IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.1989 of 2015

1.Saraswathy
2.Roopavathi (Minor)
3.Sethupathy (Minor)
(2 and 3 petitioners are minors
rep by their mother 1st petitioner) ..Appellants/Petitioner

Versus

1.Ravichandran

2.Royal Sundaram Alliance Insurance Company Ltd.,
No.1, Club House Road, Anna Salai,
Chennai-2. ..Respondents/Respondents

Civil Miscellaneous Appeal filed under section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 24.11.2014 made in M.C.O.P.No.3017 of 2012 on the file of the Motor Accident Claims Tribunal, III Small Causes Court, Chennai.

For Appellants : Mr.K.Varadha Kamaraj

For Respondents : Mr.N.Vijayaraghavan [for R2]

J U D G M E N T

The petitioners/appellants have filed this appeal against the judgment and decree dated 24.11.2014 made in M.C.O.P.No. 3017 of 2012 on the file of the Motor Accident Claims Tribunal, III Small Causes Court, Chennai.

2. For the sake of convenience, the parties are referred to hereunder according to their litigative status before the Tribunal.

3. The case of the petitioners is that on 14.04.2012 at about 21.00 hours as the deceased Lakshmanan who is the husband of the 1st petitioner and father of the 2nd and 3rd petitioners herein was walking in Muthuswamy Street near Dental College, Chennai, a car bearing Registration No.TN-02-BQ-0181 belonging

to the 1st respondent, insured with the 2nd respondent came at high speed in a rash and negligent manner, dashed against the deceased, causing him fatal injuries, due to which, the deceased subsequently passed away. At the time of accident, the deceased was aged 43 years carrying on business of Commission agent, earning Rs.12,000/- per month. The petitioners are dependents of the deceased, as such, the petitioners seek a sum of Rs.12,00,000/- as compensation from the respondents who are the owner and insurer of the offending vehicle.

4. On the other hand, opposing the claim of the petitioners, by filing counter, the 1st respondent/owner of the vehicle contends that the deceased under the influence of alcohol, suddenly crossed the road from West-East near Dental College, Chennai, without taking note of the oncoming vehicle and the accident occurred only due to sudden crossing of the road by the deceased. In spite of the driver of the 1st respondent vehicle applying sudden brake, the deceased dashed against the 1st respondent vehicle and as such the accident occurred only due to the negligence of the deceased. Hence, the 1st respondent seeks dismissal of the petition.

5. Similarly, while opposing the claim of the petitioner by filing counter, the 2nd respondent/Insurance Company contends that the accident did not occur in the manner alleged by the petitioners. The claim of the petitioners in every aspect is denied. The amount claimed by the petitioners is highly exorbitant. The petitioners are not dependents of the deceased and thus the 2nd respondent/Insurance Company sought for dismissal of the petition.

6. Before the Tribunal, the petitioners examined P.W.1 to P.W.3 and produced documents Exs.P.1 to P.4 to prove their claim. On the side of the respondents, neither oral nor documentary evidence was let in. The Tribunal, on the basis of available materials awarded a sum of Rs.8,40,000/- as compensation to the petitioners. Being not satisfied with the quantum of the award, the petitioners/claimants have come forward with the present appeal.

7. The learned counsel for the petitioners contends that the deceased was earning Rs.12,000/- per month, but the Tribunal wrongly fixed the monthly income at Rs.6,000/- without any basis. The Tribunal ought to have provided 30% towards future prospects but failed to do so. The amount awarded under different heads are very low. Hence, the petitioners seek to enhance the quantum of the award by allowing this appeal.

8. Per contra, the learned counsel for the 2nd respondent/Insurance Company contended that the Tribunal without

properly appreciating the evidence on record awarded a higher amount as compensation and as the same itself is not sustainable, there is no need to entertain the appeal for enhancement of the quantum. Hence, the 2nd respondent/Insurance Company seeks dismissal of the appeal.

9. The petitioners stated that the accident occurred only due to the rash and negligent driving of the vehicle by the 1st respondent's car driver. The eye-witness to the occurrence who deposed as P.W.2 and P.W.3 clearly stated about the manner in which the accident occurred and found fault only with the driver of the 1st respondent's vehicle for the accident. Ex.P.1 - F.I.R is also registered against the driver of the 1st respondent's car. As such, it is clear that negligence on the part of the 1st respondent's car driver alone caused the accident.

