IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 26.02.2018

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The Honourable Mr. Justice S.BASKARAN

Civil Miscellaneous Appeal No.201 of 2018

1.D.Vasanthi
2.G.D.Ramesh
3.Y.Anbarasi
4.D.Thenmathi
5.P.Anbumalar ..Appellants/Petitioners in Trial Court

..vs..

1.Sunthari

2.Bajaj Alliance General Insurance Co., Ltd.,
No.25/26, College Road, Prince Tower,
4th Floor, Nungambakkam,
Chernnai-600 034. ..Respondents/Respondents in Trial Court

This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the Fair and Decreetal order dated 13.09.2013 made in MCOP.No.4676 of 2011 on the file of the Motor Accident Claims Tribunal/(IV Judge, Court of Small Causes), Chennai.

For Appellants : Mr.V.Balamurugan

For Respondents : Mr.Srivasan Ramalingam for R-2

JUDGMENT

Being not satisfied with the quantum of compensation awarded by the Tribunal dated 13.09.2013 made in MCOP.No.4676 of 2011 on the file of the Motor Accident Claims Tribunal/(IV Judge, Court of Small Causes), Chennai, the petitioners/claimants filed this present appeal seeking enhancement of award amount.

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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 04.04.2011 at about 15.15 hours , while the deceased was proceedings in his two wheeler bearing Registration No.TN-03-5145, in Manali Road from east to west direction near Commercial Tax Check Post, Chennai-19, the Trailor Lorry bearing Registration No.TN-05-T-2493 came in the opposite direction at high speed, driven in a rash and negligent manner by its driver and dashed against the two wheeler in which the deceased was travelling causing fatal injuries to him. The driver of the said Trailor lorry belonging to the first respondent and insured with the second respondent alone is responsible for causing the accident. At the time of the accident, the deceased was aged about 59 years and was working as a Government Contractor in Thiruvottriyur Municipality earning a sum of Rs.10,000/- per month. Hence, the petitioners who are the wife and children of the deceased claiming themselves as dependents of the deceased seek a sum of Rs.50,00,000/- 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 disputed the claim of the petitioners about the manner in which the accident occurred. The claim of the petitioners that the first respondent vehicle driver alone caused the accident due to his negligence is denied. The compensation claimed by the petitioners is exorbitant and arbitrary. The accident occurred only due to the negligence of the deceased and as such the second respondent is not liable to pay any compensation. The claim made under various heads are highly excessive. The age, avocation and income of the deceased is disputed. Thus, the second respondent seeks dismissal of the petition.

5. Before the Tribunal, the first petitioner examined herself as P.W.1 and eye witness to the occurrence one P.Rajendran was examined as P.W.2 and produced documents Ex.P1 to Ex.P6 to substantiate their claim. On the side of the respondent, neither oral evidence nor documentary evidence is produced.

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6. The Tribunal, on the basis of available materials on record, found that the negligence of first respondent lorry driver alone caused the accident and directed the respondents to pay a sum of Rs.4,40,000/- as compensation to the petitioners. Being not satisfied with the quantum of compensation awarded by the Tribunal, the petitioners/claimants have come forward with the present appeal seeking enhancement of award amount

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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 petitioners/claimants contends that the Tribunal failed to consider the evidence on record properly and awarded very meager amount as compensation. The Tribunal without considering the documents filed by the petitioners fixed the notional income of the deceased at Rs.8,000/- and the same is very low. The Tribunal wrongly fixed the age of the deceased at 62 years, even though he was aged only 59 years. The amount awarded by the Tribunal under the different heads are very low. Hence, the petitioners seek to enhance the quantum of compensation by entertaining the appeal.

