

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.1794 of 2016

1.R.Pushpa
2.Uvaraj
3.R.Prabhavathy
4.R.Raghavan
5.G.Dhanammal ..Appellants/Petitioners

-Vs-

The Superintendent of Police
District Police Station
Thanjavur-613 001 ..Respondent/Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, against the order and decree dated 10.07.2012 made in M.C.O.P.No.378 of 2010 on the file of Motor Accident Claims Tribunal, XVI Additional Court, Chennai.

For appellants : : Mr.J.Ramkumar
For Respondent : : Mr.S.Jaganathan
Government Advocate (CS)

J U D G M E N T

The Appellants are the claimants and has filed this appeal challenging the order and decree dated 10.07.2012 made in M.C.O.P.No.378 of 2010 on the file of Motor Accident Claims Tribunal, XVI Additional Court, Chennai.

2. For convenience sake, the parties are referred to hereunder according to their litigative status before the Tribunal. It is a fatal case. The case of the Petitioners is that on 26.09.2009 at 9.45 hours, while the deceased was walking near Irungundram Palli Bus stop and as he was about to cross N.H.2 High way, the respondent's car bearing Reg.No.TN-49-G-0462 came at high speed, driven in a rash and negligent manner from the opposite direction, dashed against the deceased Rose, causing him fatal injuries and he died subsequently in Government Hospital, Chennai, on 18.10.2009. The accident occurred only due to negligence of the respondent van driver. The deceased

was aged 50 years and by working as a Mason was earning rs.6000/- per month. The Petitioners who are the wife, children and mother of the deceased were depending on his earnings. Thus, the Petitioners seeks a sum of Rs.6,00,000/- as compensation from the respondents.

3. On the other hand, opposing the petition, by filing counter, the respondent/State contends that the accident does not occur as alleged by the Petitioner. The respondent Police Vehicle bearing Reg.No.TN-49-G-0462, after attending the duty at Madras, left for Thanjavur on 26.09.2009 and while going near Irungundrampalli Bus stop at about 9.45 a.m., a pedestrian suddenly crossed the road from east to west and he dashed against the respondent vehicle, suffered simple injuries. It was only due to negligence of the Pedestrian, who crossed the road without looking for the traffic, resulted in the accident. The respondent driver himself took the injured and admitted him in Chengelpet Government Hospital. The accident does not occur due to negligence of the respondent Van driver. The claim of the Petitioner about the age, avocation and income of the deceased is not true. Thus, the respondent/state sought for dismissal of the Petition.

4. Before the Tribunal, the Petitioner examined P.W.1, produced documents Ex.P.1 to Ex.P.4 to prove their claim. On the side of the respondents, R.W.1 was examined and documents Ex.R.1 and Ex.R.2 was marked.

5. The Tribunal after analyzing the evidence on record, found the negligence of the respondent van driver alone caused the accident, passed an award for a sum of Rs.3,50,000/- payable by the respondent.

6. Being not satisfied with the quantum of the award, the Petitioner/claimants have come forward with the present appeal.

7. Heard both sides.

8. The learned counsel for the Petitioners/claimants contends that the Tribunal wrongly applied multiplier 10 instead of 13 as the deceased was aged 50 years. The monthly income of the deceased was fixed at Rs.3000/- while he was actually earning Rs.6000/- per month. The amount provided for under different heads is very low. Thus, the Petitioners/claimants sought for enhancement of the award amount by entertaining the appeal.

9. Per contra, the learned counsel for the respondent contends that the accident itself occurred due to negligence of the deceased and no proof regarding the age, avocation and income of the deceased was produced by the Petitioner. The award passed by the Tribunal itself is highly excessive. Thus, the respondent sought for dismissal of the appeal.

10. The 2nd Petitioner, who deposed as P.W.1 stated while the deceased was near Irungundrampalli bus stop, to cross the N.H.Highways, the respondent vehicle came at high speed, dashed against the deceased, causing him grievous head injuries which subsequently resulted in his death in Government Hospital, Chennai on 18.10.2009. The Police have registered Ex.P.1-FIR against the respondent van driver only. The contents of Ex.P.1-FIR corroborates the version given by P.W.1. As such, the Petitioner contends that the accident occurred only due to negligence of the respondent van driver.

11. On the other hand, disputing the claim of the Petitioners, the driver of the respondent vehicle who deposed as R.W.1 stated that the accident occurred only due to negligence of the deceased who tried to cross the road without noticing the oncoming vehicle. Thus, relying upon R.W.1 evidence, the respondent contends that there is no negligence on the part of their driver; the negligent crossing of the road by the deceased alone caused the accident.

