

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 27.02.2018

Coram

The Honourable Mr. Justice S.BASKARAN

Civil Miscellaneous Appeal No.173 of 2015

Munusamy

... Appellant/Petitioner

...VS...

1.M.Jayaraman

2.The Reliance General Insurance Company Ltd.,

No.6, Haddows Road,

Reliance House, 6th Floor,

Nungambakkam,

Chennai-600 034.

... Respondents/Respondents

This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the Fair and Decreetal order dated 25.09.2014 made in MCOP.No.2867 of 2009 on the file of the Motor Accident Claims Tribunal/(The Chief Judge, Court of Small Causes), Chennai.

For Appellant : Mr.T.G.Ravichandran

For Respondents : Mr.K.Moorthy for R-2

JUDGMENT

Being not satisfied with the quantum of compensation awarded by the Tribunal dated 25.09.2014 made in MCOP.No.2867 of 2009 on the file of the Motor Accident Claims Tribunal/(The Chief Judge, Court of Small Causes), Chennai, the petitioner/claimant filed this present appeal seeking enhancement of award amount.

2. For the 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 04.07.2009 at about 21.45 hours, while the deceased was walking on the left extreme side of the Waltax Road, Thirupalli Street bus stop from north to south direction, the auto bearing Registration No.TN-05-T-5557 came in the same direction at high speed and dashed

against the deceased causing her death due to the injuries suffered. The accident occurred due to the negligence of the first respondent Auto driver only and as the owner and insurer of the vehicle, the respondents are liable to pay compensation. At the time of accident, the deceased Marry was aged about 54 years and she was earning a sum of Rs.6,000/- per month by working as helper in a private company. The petitioner, who is the husband of the deceased seeks a sum of Rs.8,50,000/- as compensation from the respondents who are the owner and insurer of the offending vehicle.

4. On the other hand, the second respondent Insurance company opposed the claim petition by filing detailed counter disputing the claim of the petitioner about the manner in which the accident occurred. The age, avocation and income of the petitioner is denied. The accident occurred only due to the negligence of the deceased. The petitioner is to prove that the said Auto was insured with the second respondent and the driver of the vehicle possessed valid driving licence. Thus, the second respondent seeks dismissal of the petition.

5. Before the Tribunal, the petitioners examined P.W.1 and P.W.2 and produced documents Ex.P1 to Ex.P7 to substantiate their claim. On the side of the respondent neither oral nor documentary evidence was let in.

6. The Tribunal, on the basis of available materials on record, found the first respondent auto driver alone caused the accident and directed the respondents to pay a sum of Rs.3,72,000/- as compensation to the petitioner. Being not satisfied with the quantum of compensation awarded by the Tribunal, the petitioner/claimant have come forward with the 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 appearing for the petitioner/claimant contends that the Tribunal awarded very meager amount as compensation. The Tribunal wrongly deducted 50% of the amount towards personal expenses of the deceased instead of  $\frac{1}{3}^{\text{rd}}$  amount. The future prospects and other heads were not properly considered by the Tribunal. Hence, the petitioner seeks enhancement of the award amount by entertaining the appeal.

9. Per contra, the learned counsel appearing for the second respondent-Insurance Company contended that the deceased being aged lady was not employed and she was not earning any income as

claimed by the petitioner. The Tribunal without appreciating the evidence properly wrongly awarded huge amount as compensation and the same is unsustainable. Thus, the second respondent seeks dismissal of this appeal.

10. The petitioner contends that his wife, the deceased Marry met with an accident only due to the rash and negligent driving of the Auto by first respondent driver. The petitioner is not an eye witness to the occurrence. However, the petitioner examined one Sadiq Basha, who is an eye witness to the occurrence as P.W.2. He clearly stated that he was waiting for bus at Thirupalli Street bus stop on 04.07.2009 around 21.45 hours and at that time, a lady was walking carefully on the extreme left side of the Waltax Road and at that time, a Auto bearing Registration No.TN-05-T-5557 came at high speed dashed against the lady who was walking and she suffered injuries and she was taken to the Government Hospital, Chennai, where she subsequently passed away. According to him, the accident occurred only due to the rashness of the first respondent auto driver. The police registered Ex.P1 First Information report against the driver of the auto owned by the first respondent. After completing the investigation, the police laid charge sheet Ex.P3 against the driver of the auto. It is therefore clear from the oral evidence of P.W.2 and the contents of Ex.P1 First Information Report and Ex.P3 Charge Sheet that the accident occurred due to the rash and negligent driving of the first respondent auto. On the side of the respondents, no contra evidence is let in to disprove the claim of the petitioner. As such, the conclusion of the Tribunal that the negligence on the part of the first respondent auto driver alone caused the accident is just and proper.

