

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.2453 of 2016

1.R.Sivagami

2.R.Gowthaman (Minor)

3.R.Vijai Prasanth (Minor)

(Minor petitioners are represented by
their mother R.Sivagami/1st petitioner
herein as their Natural Guardian and
next friend)

4.N.Rajamanickam @ Raji ..Appellants/Petitioners

Versus

1.D.Srinivasan

2.Reliance General Insurance Co. Ltd.,

Reliance House, Legal Department,

No.6, Haddows Road, 6th Floor,

Nungambakkam, Chennai - 6.

(The 1st respondent was set exparte in the
lower Court)

...Respondents

Prayer: Civil Miscellaneous Appeal filed against the order and
decree dated 02.11.2011 made in M.C.O.P.No.309 of 2010 on the
file of the Motor Accident Claims Tribunal, Fast Track Court
No.1, Additional District and Sessions Judge, Poonamallee.

For Appellants : Mr.P.Natarajan

For Respondents : Mr.M.B.Gopalan Associates [for R2]
R1 - Exparte

J U D G M E N T

The petitioners/appellants have filed this appeal against
the order and decree dated 02.11.2011 and made in M.C.O.P.No.309
of 2010 on the file of the Motor Accident Claims Tribunal, Fast
Track Court No.1, Additional District and Sessions Judge,
Poonamallee.

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 16.02.2010 at about 08.15 hours, while the deceased Raja was riding his two wheeler bearing Registration No.TN-02-AA-6568 in Poonamalle high road and waiting for traffic signal near Indian Oil Petrol Bank signal near Nenrkundram, the 1st respondent lorry bearing Registration No.TN-04-L-6918 came from behind in high speed dashed against the two wheeler, in which the deceased Raja was waiting, causing him fatal injuries, resulting in his death. The accident occurred only due to negligence of the 1st respondent lorry driver. At the time of the accident, the deceased was aged 27 years, employed as a car driver earning Rs.7,500/- to Rs.10,000/- per month. The petitioners, who are the wife, children and father of the deceased were dependents on the income of the deceased. Hence, the petitioners seek a sum of Rs.18,00,000/- as compensation from the respondents.

4. On the other hand, opposing the claim of the petitioners by filing counter, the 2nd respondent/Insurance Company contends that the accident does not occur in the manner alleged by the petitioners. The deceased was driving the motor cycle without possessing valid license and he also contributed to the accident. The age, avocation and income of the deceased as stated in the petition is not correct. The claim of the petitioners is exorbitant. The deceased was guilty of contributory negligence. As such, the claim of the petitioners is liable to be rejected.

5. Before the Tribunal, the petitioners examined P.W.1 and P.W.2 and produced documents Exs.P.1 to P.13 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 evidence found negligence of the 1st respondent driver alone caused the accident and passed an award for a sum of Rs.8,25,000/- payable by the respondents 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 failed to provide any amount towards future prospectus to the deceased. The Tribunal failed to consider Ex.P.9 - Driving license of the deceased and evidence of P.W.1 while awarding the compensation. The Tribunal fixed the monthly income of the deceased very low. The amount awarded under different heads is very nominal. Thus, the petitioners sought for enhancement of the award amount.

7. Per contra, the learned counsel for the 2nd respondent/Insurance Company contends that the accident occurred only due to negligence of the deceased. Hence, the petitioners are dis-entitled to seek any compensation. The Tribunal, wrongly appreciated the evidence and passed an award, which itself is on

higher side. No ground is made out for enhancement of the quantum of the award. Thus, the 2nd respondent/Insurance Company sought for dismissal of the appeal.

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

9. The petitioners examined eye-witness to the occurrence as P.W.2 and he categorically stated the negligence of the driver of the lorry bearing Registration No.TN-04-L-6918 alone caused the accident. The police also registered Ex.P.1 - F.I.R against the driver of the 1st respondent lorry only. Subsequently, the police altered Section under which the case was registered as per Ex.P.2. It is also clear from Ex.P.3 - Rough Sketch of the spot that the accident occurred in the manner alleged by the petitioners. The 2nd respondent/Insurance Company has not examined either the driver of the lorry nor contradicted the eye-witness account given by P.W.2 by any other evidence. In such circumstances, the Tribunal was justified in fixing negligence on the part of the 1st respondent lorry driver alone, caused the accident. On the basis of P.W.2 evidence as well as the contents of Ex.P.1 - F.I.R and Ex.P.3 - Rough Sketch, this Court finds no reason to interfere with the same.

10. The petitioners contended that the deceased was employed as a driver and was aged 27 years at the time of the accident. The petitioners produced Ex.P.8 - Transfer Certificate, wherein, the date of Birth of the deceased is given as 16.05.1982. Hence, on the basis of Ex.P.5 - Post Mortem report, as well as Ex.P.8 the age of the deceased is fixed as 28 years.