12. As stated above, the Police have registered Ex.P.1-FIR against the respondent van driver only. Even assuming the deceased was trying to cross the road, if only R.W.1 has driven his vehicle at normal speed and in careful manner, he could have avoided the accident. Ex.R.1 Sketch does not support the claim of the respondent. In such circumstances, the Tribunal is justified in concluding that negligence of the respondent van driver alone caused the accident.

13. The Petitioners, who claimed themselves to be dependants of the deceased contends that the deceased was aged 50 years and was employed as a Mason, earning Rs.6000/- per month. The Petitioner has not produced any documentary proof for the age, avocation and income of the deceased. In Ex.P.3-Post mortem certificate, the age of the deceased is stated as 50 years. In the absence of any other proof, on the basis of Ex.P.3, the age of the deceased is fixed as 50 years. The multiplier to be applied for the said person is "13" as per the Ruling in the case of Sarla Verma vs Delhi Transport Corporation and another [2009 (2) TN MAC 1 (SC)].

14. The Petitioner counsel contended that as Mason, the deceased could have earned much higher income and sought for fixing the notional income at Rs.6500/- per month instead of Rs.3000/- fixed by the Tribunal. In the Petition itself, it is pleaded that the monthly income of the deceased was Rs.6000/- only. Considering the date of the accident and other attendant circumstances, it will be appropriate to fix the notional monthly income of the deceased at Rs.4500/-.

15. Considering the number of dependants are five in number, 1/4th of the income has to be deducted towards personal expenses. Further towards future prospects, 25% of the income is to be added. Thus, the loss of dependency to the family of the deceased is calculated as under:-

Monthly salary - Rs.4500/-

Add: 25% future prospects

4500 + 1125 = 5625

Towards personal expenses of the deceased, deductions 1/4th

5625 - 1/4th (1406) = 4219 rounded off to Rs.4220.

4220 x 12 x 13 = 6,58,320/- .Thus, a sum of Rs.6,58,320/- is provided under the head "loss of dependency".

16. Following the Apex court decision reported in 2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and Others], the compensation towards conventional heads, is as under:-

Loss of consortium	-40,000/-
Funeral expenses	-15,000/-
Loss of estate	-15,000/-

17. The learned counsel for the Claimants/Petitioners relied on the Ruling reported in 2017 SCC Ker [1.Valsamma and others Vs. V.A.Baiju, 2.Rev.F.R.Joseph Vattakalam, and 3. The National Insurance Co.Ltd.,] and the Ruling reported in 2018(1) TN MAC 289 [Branch Office, New India Assurance Co.Ltd., Vs. Meenkashi and others], and sought for providing reasonable sum towards "loss of love and affection". Considering the above said Ruling relied upon by the Petitioner, total sum of Rs.50,000/- awarded by the Tribunal under the head "loss of love and affection" to Petitioners 2 to 5 is confirmed. The modified award amount is as shown below:-

Sl.No.	Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)
1.	Loss of dependency	2,40,000	6,58,320
2.	Loss of love and affection	50,000	50,000
3.	Loss of consortium	50,000	40,000
4.	Funeral expenses	10,000	15,000

5.	Loss of estate	---	15,000
6.	Transport expenses	--	---
	Total	3,50,000	7,78,320

The apportionment of the award amount to the claimants is as under:-

1st petitioner -30%

2nd , 3rd and 4th Petitioners - 20% each

5th petitioner -10%.

18. In the result,

(i) The Civil Miscellaneous Appeal is Allowed;

(ii) The award amount is enhanced to Rs,7,78,320/- from Rs.3,50,000/-.

(iii) The award amount will carry interest at the rate of 7.5% per annum from the date of petition till the date of realisation;

(iv)The respondent is directed to deposit the entire enhanced award amount with proportionate interest and cost, less the amount, if any already deposited, within a period of six weeks from the date of receipt of a copy of this order.

(v)On such deposit, the appellants/claimants are entitled to withdraw the award amount in the proportion as mentioned above, along with accrued interest. The appellants shall pay required court fee for the enhanced award amount, if necessary, before obtaining copy of the decree. The Tribunal shall pass necessary orders following the appropriate procedure for disbursal of the award amount.(vi) No costs.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

nvsri

To

1.The Motor Accidents Claims Tribunal,
XVI Additional Judge, Chennai.

2.The Section Officer, VR Section, High Court, Madras.

+1cc to Mr.J.Ramkumar, Advocate, S.R.No.41852

+1cc to the Additional Government Pleader, S.R.No.42079

C.M.A.No.1794 of 2016

RSK(CO)

GSP(15/11/2018)