IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.10.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.M.A.No.1995 of 2016

1.Chokkammal
2.Sakthivel
3.Muthulakshmi
4.Vinayagamoorthy ... Appellants/ Petitioners

Vs.

1.K.Mohammed Shafi

2.The Manager,
National Insurance Co. Latd.,
Motor Third Party Claim Cell,
No.751, Anna Salai,
Chennai-600 002.

3.S.Natarajan ...Respondents/ Respondents

Prayer:- Civil Miscellaneous Appeal filed under Section 173 of M.V.Act, 1988, to enhance the compensation amount awarded in the judgment and decree dated 28.09.2010 made in MCOP.No.70 of 2009 on the file of the Motor Accident Claims Tribunal / Chief Judicial Magistrate, Chengalpattu by allowing this Civil Miscellaneous Appeal.

For Appellants : Mr.M.Guruprasad

For Respondents : M/s.R.Sreevidhya (for R2)
R1 - No Appearance
R3 - Not known

JUDGMENT

This appeal is filed assailing the judgment and decree dated 28.9.2010 passed in M.C.O.P.No.70 of 2009 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Chengalpattu.

2. The appellants are the claimants. They are wife, two sons and a daughter of the deceased Mohan. It is averred in the claim petition that on 21.11.2007, when the deceased was proceeding in motorcycle along with one Vinayagamoorthy from Maduranthagam towards Pazhayanur Village by strictly following the Rules, at G.S.T.Road, near Melavalampettai Bus Stand, one Bajaj M-80 motorcycle bearing registration No.PYR 3041 came in opposite direction and hit the motorcycle of the deceased and then the Maruthi Omni Van bearing registration No.TN 21 AZ 5629, which was going from Maduranthagam towards Chengalpattu, hit the deceased Mohan and as a result of the same the deceased died in the hospital at Chengalpattu. It is alleged that the said accident occurred due to the negligence of the first respondent, who is the driver of the Maruthi Omni Van, and the third respondent, who is the driver of the Bajaj M-80 motorcycle. Even though a total compensation of Rs.9,75,000/- was claimed, it was restricted to Rs.1,00,000/- and paid court fee in proportion to the claim amount

3. The learned Tribunal, by judgment and decree under challenge, awarded compensation of Rs.1,00,000/-.

4. Calling in question the said judgment and decree, the present appeal is filed by the claimants challenging the quantum awarded by the Tribunal.

5. It is the contention of the learned counsel appearing on behalf of the appellants that even though the appellants had paid court fee commensurate with the claim of Rs.1,00,000/-, the Tribunal is empowered to award just and fair compensation irrespective of the claim made in relation to the death of the sole breadwinner of the family.

6. It was further contended that the amount awarded by the Tribunal is too meagre and the Tribunal ought to have considered that the deceased was earning around Rs.10,000/- from lorry business per month. He further submitted that the Tribunal had adopted wrong multiplier and not awarded amounts under various heads like Loss of love and affection, loss of consortium, funeral expenses, etc.

7. Per contra, the learned counsel for the second respondent insurance company reiterated the reasons that weighed with the Tribunal in awarding the compensation as ordered and prayed for dismissal of this appeal.

8. Heard the learned counsel on either side and perused the documents available on record.

9. It is not necessary for this Court to narrate entire facts in detail qua negligence and liability. It is for the reason that these things are recorded by the Tribunal that the second respondent is liable to pay the compensation to the appellants. Since the aforesaid finding of the Tribunal is based on evidence and also none of these findings are under challenge, this Court is of the considered view that the finding of the Tribunal that the second respondent to pay the compensation is confirmed.

10. The grievance of the appellants is that the Tribunal failed to note the beneficial Section 168 of the Motor Vehicles Act to award a just and reasonable compensation to the bereaved family. The Tribunal need not expect the claimants to file a formal application seeking a specified sum of compensation and that the Tribunal is empowered to award a just and fair compensation irrespective of the claim made by the claimants.

11. The further grievance of the appellants is that in the above legal position, the Tribunal was not right in awarding a meagre sum of Rs.1,00,000/- on the ground that the appellants have only paid court fee for Rs.1,00,000/- even though they are entitled to just compensation of Rs.10,00,000/- for the death of the earning member of the family.

12. It appears that the appellants have claimed in this appeal enhancement of Rs.10,00,000/- and paid court fee thereon. At the time of filing appeal, the appellants have filed M.P.No.1 of 2014 seeking to amend the claim petition claiming compensation of Rs.10,00,000/-. By an order dated 16.12.2014, this Court allowed M.P.No.1 of 2014 by observing as under:

> "Amendment Petition is allowed subject to objection if any after appearance of the respondent/insurance company.
> Office is directed to number the appeal."

13. Pursuant to the order passed in M.P.No.1 of 2014, in the memo of valuation of appeal, the value of the claim has been amended as Rs.10,00,000/-.

14. By relying upon the decision in Nagappa v. Gurudayal Singh and others, reported in (2003) 2 SCC 274, the learned counsel for the appellants submitted that grant of permission to amend the claim petition at the appellate stage to enhance the claim amount is permissible and therefore, this Court is empowered to order enhancement of compensation pursuant to the claim being amended.

