

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.2740 of 2015

G.Vijaya

..Appellant/Petitioner

Versus

1.M/s.Mercury Car Rentals Ltd.,
No.1/24, G.S.T.Road,
Chennai - 27.

2.The United India Insurance Co.Ltd.,
38, Anna Salai, Chennai - 2. ..Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the order dated 18.12.2007 made in M.C.O.P.No.3642 of 2003 on the file of the Motor Accident Claims Tribunal, IV Judge, Court of Small Causes, Chennai.

For Appellant : Mr.A.N.Viswanatha Rao

For Respondents : Mr.R.Ravichandran [for R2]

J U D G M E N T

The Petitioner/Claimant has filed this appeal against the order dated 18.12.2007 made in M.C.O.P.No.3642 of 2003 on the file of the Motor Accident Claims Tribunal, IV Judge, Court of Small Causes, 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 petitioner/claimant is that on 24.11.2002 at about 6.00 hours, while the deceased was walking near the junction of Prince Street in G.S.T. Road, in Meenambakkam, Chennai, the car bearing Registration No.TN-22-M-6012 came at high speed dashed against the deceased person,

causing her fatal injuries, resulting in her death on the spot. The accident occurred due to rash and negligent driving of the 1st respondent car driver. The deceased was aged 53 years and she was employed as senior sweeper in Metropolitan Transport Corporation Limited, earning a sum of Rs.6,104/- per month. The petitioner/claimant, who is the daughter of the deceased was dependent on the earnings of her deceased mother. Thus, the petitioner/claimant sought for a sum of Rs.9,00,000/- as compensation from the respondents who are the owner and insurer of the offending vehicle.

4. On the other hand, opposing the claim of the petitioner/claimant, by filing counter, the 1st respondent contends that the accident did not occur in the manner alleged by the petitioner/claimant. The car bearing Registration No.TN-22-M-6012 was insured with 2nd respondent and the driver possessed valid driving license. As the vehicle was insured with the 2nd respondent/Insurance Company, they alone are liable to pay compensation to the petitioner/claimant. Thus, the 1st respondent sought for dismissal of the petition against them.

5. Likewise, opposing the claim of the petitioner/claimant, by filing counter, the 2nd respondent/Insurance Company disputed the petitioner/claimant averments about the age, avocation and income of the deceased. The petitioner is to prove that the vehicle involved in the accident belonged to the 1st respondent and the driver possessed valid driving license. The claim of the petitioner/claimant is exorbitant. Thus, the 2nd respondent/Insurance Company sought for dismissal of the petition.

6. Before the Tribunal, the petitioner/claimant examined herself as P.W.1 and eye-witness to the accident as P.W.2. She also produced documents Exs.P.1 to P.5 to prove her claim. On the side of the respondents neither oral nor documentary evidence was let in. On careful analysis of the available evidence on record, the Tribunal found, that the negligence of the 1st respondent driver alone resulted in the accident and passed an award for a sum of Rs.4,05,650/- payable by both the respondents to the petitioner/claimant. Being not satisfied with the quantum of the award, the petitioner/claimant has come forward with the present appeal.

7. The learned counsel for the petitioner/claimant contends that the Tribunal failed to note that the deceased was a permanent employee, on a monthly salary of Rs.6,104/-. The multiplier applied by the Tribunal is not correct. The amount awarded by the Tribunal under other heads is very low. Thus, the petitioner/claimant sought for enhancement of the award amount by entertaining the appeal.

8. On the other hand, opposing the appeal, the learned counsel for the 2nd respondent/Insurance Company contends that the accident occurred due to negligence of the deceased only. As such, the claim of the petitioner/claimant for enhancement is unsustainable. The amount awarded by the Tribunal itself is on higher side. Thus, the 2nd respondent/Insurance Company sought for dismissal of the appeal.

9. The petitioner/claimant, who deposed as P.W.1, clearly stated about the accident which took place on 24.11.2002. However, P.W.1 is not an eye-witness to the occurrence. The person, who witnessed the occurrence, deposed as P.W.2 and he categorically stated that the driver of the 1st respondent car drove the vehicle at high speed and caused the accident. The police registered a case against the 1st respondent driver only, as per Ex.P.2 - Copy of the F.I.R. On the other hand, the respondent has not let in any oral or documentary evidence, to contradict the version of the petitioner/claimant, about the manner in which the accident occurred. As such, on the basis of P.W.2, oral evidence and contents of Ex.P.1 - F.I.R, the Tribunal has rightly concluded that the negligence of the 1st respondent car driver alone resulted in the accident. The same needs no interference.