9. Per contra, the learned counsel appearing for the second respondent Insurance Company contends that the petitioners has not established the fact that the cause for the accident was only the negligence of the first respondent lorry driver. Similarly, the petitioners has failed to prove the monthly earnings of the deceased and as such the Tribunal has correctly fixed the monthly income at Rs.8,000/- on the basis of available records. The Tribunal has correctly awarded the amount under the different heads and no ground is made out by the petitioners to enhance the same. Hence, the second respondent seeks dismissal of this appeal.

10. The petitioners who are the legal heirs of the deceased Dilli Babu claims that on 04.04.2011 at about 15.15 hours, while the deceased was proceedings in his two wheeler bearing Registration No.TN-03-5145 met with an accident due to the negligence of the first respondent lorry driver. The petitioners examined eye witness to the occurrence as P.W.2 and he categorically stated that the accident occurred due to the rash and negligent driving of the driver of the Trilor lorry bearing Registration No.TN-05-T-2493. The police registered Ex.P1 First Information report against the driver of the lorry owned by the first respondent. Further after completing the investigation, the police filed Ex.P2 charge sheet incriminating the driver of the first respondent lorry as the offender. Further, nothing is elicited from the eye witness to the occurrence who deposed as P.W.2 to discredit his evidence. Thus, it is clear from the oral evidence of P.W.2 and the contents of Ex.P1 First Information Report and Ex.P2 Charge Sheet that the negligence of the first respondent lorry driver alone resulted in the accident. To contradict the claim of the petitioners neither the driver of the first respondent Lorry nor any other witness was examined by the respondents to disprove the negligence alleged against them. Thus, on the basis of above

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said discussions, it is clear that the rash and negligent driving of the vehicle by the first respondent lorry driver alone caused the accident and the conclusion arrived at by the Tribunal in that record is just and proper.

11. The offending vehicle belongs to the first respondent and the same was insured with the second respondent as clearly mentioned in the petition. The same is not specifically denied and disputed by the respondents and as such the respondents who are the owner and insurer of the offending vehicle are liable to pay compensation.

12. The petitioners states that the deceased Dilli Babu was the husband of the first petitioner and father of the other petitioners. At the time of death of the deceased, he was stated to be 59 years old. However, as per Ex.P3 Postmortem Certificate, the deceased was stated to be as 62 years. In the absence of any other documentary proof about the age of the deceased, on the basis of Ex.P3 Postmortem Certificate, his age is fixed at 62 years by the Tribunal and the same is perfectly valid.

13. The petitioners claim that the deceased was working as a contractor attached to Thiruvottriyur Municipality earning a sum of Rs.1,00,000/- per month. The first petitioner, who deposed as P.W.1 produced the contract work orders given to her deceased husband as Ex.P6. She also produced the copy of the Bank Pass Book of the deceased as Ex.P5. It is true that as per Ex.P6, work orders, the value of the work allotted to the deceased during 2009-2011 was valued Rs.61,60,000/-. Further, it is also pointed out that during the period 10.03.2010 to 31.10.2011, as per Ex.P6, the value of the work given to the deceased was Rs.39,10,855/-. Pointing it out, the learned counsel appearing for the petitioners contended that the Tribunal erred in fixing the monthly income of the deceased at Rs.8,000/-, without any basis ignoring the documents produced by the petitioner. The learned counsel appearing for the petitioners further contended that out of the total value of the work allotted, the deceased would have earned 20% of amount as profit and as such 20% of the value of the work allotted in 10 months immediately before the death of the deceased which will be Rs.39,00,000/- x 20 - 100 = Rs.7,80,000/- has to be taken in to consideration for fixing the monthly income of the deceased. Thus, the petitioners contends that the monthly income of the deceased be re-fixed, accordingly instead of Rs.8,000/- fixed by the Tribunal

14. On the other hand, refuting the said contention of the petitioners, the learned counsel appearing for the respondent-Insurance Company contends that the petitioner has not produced

