IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 21.08.2018

JUDGMENT PRONOUNCED ON: 02.11.2018

CORAM:

THE HONOURABLE MR. JUSTICE R. PONGIAPPAN
Civil Miscellaneous Appeal No.649 of 2011

1. U. Lakshmi

2. G. Udaya Kumar
W/o Muniraj ... Appellants/Petitioner

Vs

1. K. Mustaq Ahmed

2. M/s. The New India Assurance Co.Ltd
No.46, Moore Street
Chennai - 600 001 ... Respondents /Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 26.10.2010 made in MCOP No.336 of 2006 on the file of Motor Accidents Claims Tribunal/III Court of Small Causes, Chennai

For Appellants : Mr. V. Mohan Choudry
For Respondents : R1 - Exparte
R2 - Mr. C. Ramesh Babu

JUDGMENT

Aggrieved over the award passed by the Motor Accidents Claims Tribunal/III Court of Small Causes, Chennai in MCOP No.336 of 2006, the appellants who are the claimants in the claim petition filed this appeal, in which they seek the relief to enhance the compensation 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.10,00,000/- for the death of their daughter U.K. Shalini Devi. The 1st respondent in the claim application is the owner of the offending vehicle and the 2nd respondent is the insurer. After elaborate enquiry, the claim Tribunal awarded Rs.3,03,000/- as a total compensation with interest at the rate of 7.5% per annum, against which the present appeal has been preferred.

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

2.1. On 19.11.2005, at about 18.40 hours, when the deceased was travelling in a Bajaj M80 Motorcycle bearing Reg.No.TN 4 B 7888, as a pillion rider, on the northern side of the 3rd Avenue Road and was slowly turning towards west side, and the other injured in this occurrence were crossing the road, the 1st respondent Mini Lorry bearing Reg.No. TN 21 F 6867 came in a rash and negligent manner in Periyar E.V.R. Salai from west to east direction, knocked down one stationed Splendor Motor Cycle and then hit against 4 persons crossing the road and further came and hit the M 80 Motorcycle, in which the deceased was travelling as pillion rider and thereby the deceased sustained grievous injuries and died. The accident occurred due to the rash and negligent driving of the 1st respondent Mini Lorry driver. The 1st respondent being the owner and the 2nd respondent being the insurer of the Mini Lorry are jointly and severally liable to compensate the petitioner.

3) In the Claim Tribunal, the 1st respondent remained exparte. Opposing the claim made by the Claimants, the 2nd respondent filed a Counter and denied the liability. According to him, the vehicle, which is responsible for the accident is not validly insured with their Insurance Company. Further, at the time of accident one Manikandan, who drove the Van was under the influence of Alcohol. As such this respondent is not liable to indemnify the owner of the vehicle. Further, it was contended that the 1st respondent had knowingly allowed the said Manikandan to drive the vehicle, resulted in the accident. The owner and the driver of the vehicle have breached the conditions and acted against the statue and thus the 2nd respondent is not liable to pay the compensation. According to him, the age avocation and income of the deceased are all denied.

4) During the time of enquiry, the learned Counsel appearing for the appellant contended that the Claim Tribunal, without calculating the future prospects and without considering the educational qualification, fixed the monthly income of the deceased as Rs.3,000/-, which is erroneous. Thereby, the quantum determined by the claim Tribunal is very meager and he prayed to enhance the compensation.

5) On the other hand, the learned Counsel appearing for the 2nd respondent would contend that the compensation fixed by the Claim Tribunal is reasonable and the findings arrived at by the claim Tribunal does not need any interference.

6) Now, on going through the findings arrived at by the claim Tribunal, it was held that the alleged accident occurred only due to the rash and negligent act of the driver of the 1st respondent vehicle. Further, it was concluded that being

the insurer, the 2nd respondent in this appeal is liable to pay the compensation. In the trial Court, in order to prove the negligence of the driver of the Mini Lorry, the 2nd appellant in this appeal was examined as PW 1. In her evidence, she specifically stated about the manner of the accident. Further, she produced the copy of the First Information Report and the copy of the Rough Sketch prepared for the alleged accident as Ex.P.1 and Ex.P.2 respectively. The contents of the First Information Report clearly corroborated the evidence given by PW 1. Therefore, the evidence of PW 1 clearly reveals only due to the rash and negligent driving of the Mini Lorry driver, the alleged accident had happened.

