

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.2528 of 2015
and M.P.No.1 of 2015

1.Janet Selvakumari
2.Rajendra Babu

..Appellants/Petitioners

Vs.

1.Godavari Ammal

2.The Royal Sundaram Alliance Insurance
Company Limited
Sundaram Towers, No.45 and 46
Whites Road, Chennai.

..Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 24.08.2015 passed in M.C.O.P.No.285 of 2012 on the file of Motor Accidents Claims Tribunal, 2nd Additional District and Sessions Judge, Vellore at Ranipet.

For appellants : : Mr.V.Parivallal
for Respondents : : Mr.N.Vijayaraghavan for R2.

J U D G M E N T

This Civil Miscellaneous Appeal is filed by the appellants/Petitioners, challenging the judgment and decree dated 24.08.2015 passed in M.C.O.P.No.285 of 2012 on the file of Motor Accidents Claims Tribunal, 2nd Additional District and Sessions Judge, Vellore at Ranipet.

2. For the sake of convenience, the parties are referred to as per their litigative status before the Tribunal. It is a fatal case. The case of the Petitioners is that on 08.05.2010 at about 5.30 p.m., the deceased Absolome was proceeding as Passenger in the 1st respondent bus bearing Reg.No.TN-23-AF-3677 from Kandipedu to Katpadi, while going near Eganatha Reddy Land Bend, due to rash and negligent driving, the driver of the bus lost control and consequently, the deceased was thrown out of the bus suffering multiple fatal injuries resulting in his death on the next day in the CMC Hospital, Vellore. The accident

occurred only due to rash and negligent driving of the respondent bus driver. The said bus was insured with the 2nd respondent and as such, the respondents who are the owner and insurer of the vehicle are liable to pay compensation. The deceased was aged 60 years and by working as a cooly was earning Rs.15,000/- per month. The Petitioners who are the wife and sons of the deceased were depending on his earnings and sought Rs.15,00,000/- as compensation from the respondents.

3. On the other hand, by filing counter, the 2nd respondent-Insurance company disputes the claim of the Petitioners about the age, avocation and income of the deceased. The 2nd respondent denies the nature of accident as alleged by the Petitioners. The 1st respondent bus was insured only for 55 passengers seated in the bus and there is no coverage for the standee passengers. As the deceased travelled in the bus only as a standee passenger, the Petitioners are not entitled to seek any compensation from the 2nd respondent. The accident occurred not due to the fault of the 1st respondent bus driver but only due to negligence of the deceased. The deceased tried to pick up his bag from the platform while the bus was moving, resulting in loss of balance and he fell down from the bus. There was no negligence on the part of the 1st respondent bus driver. The accident occurred only due to negligence of the deceased. Thus, the 2nd respondent sought for dismissal of the claim petition.

4. Before the Tribunal, the Petitioners examined P.W.1, produced documents Ex.P.1 to Ex.P.10 to prove their contention. On the side of the 2nd respondent, neither oral nor documentary evidence was let in. On the basis of available evidence, the Tribunal found that the negligence of the 1st respondent driver alone caused the accident and passed award for a sum of Rs.4,70,250/- payable by the respondents to the Petitioners.

5. Being not satisfied with the quantum of the award, the Petitioners have come forward with the present appeal.

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

7. The learned counsel for the appellants/Petitioners contends that the Tribunal failed to consider the documents produced by them properly and inspite of substantial evidence placed to prove the monthly income of the deceased at Rs.15,000/- , the tribunal fixed the monthly income wrongly at Rs.6000/-. The Tribunal also wrongly deducted 1/3rd of the said income towards personal expenses. The tribunal failed to award any amount towards future prospects. The amount awarded under different heads are very low. Thus the Petitioners seeks

enhancement of the quantum of the award by entertaining the appeal.

8. Per contra, the learned counsel for the 2nd respondent-Insurance company contends that the claim of the Petitioners that the deceased was earning Rs.15,000/- is not supported by any acceptable evidence and as such, the Tribunal is justified in fixing the monthly income at Rs.6000/-. The award passed by the Tribunal is highly excessive. The accident occurred only due to negligence of the deceased, as the deceased travelled in the bus as standee passenger. The Insurer is not liable to pay any compensation. Thus, the 2nd respondent sought for dismissal of the appeal.