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any documentary proof for the profit made by him and he has not produced any income tax returns to show the actual income derived by him. Thus, the respondent-Insurance Company contends that merely because, Ex.P6 work allotment order is produced, the income earned by the deceased cannot be re-fixed as sought for by the petitioners. However, refuting the said claim of the respondents, the learned counsel appearing for the petitioners contends that merely because the income tax return was not filed, it will not mean that the deceased was not making income as claimed by the petitioners. In Support of his claim, the learned counsel for the petitioners relied upon the Ruling of the Division Bench of this Court in THE BRANCH MANAGER, UNITED INDIA INSURANCE CO. LTD., Vs. JEYADEVI AND OTHERS reported in 2013 (1) TN MAG 610 (DB), wherein it has held as follows:-

> "The deceased had 14 years of standing at the Bar and he was having as junior, separate Office, Clerk, Typist, phone and Vehicle. He had appeared in many cases before various Courts in Pazhani and Dindigul. His non-payment of Income Tax may not be a ground that he would not have earned good professional Income. One's duty to pay Income Tax is different from one's capacity to earn. At the time of his death, the deceased was 38 years old. Rs.20,000/- as his monthly professional income is not on the higher side."

15. Considering the said contention of the petitioners and the fact that the deceased was indeed functioning as Government Contractor and he was given work to the value of Rs.39,10,855/- during 10 months period prior to his death as evidenced by Ex.P6, it will be appropriate to fix the monthly income of the deceased at Rs.20,000/- per month.

16. As stated earlier, the age of the deceased was fixed at 62 years, as per SARLA VERMA case , the correct multiplier to be applied is 7. Since the deceased age was fixed at 62, no future prospects need to be added. Since there are five petitioners and they were all dependents of the deceased, 1/4th amount is to be deducted. Hence, the loss of dependency is calculated is as follows:-

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(1) Rs.20,000/-, deduction 1/4th amount of Rs.5,000/-, the balance amount wound be Rs.15,000/- as loss of monthly income.

(2) Rs.15,000/- x 12 = Rs. 1,80,000/- x 7 = Rs.12,60,000/-. Thus, the loss of income fixed at Rs.12,60,000/-.

17. 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
Loss of Estate = Rs.15,000.00
Funeral Expenses = Rs.15,000.00
Transportation = Rs.10,000.00

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

Sl No	Heads	Amount awarded by the Tribunal	Awarded by this Court
1.	Pecuniary Loss of income	3,60,000.00	12,60,000.00
2.	Loss of Estate	-	15,000.00
3.	Loss of Consortium	20,000.00	40,000.00
4.	Loss of love and affection	50,000.00	-
5.	Funeral Expenses	10,000.00	15,000.00
6.	Transportation		10,000.00
	Total	4,40,000.00	13,40,000.00

18. In the result, the civil miscellaneous appeal is partly allowed. No costs. The amount of Rs.4,40,000/- awarded by the Tribunal dated 13.09.2013 made in MCOP.No.4676 of 2011 on the file of the Motor Accident Claims Tribunal/(IV Judge, Court of Small Causes), Chennai, is enhanced to Rs.13,40,000/-. The second respondent/Insurance Company is directed to deposit the entire enhanced award amount of Rs.13,40,000/- with interest at the rate of 7.5% p.a. from the date of claim petition till the date of deposit the entire award amount, 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 first petitioner/first claimant is entitled to 40% of the award amount and the petitioners 2 to 5/claimants 2 to 5 are each entitled to 15% of the award amount. The petitioners/claimants are permitted to withdraw their respective share with accrued interest by filing necessary application before the Tribunal.

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Sd/-
Assistant Registrar(CO)

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Sub Assistant Registrar

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To

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

2. The Section Officer, VR Section,
High Court, Madras.(2-copies)

+ 1 cc to MR. K. Malai Kannu, Advocate Sr.14479
+ 1 cc to MR. Srivasan Ramalingam, Advocate SR.14360

C.M.A.No.201 of 2018

VSN(CO)
EU(02/04/2018)

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