10. The Tribunal, fixed the monthly income of the deceased at Rs.6,000/- from his business as Commission agent. However, there is no documentary proof regarding the avocation and income of the deceased. The learned counsel for the petitioners contends that as a vegetable vendor, the deceased would have easily made Rs.200/- to Rs.300/-/day. Considering the rival contention, this Court is of the view that fixing the notional monthly income as Rs.6,500/- per month instead of Rs.6,000/- fixed by the Tribunal will be appropriate.

11. The petitioners states that the deceased was aged 43 years at the time of the accident. In Ex.P.2 - Post Mortem report, the age of the deceased is stated as 43. As such there are no other documents regarding the age of the deceased available on record. Hence, the age of the deceased is fixed at 43, on the basis of Ex.P.2 - Post Mortem report. Considering the age of the deceased, the correct multiplier to be applied is 14 for the age group of 41-45 years. However, the Tribunal has applied the multiplier as 15 and the same is to be modified.

12. The learned counsel for the petitioners contends that the Tribunal has not taken into consideration, the future prospects of the deceased, who was self employed person, aged 43 years. The learned counsel for the respondents also conceded that the future prospects is to be provided for. As such, considering the age of the deceased and he being a self employed person, 25% of the income has to be added towards future prospects and the deceased having three dependents, from his income 1/3rd is to be deducted towards personal expenses and the correct multiplier to be applied is '14'. Hence, his contribution to the family is calculated as under:-

[((Rs.6500+ 25%(1625)) - 1/3(8125))] = Rs.5,417/-
Rs.5,417 x 12 x 14 = Rs.9,10,056/-.

Thus, a sum of Rs.9,10,056/- is granted as compensation under the head "Loss of Income".

13. In respect of awarding compensation under conventional heads, as per the Constitution Bench judgment of the Supreme Court reported in 2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and Others], the compensation has to be awarded towards loss of estate, loss of consortium and funeral expenses and hence, this court is inclined to grant a sum of Rs.15,000/- each towards loss of estate and funeral expenses and for loss of consortium a sum of Rs.40,000/- is awarded.

14. As rightly pointed out by the learned counsel for the respondents no amount can be provided for Love and Affection. As Supreme Court has made it clear that only total sum of Rs.70,000/- can be granted under the conventional heads. Hence, the amount provided by the Tribunal for loss of Love and Affection is unsustainable. Thus, the award passed by the Tribunal is modified as follows:-

Sl. No.	Head	Amount granted by the Tribunal	Amount awarded by this Court
1	Loss of Income	Rs.7,20,000.00	Rs. 9,10,056.00
2	Funeral Expenses	Rs.15,000.00	Rs.15,000.00
3	Loss of Consortium	Rs.30,000.00	Rs.40,000.00
4	Loss of Estate	-	Rs.15,000.00
5	Love and Affection	Rs.75,000.00	-
6	Total	Rs.8,40,000.00	Rs.9,80,056.00 Round off Rs.9,80,000.00

15. In the result, the Civil Miscellaneous Appeal is Partly Allowed
as follows:-

(i) The award of the Tribunal is enhanced to Rs.9,80,000/- from Rs.8,40,000/-.

(ii) The award amount will carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

(iii) In view of the above enhanced award amount, the 2nd respondent/Insurance Company is directed to deposit the award amount, less the amount, if any, already deposited, along with accrued interest within a period of six weeks from the date of receipt of a copy of this judgment.

(iv) The apportionment of the modified enhanced award amount is as follows:-

1st petitioner - 20%

2nd and 3rd petitioners - 40% each.

The share of the minors is directed to be deposited in any one of the nationalised bank till they attain majority.

(v) On such deposit, the 1st petitioner/1st appellant is permitted to withdraw the amount awarded as above by filing proper application before the Tribunal. The Tribunal shall pass appropriate directions for the disbursal of the amount as stated supra on filing of such application.

(vi) Petitioners/appellants shall pay necessary court fee before receiving the copy of this judgment for the enhanced compensation amount.

No costs.

Sd/-
Assistant Registrar(CS VII)

//True copy//

Sub Assistant Registrar

bri

To

1.The III Small Causes Court, Chennai.

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

+1cc to Mr.K.varadhakamaraj, Advocate SR.No.18883

C.M.A.No.1989 of 2015

GP(CO)
GN(06/06/2018)