15. In Nagappa v. Gurudayal Singh and others, supra, the Hon'ble Supreme Court held:

"16.From the aforesaid observations it cannot be held that there is a bar for the Claims Tribunal to award the compensation in excess of what is claimed, particularly when the evidence which is brought on record is sufficient to pass such award. In cases where there is no evidence on record, the court may permit such amendment and allow to raise additional issue and give an opportunity to the parties to produce relevant evidence.

.....

21.For the reasons discussed above, in our view, under the MV Act, there is no restriction that the Tribunal/court cannot award compensation amount exceeding the claimed amount. The function of the Tribunal/court is to award "just" compensation on the basis of evidence produced on record. Further, in such cases there is no question of claim becoming time-barred or it cannot be contended that by enhancing the claim there would be change of cause of action. It is also to be stated that as provided under sub-section (4) to Section 166, even the report submitted to the Claims Tribunal under sub-section (6) of Section 158 can be treated as an application for compensation under the MV Act. If required, in appropriate cases, the court may permit amendment to the claim petition."

16. As per the decision of the Hon'ble Supreme Court in Nagappa v. Gurudayal Singh and others, supra, there is no restriction that the Tribunal/Court cannot award compensation amount exceeding the claimed amount. Further, in appropriate cases, the Court may permit amendment to the claim petition.

17. In the present case, the appellants claimed that the deceased was the owner of the lorry and was earning Rs.10,000/- per month and also adduced evidence. But the Tribunal has failed to discuss the evidence while determining the compensation. It is for the Tribunal to determine just compensation from the evidence which is brought on record. However, the Tribunal without discussing the merits of the claim awarded Rs.1,00,000/- as claimed by the appellants in the claim petition with future interest at the rate of 7.5% per annum.

18. The appellants are now seeking support of the decision of the Hon'ble Supreme Court in Nagappa v. Gurudayal Singh and others, supra and claimed higher compensation. On a perusal of the award of the Tribunal, it is seen that the appellants have not marked any document to show the avocation and monthly

earning of the deceased. Since the claim of the appellants had amended, it would be appropriate to remand the matter to the Tribunal enabling the appellants to prove their claim by adducing fresh oral and documentary evidence and thereafter, the Tribunal decide the claim on merits and in accordance with law.

19. As stated supra, this Court allowed the amendment petition subject to objection, if any, after appearance of the respondent/insurance company. Now the second respondent insurance company entered appearance and objected the enhancement of claim. However, in support of their objection, the second respondent insurance company has not produced any material.

20. It is pertinent to note that earlier, the matter was referred to the Lok Adalat. Accordingly, for the hearing on 28.08.2018, both parties appeared before the Lok Adalat. On a perusal of the records, by an order dated 28.08.2018, the learned Lok Adalat Judge, observed as under:

> " ..... The manager representing the Insurance Company makes a statement, that there is no possibility of settlement since the Insurance Company is deprived of right while amending the appeal, when the appeal itself is not maintainable for enhancement. In view of the above the matter is to be posted as directed by the Hon'ble High Court before the Court. ...."

21. Though the second respondent insurance company stated that they are aggrieved by the amendment made in the claim petition, as against the amending made in the value of the claim, they have not preferred any appeal and the amendment of the claim ended finality. Since pursuant to the order of this Court made in M.P.No.1 of 2014, the claim was amended, it is for the second respondent insurance company to project their case before the Tribunal qua quantum and at this stage, this Court cannot take note of the objection raised by them.

22. It is to be noted that in an appropriate case where from the evidence brought on record if the Court considers that the claimant is entitled to get more compensation than claimed, the Court may pass such award. In the present case on hand, as stated supra, the appellants being claimants have every right to brought requisite documentary evidence to show that they are entitled to get more amount than what was awarded by the Tribunal. Therefore, this Court considers it appropriate to remand the matter to the Tribunal for fresh consideration.

23. In the result, judgment and decree dated 28.9.2010 passed in M.C.O.P.No.70 of 2009 on the file of the Motor

Accident Claims Tribunal, Chief Judicial Magistrate, Chengalpattu is set aside in respect of quantum of compensation and the matter is remanded to the Tribunal. The Tribunal is directed to give an opportunity to both sides to adduce fresh oral and documentary evidence in respect of quantum and then decide the claim of the appellants on merits and in accordance with law based on the amended claim. The Tribunal is further directed to dispose of the claim petition within a period of four weeks from the date of receipt of a copy of this order. Both the parties are directed to co-operate the Tribunal for disposal of the claim petition within the stipulated time. The Civil Miscellaneous Appeal is disposed of accordingly.

It is stated that pursuant to the award, the second respondent insurance company has deposited the award amount of Rs.1,00,000/- and the same is lying in the credit of M.C.O.P.No.70 of 2009. Considering the facts and circumstances of the case and also in the interest of justice, the appellants are permitted to withdraw the amount lying in the credit of M.C.O.P.No.70 of 2009. The Tribunal is directed to deduct Rs.1,00,000/- while finally determining the compensation.

Vs

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Chief Judicial Magistrate,
Motor Accident Claims Tribunal,
Chengalpattu.

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

+1cc to Mr.M.Guruprasad, Advocate, SR.No.73569

C.M.A.No.1995 of 2016

Kak(23/05/2019)