

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 28.04.2018

Coram

The Honourable Mr. Justice S.BASKARAN

Civil Miscellaneous Appeal No.3063 of 2011

1.Tmt.Jaya

2.Vijaya

... Appellants/Petitioners

...VS...

1.S.Mahesh

2.New India Assurance Co. Ltd.,
No.80, Arcot Road, Porur,
Chennai-87.

3.Anjalatchi

... Respondents/Respondents

This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 29.07.2010 made in MCOP.No.3947 of 2007 on the file of the Motor Accident Claims Tribunal/Additional District Judge, Fast Track Court No.I, Chennai.

For Appellants : Mr.N.Veerasamy
For Respondents : Mr.K.Vinod for R-2
R1-Exparte,
R3-Exparte

JUDGMENT

Being not satisfied with the quantum of compensation awarded by the Tribunal, dated 29.07.2010 made in MCOP.No.3947 of 2007 on the file of the Motor Accident Claims Tribunal/Additional District Judge, Fast Track Court No.I, Chennai, the petitioners/claimants have come forward with this present appeal seeking to 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 21.08.2007 at about 5.50 a.m., while the deceased Bakthavachalam was riding his two wheeler along with his daughter Vijaya as pillion rider in G.S.T. Road, on his way from Guindy to Mandaveli, a Mini Lorry bearing Registration No.TN-10-R-0807 came at high speed dashed against the motor cycle driven by the deceased Bakthavachalam from behind causing him fatal injuries as well as causing

grievous injuries to the pillion rider. The accident occurred only due to the negligence of the driver of the first respondent vehicle. The deceased Bakthavachalam was aged about 42 years and by working as mason, was earning a sum of Rs.10,000/- per month. The petitioners in MCOP.No.3947 of 2007 (C.M.A.3063 of 2011) are the wife and daughter of the deceased Bakthavachalam and they are dependents on the income earned by the deceased. Thus, the petitioners sought for a sum of Rs.10,00,000/- as compensation from the first and second respondents who are the owner and insurer of the offending vehicle. The mother of the deceased is added as third respondent in the proceedings.

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 claim of the petitioners is exorbitant. The claim of the petitioners about the age, avocation and income of the deceased is denied. The accident occurred only due to the negligence of the deceased who drove the motor cycle in a zigzag manner and that too in the middle of the road inviting the accident. As such, the second respondent Insurance Company sought for dismissal of the petition.

5. Before the Tribunal, the petitioners examined P.W.1 and P.W.2 and produced documents Ex.P1 to Ex.P7 to prove their claim. On the side of the respondents, neither oral nor documentary evidence was let in.

6. The Tribunal, after analysing the evidence available on record found the negligence on the part of the first respondent vehicle driver alone caused the accident, passed an Award for a sum of Rs.3,55,600/- as compensation to the petitioners. Being not satisfied with the quantum of compensation awarded by the Tribunal, the petitioners/claimants have come forward the present appeal seeking to enhance the award passed by the Tribunal.

7. I have heard the learned counsel appearing for the appellants/petitioners 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/petitioners contended that the Tribunal failed to consider the evidence available on record properly and wrongly fixed the monthly income of the deceased at Rs.2,000/-. Even though, the petitioners claimed that the deceased was earning a sum of Rs.10,000/- per month by working as mason, the Tribunal ought to have fixed the notional income of the deceased at Rs.4,000/- per month which is the minimum wages prescribed. The

Tribunal also wrongly applied the multiplier 13 instead of multiplier 15. The amount awarded by the Tribunal under the different heads is very low. Thus, the petitioners/claimants sought for enhancing the award amount by entertaining the appeal.

9. Per contra, the learned counsel appearing for the second respondent-Insurance Company contends that the deceased invited the accident due to his negligence and in the absence of any proof for age, avocation and income of the deceased, the award passed by the Tribunal is just and proper and the same need not be interfered with. Thus, the second respondent-Insurance Company sought for dismissal of this appeal.

