

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.166 of 2017

1.S.Parwati  
2.G.Sib Ada

..Appellants/Petitioners

Versus

1.A.Gunasekaran

2.Reliance General Insurance Company Ltd.,  
Rai Towers, 2<sup>nd</sup> Floor,  
Plot No.2054, 2<sup>nd</sup> Avenue,  
Anna Nagar, Chennai-40.

..Respondents/Respondents

Civil Miscellaneous Appeal filed against the judgment and decree dated 14.10.2014 made in M.C.O.P.No.1836 of 2012 on the file of the Motor Accident Claims Tribunal, II Small Causes Court, Chennai.

For Appellants : Mr.K.Varadha Kamaraj  
For Respondents : Mr.S.Arun Kumar [for R2]  
R1-Experte before Tribunal

J U D G M E N T

The Petitioners/Claimants have filed this appeal against the judgment and decree dated 14.10.2014 made in M.C.O.P.No.1836 of 2012 on the file of the Motor Accident Claims Tribunal, II 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 05.02.2012 at about 1.00 hour, while the deceased was walking on the left side of the G.S.T Road, near Keezhakaranai bus stop, the 1<sup>st</sup> respondent vehicle bearing Registration No.TN-22-L-0567 came at high speed dashed against the deceased, resulting in his death. The accident occurred due to rash and negligent driving by the 1<sup>st</sup> respondent vehicle driver. The deceased was aged 20 years and by working as a coolie was earning Rs.9,000/- per month. The petitioners, who are the parents of the deceased were dependent on the earning of the deceased son. Due to sudden demise of

their son, the petitioners are suffering due to loss of income. Thus, the petitioners seek a sum of Rs.10,00,000/- as compensation from the respondents.

4. On the other hand, opposing the claim of the petitioners, by filing counter, the 2<sup>nd</sup> respondent/Insurance Company contends that the accident does not take place as alleged by the petitioners. The 1<sup>st</sup> respondent vehicle driver was not responsible for the accident. The age, avocation and income of the deceased as alleged in the petition is not correct. The claim of the petitioners is exorbitant. Hence, the 2<sup>nd</sup> respondent/Insurance Company sought for dismissal of the petition.

5. Before the Tribunal, the petitioners examined P.W.1 and P.W.2 and produced documents Exs.P.1 to P.8. On the side of the respondents neither oral nor documentary evidence was let in. On the basis of available evidence, the Tribunal found the negligence of the 1<sup>st</sup> respondent vehicle driver alone caused the accident and awarded a sum of Rs.7,73,000/- as compensation to the petitioners. Being not satisfied with the quantum of the award, the petitioners have come forward with the present appeal.

6. The learned counsel for the petitioners contends that the Tribunal wrongly fixed the income of the deceased at Rs.6,000/- per month instead of Rs.9,000/-. The Tribunal ought not to have deducted 50% of the income of the deceased towards his personal expenses, but only 1/3<sup>rd</sup> should have been deducted. The amount awarded under different heads are very low and meagre. Hence, the petitioners seek enhancement of the quantum of the award by allowing the appeal.

7. Per contra, learned counsel for the 2<sup>nd</sup> respondents/Insurance Company contends that the accident occurred only due to negligence of the deceased and as such the petitioners are not entitled to ask for any compensation. Further, on the basis of available evidence, the Tribunal has awarded compensation which itself is on the higher side. Thus, the 2<sup>nd</sup> respondents/Insurance Company seeks dismissal of the appeal.

8. Heard both sides and perused the available materials on record.

9. The petitioners states that the deceased was aged 20 years and was earning Rs.9,000/- per month by working in a private concern. According to the petitioners the accident occurred due to negligence of the 1<sup>st</sup> respondent driver only. The eye-witness to the occurrence, who deposed as P.W.2 clearly stated that the accident occurred only due to rash and negligent

driving by the 1<sup>st</sup> respondent vehicle driver. The police also registered Ex.P.1 - F.I.R against the 1<sup>st</sup> respondent driver only. As such, it is clear from P.W.2 evidence and contents of Ex.P.1 - F.I.R that the accident occurred only due to negligence on the part of the 1<sup>st</sup> respondent vehicle driver. Further there is no contra evidence let in by the respondent to disprove the evidence of P.W.2. As such, on the basis of P.W.2 oral evidence and Ex.P.1 - F.I.R, it is clear that the negligence of the 1<sup>st</sup> respondent car driver alone caused the accident. Hence, the respondents being the owner and insurer of the vehicle are liable to pay compensation.

10. The petitioners states that the deceased suffered multiple injuries and in spite of the treatment in G.H, Chennai, passed away on 09.02.2012 in the hospital itself. The petitioners produced Ex.P.2 - A.R.Copy, which clearly proves that the deceased suffered multiple injuries all over his body. Further, it is clear from Ex.P.4 - Post mortem certificate that only due to the injured suffer in the accident, the same person passed away. As such the respondent is the owner and insurer of the offending vehicle is liable to pay compensation to the petitioner. The Tribunal, on the basis of available records, held that the deceased was earning Rs.6,000/- per month. Considering the nature of work which deceased was doing as stated by the petitioners, it will be appropriate to fix monthly earning at Rs.6,500/-.

11. Considering the age of the petitioners and he was employed as coolie it will be appropriate to add 40% towards future prospects. The deceased being Bachelor 50% income is to be deducted towards personal expenses. As the deceased was aged 18 years as evidenced by Ex.P4 - Post Mortem report and Ex.P.5 - Death certificate, the correct multiplier to be applied is '18'. Hence, the loss of income is calculated as follows:-

$$[(Rs.6500+40\%)-4550*12*18] = Rs.9,82,800/-$$

Thus, a sum of Rs.9,82,800/- is granted as compensation under the head "Loss of Income".

12. 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 is to be awarded towards loss of estate 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.

13. Accordingly, the compensation awarded by the Tribunal stands modified as follows:

| Sl. No. | Head               | Amount granted by the Tribunal | Amount awarded by this Court |
|---------|--------------------|--------------------------------|------------------------------|
| 1       | Loss of Income     | Rs.6,48,000.00                 | Rs.9,82,800.00               |
| 2       | Funeral Expenses   | Rs.25,000.00                   | Rs.15,000.00                 |
| 3       | Loss of Estate     | -                              | Rs.15,000.00                 |
| 4       | Love and Affection | Rs.1,00,000.00                 | -                            |
| 5       | Total              | Rs.7,73,000.00                 | Rs.10,12,800.00              |

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

- (i) The award of the Tribunal is enhanced to Rs.10,12,000/- from Rs.7,73,000/-.
- (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 2<sup>nd</sup> 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) Since there is enhancement in the award amount each petitioners/claimants are entitled to 50% of the award amount.
- (v) On such deposit, the petitioners/claimants are 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 the filing of such application.
- (vi) Petitioners/claimants shall pay necessary court fee before receiving the copy of this judgment for the enhanced compensation amount.

No costs.

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Sd/-  
Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

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To

1.The Motor Accidents Claims Tribunal,  
II Small Causes Court,  
Chennai.

Copy to

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

+1cc to Mr.K.VARADHAKAMARAJ, Advocate, S.R.No.19917

+1cc to Mr.S.ARUNKUMAR, Advocate, S.R.No.20165

C.M.A.No.166 of 2017

GJ(CO)  
TR(04/07/2018)



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