9. The Petitioners are the wife and son of the deceased. According to the 1st Petitioner, on 08.05.2010, while she was travelling along with her deceased husband as passenger in the 1st respondent bus bearing Reg.No.TN-23-AF-3677 towards Katpadi, due to high speed, in which the bus was driven at about 5.30 p.m., while going near Kandipedu Village, the deceased was thrown out of the bus and suffered fatal injuries. The 1st petitioner/wife of the deceased who deposed as P.W.1 stated that she travelled along with the deceased in the respondent bus at the time of the accident and it was only due to high speed in which the bus was driven, the accident occurred. Further the Police have registered Ex.P.1-FIR against the driver of the 1st respondent bus only. As per Ex.P.6-MVI report, there was no mechanical defect in the vehicle. As such, it is clear from P.W.1 oral evidence and contents of Ex.P.1-FIR that the accident occurred only due to negligence of the 1st respondent bus driver and on the other hand, the 2nd respondent has not let in any oral or documentary evidence to contradict the claim of the Petitioners. As such, the Tribunal is justified in fixing the negligence on the part of the 1st respondent bus driver alone resulting in the accident.

10. The Petitioners contend that the deceased was aged 60 years and by working as a cooly in Kolar Gold Field (KGF) was earning Rs.15,000/- per month. However, there was no independent evidence to prove the same. It is evidence from Ex.P.3-Post Mortem Certificate that the deceased was aged 60 years. Accordingly, his age was fixed by the Tribunal as 60 years. For that age group, following Sarla Verma case, [Sarala Verma & Ors vs Delhi Transport Corp.& Another [2009 (2) TN MAC 1 (SC):2009] the multiplier to be applied is '9'. The Tribunal

has wrongly applied multiplier '8' and as such, the same is to be modified, as sought for by the Petitioners.

11. Considering the fact that the deceased was aged 60 years and no proof was produced about his avocation and income and taking into consideration the fact that the accident occurred during 2010, it will be appropriate to fix the notional monthly income at Rs.6500/- instead of Rs.6000/- fixed by the Tribunal. Since the deceased was aged 60 years, following Pranay Sethi case, it will be appropriate to add 10% towards future prospects. Since the number of dependants were two persons, 1/3rd income should be deducted towards personal expenses of the deceased. Thus, the loss of dependency to the family of the deceased, will be as follows:-

Monthly income : Rs.6500

Future prospects : 10%

Add: $6500 + 10\% (650) = 7150$

1/3rd deduction towards personal expenses : $7150 \times 1/3 = 2383$

$7150 - 2383 = 4767$

$4767 \times 12 \times 9 = 5,14,836/-$.

Further, the sum of Rs.20,250/- under "Medical Bills" and the sum of Rs.6000/- awarded under the head "Transport expenses" are just and reasonable and hence, the same are confirmed. However, the sum of Rs.20,000/- awarded under the head "loss of love and affection" to 2nd Petitioner is set aside. Following the Apex court decision reported in 2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and Others], the compensation towards conventional heads, is as under:-

Funeral expenses	-15,000/-
Loss of estate	-15,000/-
Loss of consortium	-40,000/-
Add: Loss of dependency	5,14,836/-
Medical Bills	20,250/-
Transportation	6,000/-
Total =	6,11,086/-

12. Accordingly, the compensation awarded by the Tribunal stands modified and enhanced from Rs.4,70,250/- to Rs.6,11,086/- and the same is as shown below.