7) The contention raised by the learned Counsel appearing for the respondent is, during the time of occurrence, the driver of the Mini Lorry, who drove the vehicle was in a drunken mood. Further, the 1st respondent permitted his driver to drive the vehicle after consuming liquor amounts to the violation of policy conditions.

8) In this context, during the time of enquiry before the Tribunal on the side of the 2nd respondent one V.P. Sivaraman was examined as RW.1. Further, the copy of the charge sheet filed in a case, which registered for the occurrence has been marked as Ex.R.1. In the charge sheet, it was mentioned that the Driver of the Mini lorry committed the offence under Section 185 of MV act. So, according to the police, at the time of accident, the driver of the Mini Lorry was under the influence of alcohol. Even though, the offence under Section 185 of MV Act has been mentioned in the Charge sheet, in order to show the prima facie case for the said offence, necessarily the respondent has to produce the medical records pertaining to the driver. Further, there is no averment for conducting the blood test to the driver. So without any medical records, it cannot be decided that the driver of the offending vehicle was under the influence of alcohol. It cannot be said that consuming the liquor alone is amount to that the person, who consumed the liquor is under the influence of alcohol. Therefore, the contention raised by the Counsel appearing for the 2nd respondent is not proved. The trial Court also took the same view and hold that being the insurer, the 2nd respondent is liable to pay the compensation. So the findings arrived at by the trial Court is confirmed by this Court.

9) Coming to the point of quantum, the claim Tribunal fixed the monthly income of the deceased as Rs.3,000/-. In respect to the income of the deceased, on the side of the claimant, the copy of the Certificate issued in favour of the deceased was marked as Ex.P.7. According to the said certificate, the deceased has completed the Diploma Course in

Tailoring. In this regard, PW 1 has stated that the deceased was earning Rs.150/- per day. The Claim Tribunal only after considering the above aspects fixed the monthly income of the deceased as Rs.3,000/-. Thereby, since the accident occurred in 2005 fixing Rs.3,000/- as the monthly income of the deceased is found correct and does not need any interference. Secondly, in the claim Tribunal, the Postmortem certificate of the deceased was marked as Ex.P.3. As per the said Certificate, the age of the deceased is 17 years at the time of accident.

10) Now, on going through the future prospects, it is necessary to follow the Judgment of our Honourable Apex Court, the case of National Insurance Company Limited Vs. Pranay Sethi and others reported in 2017 ACJ 2007. In the said Judgment, Constitutional Bench of our Honourable Apex court has given various guidelines and observed that if a person is self-employed and below the age of 40 years, 40% of the monthly income to be added for calculating the dependency. So, according to the said Judgment, it is necessary to add 40% of the monthly income as a future prospects for calculating the loss of dependency. So the total monthly income of the deceased is Rs.3,000/- + Rs.1,200/- = Rs.4,200/-

11) 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 50% of the monthly income towards her personal expenses. After deducting 50% towards personal expenses, the monthly income of the deceased comes to Rs.2,100/-.

12) 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 if a person died in the age of 17, the appropriate multiplier taken into account for calculating the pecuniary loss is 18. Therefore, in this case, the appropriate multiplier for calculating the loss of dependency is 18. Further, the pecuniary loss of claimants was calculated as follows:

Rs.2,100 x 12 months x 18^{th} multiplier = Rs.4,53,600/-

13) Now, on going through the conventional heads, as per the case of National Insurance Company Limited Vs Pranay Sethi and Others reported 2007 ACJ 2700, it is necessary to add Rs.15,000/- each under the head of funeral expenses and 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	4,53,600.00

SL.NO	PARTICULARS	AMOUNT (IN.RS)
2.	Towards Funeral Expenses	15,000.00
3.	Towards Loss of Estate	15,000.00
Total		4,83,600.00

14) Hence, the compensation arrived by the Claim Tribunal is enhanced to the extent of Rs.4,83,600/- and the appellants 1 and 2 are entitled to equal share. The rate of interest awarded by the Claim Tribunal 7.5% per annum is unaltered. 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.

15) In the result, the Civil Miscellaneous appeal is disposed of. There shall be no order as to costs.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

vrn

To

The Motor Accidents Claims Tribunal/
III Court of Small Causes, Chennai

Copy to

The Section Officer
VR Section, High Court
Madras

+2cc to Mr.V.Mohan Choudary, Advocate, S.R.No. 75776
+1cc to Mr.C.Ramesh Babu, Advocate, S.R.No. 76020

Civil Miscelleneous Appeal No.649 of 2011

RJ(CO)
GN(07/12/2018)