Thereby, on considering the surrounding circumstances, I am of the view that it would be appropriate to determine Rs.4500/- as monthly income of the deceased.

9) Now, on go through the future prospects, it is necessary to follow the Judgment of the Constitution Bench in the case of National Insurance Company Limited Vs Pranay Sethi and Others reported 2007 ACJ 2700, in which our Honourable Apex Court has held that if a person is a self-employed in the age of below 40 years, 40 % of the future prospects has to be added for calculating the loss of dependency. In this case, on the side of the claimants, the copy of the Post Mortem Certificate dated 15.06.2010 was marked as Ex.A.2. In the said certificate, the Doctor estimated the age of the deceased as 30 years at the time of the accident. Further on go through the Ex.A.8, Transfer Certificate of the deceased the date of birth of the deceased is 20.04.1984. So the approximate age of the deceased is 23 years at the time of accident. Since the transfer certificate issued before the date of accident, this Court held that the age of the deceased is 23 years at the time of accident. Therefore, total monthly income of the deceased comes to

Total Monthly Income :: Rs.4,500 + Rs.1,800 (40%)
:: Rs.6,300/-

10) Now coming to the point of deduction, it is an admitted fact that the deceased died in the accident without any marriage. So it is necessary to deduct the 50% towards his personal expenses. After deducting the 50% towards his personal expenses, the monthly income of the deceased comes to Rs.3150/-

11) With regard to the multiplier in the case of Sarla Verma Vs Delhi Transport Corporation reported in (2009) 6 SCC 121, our Honourable Apex Court has held that if a person died in the age of 21 to 25 years, an appropriate multiplier is 18. In this case, as already discussed the age of the deceased at the time of accident was 23 years. Hence, the appropriate multiplier for calculating the loss of dependency is 18. Accordingly, the pecuniary loss is calculated as follows.

Loss of Income :: Rs.3150 x 12 (months) x 18
(multiplier)
:: Rs.6,80,400/-

12) Now on go through the conventional heads as per the National Insurance Company Limited Vs. Pranay Sethi and others reported in 2017 ACJ 2700, it is necessary to add Rs.15,000/- towards funeral expenses, Rs.15,000/- towards loss of estate. Accordingly, the appellants 1 and 2 are entitled the compensation as follows.

SL.NO	PARTICULARS	AMOUNT (IN.RS)
1.	Towards Loss of dependency	6,80,400.00
2.	Towards Funeral Expenses	15,000.00
3.	Towards Loss of Estate	15,000.00
Total		7,10,400.00

13) Hence, the compensation arrived by the Claim Tribunal is modified to the extent of Rs.7,10,400/- and the appellants 1 and 2 are entitled to equal share. The rate of interest awarded by the Claim Tribunal 6% per annum is altered to 7.5% per annum. The 2nd respondent Insurance Company is directed to pay the entire award amount along with interest and costs after deducting the amount already deposited, within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, after collecting the Court fee for the enhanced compensation, the Tribunal is directed to transfer the said amount to the Bank account of the appellants through RTGS/NEFT within a period of one week.

14) In the result, the Civil Miscellaneous appeal is disposed of. Consequently, the connected Miscellaneous petitions are closed. There shall be no order as to costs.

Sd/-
Assistant Registrar (CO)

//True copy//

Sub Assistant Registrar

vrn

TO

1. The Motor Accidents Claims,
Principal District Court,
Krishnagiri.

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

+1cc to Mr.G.Udaya Kumar, Advocate, S.R.No. 63588

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RSI (CO)
GN(01/11/2018)



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