Sl.No.	Heads	Amount awarded by the tribunal	Amount awarded by this Court
1	Loss of dependency	Rs. 3,84,000	Rs. 5,14,836/-.
2.	Loss of consortium to 1 st petitioner	Rs. 20,000	Rs. 40,000
3.	Loss of love and affection to 2 nd petitioners	Rs. 20,000	---
4.	Funeral expenses	Rs. 20,000	Rs. 15,000
5.	Loss of Estate	---	Rs. 15,000
6.	Transport expenses	Rs. 6,000	Rs. 6,000
7.	Medical Bills	Rs. 20,250	Rs. 20,250
	Total	Rs. 4,70,250	Rs. 6,11,086

13 In the result,

(i) This Civil Miscellaneous Appeal is Allowed;

(ii) The award amount is enhanced to Rs.4,70,250/- to Rs.6,11,086/-

(iii) The award amount will carry interest at the rate of 7.5% from the date of petition till the date of realisation;

(iv) The 2nd respondent / Insurance Company is directed to deposit the entire award amount along with proportionate interest and cost, as ordered by this court, less the amount, if any already deposited.

(v) The Petitioners 1 to 4 are entitled to the award amount on the following apportionment:- 1st petitioner/wife-60%; 2nd petitioners-40% each; The Petitioners 1 and 2 are entitled to withdraw their respective shares of the award amount along with accrued interest, less the amount already withdrawn. The Tribunal shall pass necessary orders for disbursal of the award amount by following the appropriate procedure.

(vi) No costs. Consequently, connected MP is closed.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

nvsri

To

1.The 2nd Additional District and Sessions Judge,
Motor Accidents Claims Tribunal, Vellore at Ranipet.

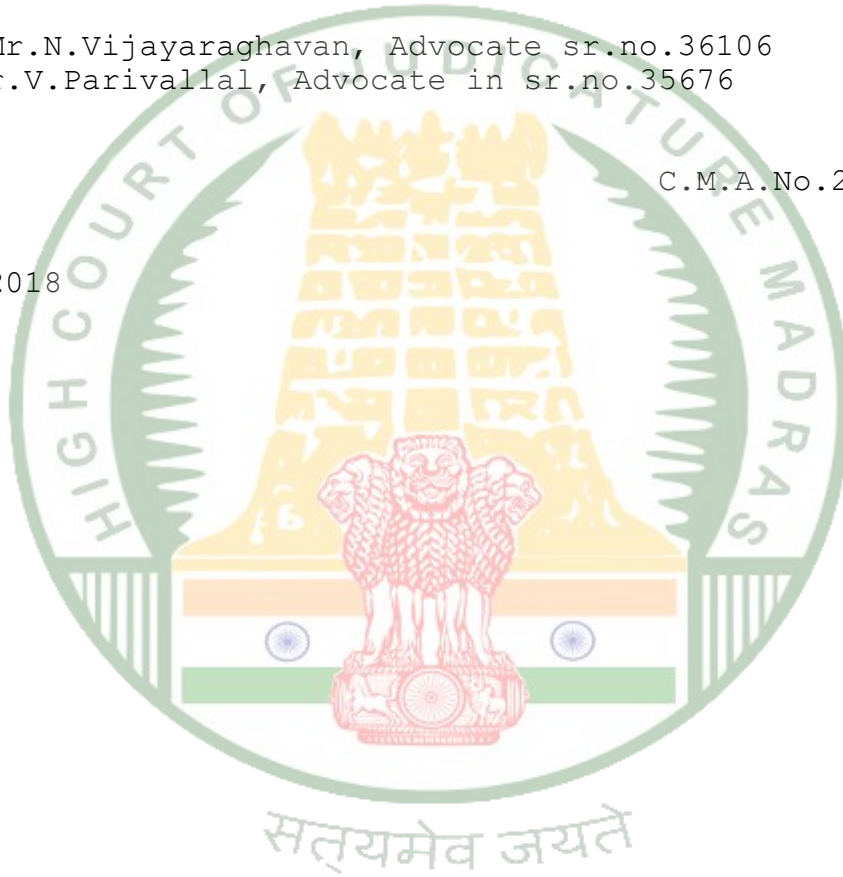
2.The Section Officer,
VR Section, High Court, Madras.(2 copies)

+1cc to Mr.N.Vijayaraghavan, Advocate sr.no.36106

+2cc to Mr.V.Parivallal, Advocate in sr.no.35676

C.M.A.No.2528 of 2015

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