10. This appeal is filed only against the quantum of compensation awarded by the Tribunal. The negligence aspect is not seriously disputed by either side. The second petitioner who is the daughter of the deceased and eye witness to the occurrence deposed as P.W.2 and clearly stated that the accident occurred only due to the negligence of the first respondent vehicle driver. According to P.W.2, while she was going as a pillion rider in the two wheeler driven by his father, the first respondent Mini Lorry bearing Registration No.TN-01-R-0807 came at high speed and dashed against the two wheeler causing fatal injuries to her father. The police also registered the case against the driver of the said mini lorry only, as evidenced by Ex.P1 copy of First Information Report. The driving licence of the deceased is produced as Ex.P5. It is therefore clear from the evidence of P.W.2 as well as the contents of Ex.P1 First Information Report that the negligence of the first respondent vehicle driver alone caused the accident. Further, there is no contra evidence let in by the respondents to disprove the claim of the petitioners. Neither the driver of the first respondent vehicle nor any other person has been examined by the respondents to disprove the petitioners claim. As such, it is clear that the negligence of the first respondent's vehicle driver alone caused the accident. The petitioners claims that the offending vehicle belongs to the first respondent and the same was insured with the second respondent. As such, the respondents are liable to pay compensation to the petitioners.

11. The petitioners contend that the deceased was aged about 42 years and by working as mason was earning a sum of Rs.10,000/- per month. The driving licence of the deceased is produced as Ex.P5, wherein, the date of birth is shown as 04.05.1966. Further in Ex.P3 Death Certificate and in Ex.P2 Postmortem Certificate, the age shown as 45 years. In such circumstances, keeping in mind Ex.P5 Driving Licence, it will be appropriate to fix the age of the deceased as 42 years. The petitioners stated that the deceased was working as mason

earning a sum of Rs.10,000/- per month. However, there is no proof for the income of the deceased, the Tribunal after deducting 1/3rd amount towards the personal expenses of the deceased, fixed a sum of Rs.2,000/- as the monthly income of the deceased. This is being challenged by the petitioners. Admittedly, the accident took place in the year,2007 and the deceased was employed as mason. As such, it will be appropriate to fix the notional monthly income of the deceased at Rs.7,000/-. As the deceased was aged about 42 years, 25% of the income viz Rs.1750/- is added towards future prospects and total monthly income would be Rs.8,750/-. Keeping in mind the number of dependents after deducting 1/3rd amount towards the personal expenses of the deceased, the contribution to the family would be Rs.5,834/-. As the deceased was aged about 42 years, the multiplier to be applied is 14. As such, the loss of income is calculated as follows:-

$$\text{Rs.5,834/-} \times 12 = \text{Rs.70,008/-} \times 14 = \text{Rs.9,80,112/-}.$$

12. 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 Estate	Rs.15,000.00
Loss of consortium	Rs.40,000.00
Funeral Expenses	Rs.15,000.00

Rs.	Rs.70,000.00

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

S1 No	Heads	Amount awarded by the Tribunal	Awarded by this Court
1.	Pecuniary Loss of income	3,12,000.00	9,80,112.00
2.	Funeral Expenses	8,000.00	15,000.00
3.	Loss of love and affection	10,000.00	-
4.	Loss of Estate	-	15,000.00
5.	Transportation	2,000.00	10,000.00
6.	Loss of consortium	15,000.00	40,000.00
7.	Damage to Cloths	1,000.00	1,000.00
8.	Medical Bills	7,600.00	7,600.00
	Total	3,55,600.00	10,68,712.00

Accordingly, the quantum of compensation awarded by the Tribunal is modified and the same is enhanced to Rs.10,68,712/- and the same is rounded to Rs.10,68,800/-.

14. In the result, the civil miscellaneous appeal is partly allowed. No costs. The amount of Rs.3,55,600/- awarded by the Tribunal dated 29.07.2010 made in MCOP.No.3947 of 2007 on the file of the Motor Accident Claims Tribunal/Additional District Judge, Fast Track Court No.I, Chennai, is hereby enhanced to Rs.10,68,800/-. The second respondent Insurance company is directed to deposit the entire award amount of Rs.10,68,800/- with interest at the rate of 7.5% p.a. from the date of claim petition till the date of deposit the 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 appellants are entitled to 40% each of the award amount and the third respondent is entitled to 20% of the award amount. The appellants and third respondent are permitted to withdraw their respective share with accrued interest by filing necessary application before the Tribunal. The appellants are directed to pay the excess court fee within a period of two weeks from the date of receipt of a copy of this order.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

rrg

To
The Additional District Judge,
(the Motor Accident Claims Tribunal)
Fast Track Court No.I,
Chennai.

+1cc to Mr.K.VINOD, Advocate, S.R.No.32488
+1cc to Mr.N.VEERASAMY, Advocate, S.R.No. 32416

C.M.A.No.3063 of 2011

SSD(CO)
TR(02/08/2018)