10. The 1st respondent being the owner and the 2nd respondent being insurer of the vehicle, both are liable to pay compensation to the petitioner/claimant. The petitioner/claimant stated that the deceased was a permanent employee of the transport Corporation as senior sweeper and she was getting a sum of Rs.6,104/- per month. The deceased was stated to be 54 years old and it is clear from Ex.P.5 - Salary certificate of the deceased that her date of birth is 15.03.1959. It is clear from the same that the deceased was aged 54 years on the date of accident on 24.11.2002, Ex.P.1 - Post mortem report also corroborates the same. Thus, the age of the deceased is fixed as 54 years. The petitioner/claimant claims that the deceased/mother by working as senior sweeper in the Metropolitan Transport Corporation Ltd., was earning Rs.6,104/- per month. Ex.P.5 - Salary slip clearly, proves the same. Considering the age of the deceased was 54 years and she was permanently employed, 15% of the income is to be added towards future prospects and 1/3rd is to be deducted towards personal expenses and the correct multiplier to be applied is '11'. Thus, the loss of income is calculated as follows:-

$$[(Rs.6104 * 15\%) + 6104] = Rs.7,019/-$$

$$[Rs.7019 - (Rs.7019 * 1/3)*12*11] = Rs.6,17,760/-$$

Thus, a sum of Rs.6,17,760/- is granted as compensation under the head "Loss of Income".

11. In view of the 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 and funeral expenses and thus, this court is inclined to grant a sum of Rs.15,000/- each towards loss of estate and funeral expenses.

12. Accordingly, the award passed by the Tribunal is modified as follows:-

Sl. No.	Head	Amount granted by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)
1	Loss of income	3,90,624.00	6,17,760.00
2	Funeral Expenses	5,000.00	15,000.00
3	Mental Agony	5,000.00	-
4	Loss of Estate	5,000.00	15,000.00
5	Total	4,05,624.00	6,47,760.00

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

(i) The award of the Tribunal is enhanced to Rs.6,47,760/- from Rs.4,05,624/-.

(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 modified 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) On such deposit, the petitioner/claimant is 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.

(v) Petitioner/Claimant shall pay necessary court fee before receiving the copy of this judgment for the enhanced compensation amount.

(vi) In view of the order of this court passed in M.P.No.1 of 2009 in C.M.A.SR.No.93193 of 2009, the petitioner/claimant shall forego interest for the delay period.

No costs.

Sd/-

Assistant Registrar (CS V)

//True copy//

Sub Assistant Registrar

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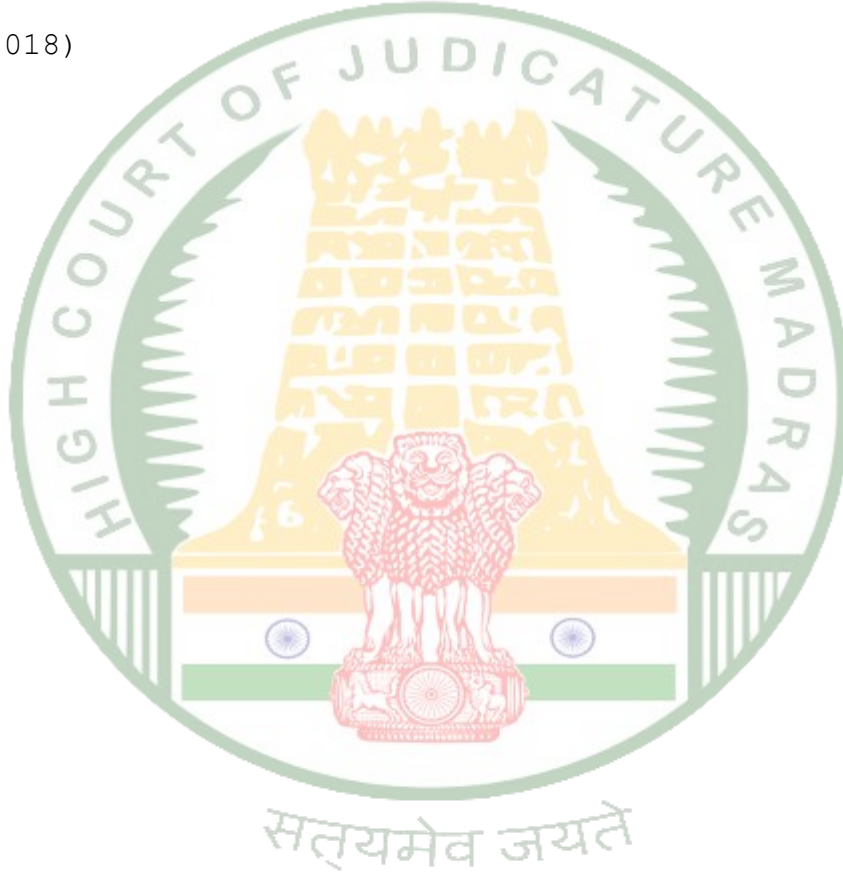
To

1.The IV Judge, Court of Small Causes,
Chennai.

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

C.M.A.No.2740 of 2015

SS (CO)
GN (27/07/2018)



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