11. The petitioners claim that the deceased was employed as a driver, earning upto Rs.10,000/- per month. The copy of the driving license of the deceased is produced as Ex.P.9. However, no proof of his income is produced by the petitioners. In such circumstances, considering the fact, that driver are in demand, it will be appropriate to fix his notional monthly income at Rs.7,000/-. Considering the age of the deceased was 28, it will be appropriate to add 40% towards future prospectus and as there are 4 dependents, 1/4th is to be deducted towards personal expenses, and the correct multiplier to be applied is '17'. Thus, the 'loss of dependency' is calculated as follows:-

$$\begin{aligned} &[(7000+40\%(2800) - \frac{1}{4}(9800))] = \text{Rs.}7,350/- \\ &\text{Rs.}7350 * 18 * 17 = \text{Rs.}14,99,400/- \end{aligned}$$

Thus, a sum of Rs.14,99,400/- is granted as compensation under the head "Loss of Dependency".

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 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.

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 Dependency	Rs. 7,65,000.00	Rs. 14,99,400.00
2	Funeral Expenses	Rs. 10,000.00	Rs. 15,000.00
3	Loss of Consortium	Rs. 10,000.00	Rs. 40,000.00
4	Loss of Estate	-	Rs. 15,000.00
5	Love and Affection	Rs. 40,000.00	-
6	Transport Charges	-	Rs. 15,000.00
7	Total	Rs. 8,25,000.00	Rs. 15,84,400.00

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

(i) The award of the Tribunal is enhanced to Rs.15,84,400/- from Rs.8,25,000/-.

(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, 2nd and 3rd petitioners - 30% each
4th petitioner - 10%

(v) On such deposit, the 1st and 4th petitioners/1st and 4th appellants are permitted to withdraw the amount awarded as above by filing proper application before the Tribunal. The Tribunal shall pass appropriate directions for the disbursement of the amount as stated supra on the filing of such application.

(vi) The share of the 2nd and 3rd petitioners/minors are directed to be deposited in any one of the nationalised bank till they attain majority.

(vii) Petitioners/appellants shall pay necessary court fee before receiving the copy of this judgment for the enhanced compensation amount.
No costs.

s/d-
Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

bri

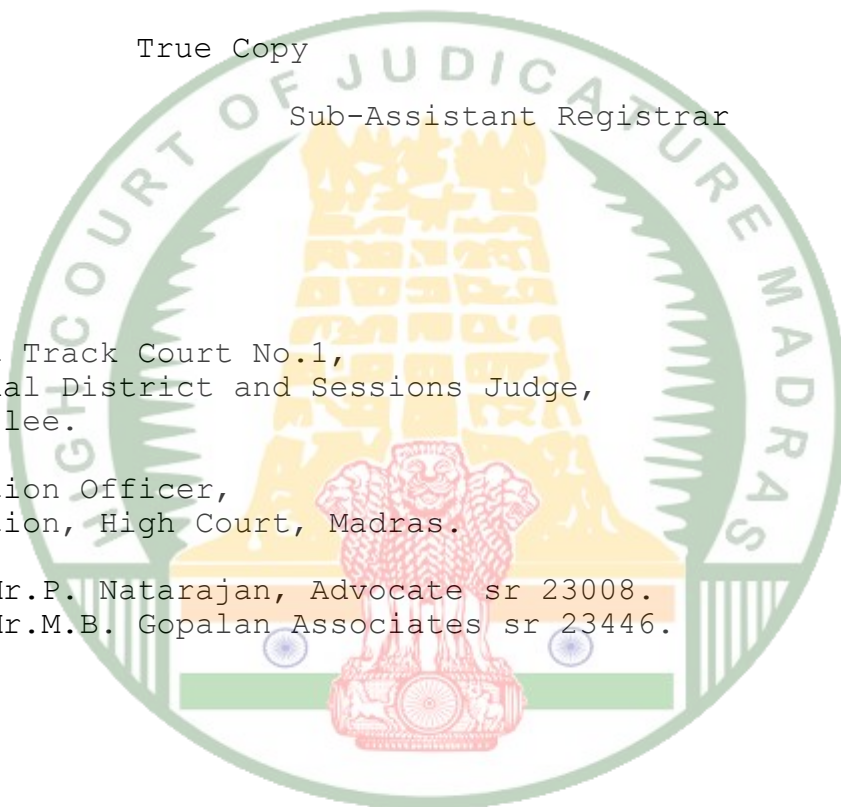
To

1.The Fast Track Court No.1,
Additional District and Sessions Judge,
Poonamallee.

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

+1 CC to Mr.P. Natarajan, Advocate sr 23008.

+1 CC to Mr.M.B. Gopalan Associates sr 23446.



सत्यमेव जयते

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SP(23/04/2018)

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