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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 06.07.2018

Coram

The Honourable Mr. Justice S.BASKARAN

Civil Miscellaneous Appeal No.2452 of 2015

1.P.Vasanthi

2.P.Babu

... Appellants/Petitioners

..vs..

1.J.Saravanan

2.Bajaj Allianz General Insurance Company Ltd.,

No.25/26, IV Floor, "Prince Towers",

College Road, Nungambakkam,

Chennai - 600 006.

... Respondents/Respondents

This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the Fair and Decreetal order dated 14.07.2014 made in MCOP.No.3479 of 2009 on the file of the Motor Accident Claims Tribunal/(Special Sub Court-I), Chennai.

For Appellants : Mr.K.Varadhakamaraj

For Respondents : Mr.T.K.Premkumar for R-2

For R1 : No Appearance

JUDGMENT

Being not satisfied with the quantum of compensation awarded by the Tribunal, dated 14.07.2014 made in MCOP.No.3479 of 2009 on the file of the Motor Accident Claims Tribunal/(Special Sub Court-I), Chennai, the present appeal has been filed by the petitioners/claimants for enhancement of the 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 28.02.2009 at about 10.30 a.m., while the deceased was riding his bicycle on



Ennore Beach Road, opposite to Sanco Company, the first respondent Trailer Lorry bearing Registration No.TN-47-A-3279 came from behind, driven in a rash and negligent manner dashed on the bicycle of the deceased causing him fatal injuries resulting in his death subsequently in the Government Hospital, Chennai. The accident occurred due to the negligence of the first respondent Lorry driver only. The deceased was aged 24 years and he was earning a sum of Rs.200/- per day by working as sealing man in a private company. The petitioners who are the sister and brother of the deceased were depending on the earning of the deceased. Thus, the petitioners sought for a sum of Rs.7,00,000/- as compensation from the respondents who are the owner and insurer of the offending vehicle.

4. On the other hand, opposing the claim petition, the second respondent Insurance company filed counter contending that the accident does not occur in the manner alleged by the petitioners. The deceased by riding his bicycle floating the traffic rules contributed to the accident. The age, avocation and income of the deceased alleged in the petition is not true. The petitioners are not dependents on the deceased and they must prove that they are Class-I legal heirs of the deceased. The petitioners have to prove that the first respondent lorry driver possessed valid driving licence to drive the lorry with relevant documents. Thus, the second respondent-Insurance company sought for dismissal of the petition.

5. Before the Tribunal, the petitioners examined P.W.1 to P.W.3 and produced documents Ex.P1 to Ex.P7 to substantiate their claim. On the side of the respondents, neither oral nor documentary evidence was let in.

6. The Tribunal, on the careful analysis of evidence, found the negligence of the first respondent's lorry driver alone caused the accident, passed an Award for a sum of Rs.4,77,000/- payable by the respondents to the petitioners. Being not satisfied with the quantum of compensation awarded by the Tribunal, the petitioners/claimants have come forward this present appeal.

7.I have heard the learned counsel appearing for the appellants/claimants and the learned counsel appearing for the second respondent-Insurance Company and perused the materials available on record.

8.The learned counsel appearing for the appellants/claimants contends that the Tribunal wrongly fixed the income of the deceased at Rs.6,000/- per month. The Tribunal wrongly deducted 2/3rd of the income for personal expenses of the deceased. The amount awarded under different



heads are very nominal. Thus, the petitioners sought for enhancement of the compensation amount by entertaining the appeal.

9. Per contra, the learned counsel appearing for the second respondent-Insurance Company contends that the petitioners are not entitled to seek any compensation as they are not Class-I legal heirs of the deceased and they are not dependents of the deceased. The amount awarded by the Tribunal itself is on the higher side. There is no need or scope to enhance the award amount. Thus, the second respondent-Insurance Company sought for dismissal of this appeal.

10. It is only a quantum appeal. Both sides are not disputing the conclusion arrived at by the Tribunal that the negligence of the first respondent's driver alone caused the accident. The first petitioner who deposed as P.W.1 stated about the accident which took place on 28.02.2009 at about 10.30 a.m., She clearly stated that the Lorry which was coming from behind dashed against the deceased causing him fatal injuries. The Police also registered Ex.P1 First Information Report against the first respondent lorry driver only. The Police subsequently filed Ex.P6 Charge alteration report, which clearly prove that the negligence of the first respondent lorry driver alone caused the accident. The petitioners also produced Ex.P2 Rough Sketch of the occurrence spot which corroborate the petitioners claim. The oral evidence of P.W.1 and the contents of Ex.P1 First Information Report clearly prove the manner in which the accident occurred. On the other hand, the respondent has not let in any evidence both oral and documentary to contradict the petitioners claim. As such the conclusion of the Tribunal that the negligence of the first respondent lorry driver alone resulted in the accident is just and proper and the same needs no interference.

11. The first respondent vehicle was insured with the second respondent Insurance Company and the same is not disputed. As such, the respondents who are the owner and insurer of the vehicle are liable to pay compensation.

12. The learned counsel appearing for the second respondent contended that the petitioners are not dependent on the deceased, as they are only brother and sister of the deceased and as such they are Class-II legal heirs and they are not entitled to seek compensation. Refuting the same, the learned counsel appearing for the petitioners relying on the ruling reported in 2013 (1) TN MAC 290 in DIVISIONAL MANAGER, NEW INDIAN ASSURANCE CO. LTD., CSI BUILDING, OFFICERS' LINE ROAD, VELLORE Vs. G.SELVI AND OTHERS, contended that the petitioners are the legal heirs of the deceased and as such they are



= Rs.3,500/-.

(2) Rs.3,500/- x 12 = Rs.42,000/- x 17 = Rs.7,14,000/-.

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, and funeral expenses, this Court is inclined to modify the compensation as under:-

Funeral Expenses = Rs. 15,000.00

Loss of Estate = Rs. 15,000.00

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

Sl No	Heads	Amount awarded by the Tribunal	Awarded by this Court
1.	Pecuniary Loss of income	4,32,000.00	7,14,000.00
2.	Loss of Estate	-	15,000.00
4.	Loss of love and affection	30,000.00	-
5.	Funeral Expenses	15,000.00	15,000.00
	Total	4,77,000.00	7,44,000.00

Accordingly, the compensation awarded by the Tribunal is modified and the same is enhanced to Rs.7,44,000/-.

16. In the result, the Civil Miscellaneous Appeal is allowed. No costs. The amount of Rs.4,77,000/- awarded by the Tribunal dated 14.07.2014 made in MCOP.No.3479 of 2009 on the file of the Motor Accident Claims Tribunal/(Special Sub Court-I), Chennai, is enhanced to Rs.7,44,000/-. The appellants/claimants are directed to pay excess Court fee within a period of two weeks from the date of receipt of copy of this order. The Second respondent-Insurance Company is directed to deposit the entire enhanced award amount of Rs.7,44,000/- with interest at the rate of 7.5% p.a. from the date of claim petition till the date of deposit within a period of six weeks from the date of receipt of a copy of this order. The appellants/claimants are entitled to equal share in the award amount. On deposit of the award amount, the petitioners/claimants are permitted to withdraw their respective share with accrued interest by filing necessary application before the Tribunal.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

rrg



To

The Special Sub Judge I,
Motor Accident Claims Tribunal
Chennai.

+1cc to Mr. K.Varadha Kamaraj, Advocate, S.R.No. 43917

+1cc to Mr. T.K.Prem Kumar, Advocate, S.R.No. 43805

C.M.A.No.2452 of 2015

KJ(CO)
GN(20/11/2018)