11. The petitioner contended that the deceased was aged about 54 years at the time of the accident. The petitioner has not produced any document to prove the age of the deceased. In Ex.P4 wound certificate, the age of the deceased is mentioned as 48 years, whereas in Ex.P5 Postmortem Certificate, the age of the deceased is mentioned as 54 years. In the absence of any other documentary proof, the age of the deceased is fixed at 54 years, as per Ex.P5 Postmortem Certificate. Hence, the correct multiplier is to be applied 11.

12. The deceased is stated to be employed as helper in a private company earning a sum of Rs.6,000/- per month. However, the petitioner has not produced any proof for Job and income of the deceased. As such taking into consideration the prevailing market condition, any person employed as a Cooli or Helper can easily earned Rs.6000/- per month. Hence, the monthly income of the deceased is fixed at Rs.6,000/-. The age of the deceased being 54 years, following the PRANAY SETHI case, if any self

employed person aged above 50 years, 10% of the income is to be taken as future prospects. Following the SARALA VERMA case, the multiplier is 11.

13. The learned counsel appearing for the petitioner contended that the Tribunal erred in deducting 50% amount of the earnings of the deceased towards personal expenses and the same is not correct. According to him, the deceased being a lady utilized service to the family, and the same should be treated as service contribution by her to the family and not as the salary or money contribution. Hence, relying upon the Ruling reported in PARAMJIT SINGH AND ANOTHER Vs. DILBAGH SINGH AND OTHERS in 2014 ACJ 1817, the petitioner contended that no amount should be deducted towards personal expenses. However, in the case on hand, the petitioner did not claim that the deceased was house wife doing service to the family alone. On the other hand, the claim of the petitioner is that his wife, the deceased was employed as helper in a private company. On that basis only the loss of income is claimed by the petitioner. As stated above, taking into account the claim being made on the basis of employment of the deceased, the plea of the petitioner not to deduct any amount towards the personal expenses of the deceased cannot be accepted. The Ruling relied upon by the petitioner will not be applicable to the facts of this case for the above said reasons. As such, the petitioner being only dependent of the deceased, 1/3<sup>rd</sup> income is to be deducted towards personal expenses instead 50% done by the Tribunal. As such the loss of dependency is calculated is as follows:-

(1) Rs.6000/-, add 10% of the amount of Rs.600/- towards future prospects = Rs.6600/-.

(2) Rs.6600/-, deducted 1/3<sup>rd</sup> amount of Rs.2,200/- towards personal expenses of the deceased and the balance amount would be Rs.4400/- as loss of income.

(3) Rs.4400/- x 12 = Rs.52,800/- x 11 = Rs.5,80,800/- as total loss of income.

14. 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 Consortium | = | Rs. 40,000.00 |
| Funeral Expenses   | = | Rs.15,000.00  |
| Transportation     | = | Rs. 5,000.00  |

Accordingly, the compensation awarded by the Tribunal is modified as follows:-

| S1 No | Heads                      | Amount awarded by the Tribunal | Awarded by this Court |
|-------|----------------------------|--------------------------------|-----------------------|
| 1.    | Pecuniary Loss of income   | 2,97,000.00                    | 5,80,800.00           |
| 2.    | Loss of Consortium         | 25,000.00                      | 40,000.00             |
| 3.    | Funeral Expenses           | 25,000.00                      | 15,000.00             |
| 4.    | Loss of love and affection | 20,000.00                      | -                     |
| 5.    | Transportation             | 5,000.00                       | 5,000.00              |
|       | Total                      | 3,72,000.00                    | 6,40,800.00           |

15. In the result, the civil miscellaneous appeal is partly allowed. No costs. The amount of Rs.3,72,000/- awarded by the Tribunal dated 25.09.2014 made in MCOP.No.2867 of 2009 on the file of the Motor Accident Claims Tribunal/(The Chief Judge, Court of Small Causes), Chennai, is enhanced to Rs.6,40,800/-. The second respondent/Insurance Company is directed to deposit the entire enhanced award amount of Rs.6,40,800/- with interest at the rate of 7.5% p.a. from the date of claim petition till the date of deposit the award amount and 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 petitioner/claimant is permitted to withdraw the entire award amount with accrued interest by filing necessary application before the Tribunal.

Sd/-  
Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

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To

1. The Chief Judge, Court of Small Cases,  
The Motor Accident Claims Tribunal  
Chennai.

2. The Section Officer, V.R. Section,  
High Court, Madras. (2 copies)

+1cc to Mr.K.MOORTHY, Advocate, S.R.No.15795  
+1cc to Mr.T.G.RAVICHANDRAN, Advocate, S.R.No. 14850

C.M.A.No.173 of 2015

MP (CO)

TR(03/04/2018)