IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.216 of 2018

Nagappan (deceased)
1.Kasthuri ..Appellant/Petitioner

Versus

1.S.Elangovan

2.Reliance General Insurance Company Ltd.,
NTG Complex, No.14, Ramasamt Street,
West Tambaram, Chennai -45. ..Respondents/Respondent
Nowat: 6th Floor, 6 HaddowsRoad
Nungambakkam, Chennai-34

Prayer: Civil Miscellaneous Appeal filed against the decree and judgment dated 13.02.2013 made in M.C.O.P.No.2505 of 2010 on the file of the Motor Accident Claims Tribunal, V Judge, Small Causes Court.

For Appellant : M/s.A.N.Viswanatha Rao & Ramya V.Rao.

For Respondents : M/s.M.B.Gopalan Associates

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J U D G M E N T

The Appellant/petitioner has filed this appeal against the decree and judgment dated 13.02.2013 made in M.C.O.P.No.2505 of 2010 on the file of the Motor Accident Claims Tribunal, V Judge, Small Causes Court, Chennai.

2. With consent of the learned counsel on either side, the main Civil Miscellaneous Appeal is taken up for final disposal at the admission stage itself.

3. For the sake of convenience, the parties are referred to hereunder according to their litigative status before the Tribunal. The case of the petitioners is that on 03.10.2009 at about 15.30 hours, while the deceased was proceeding in a two wheeler bearing Registration No.TN-19-6817 as a pillion rider, in the ECR Road near Pattipulam, the rider of the two wheeler drove the vehicle in a rash and negligent manner and as such when he tried to over take a lorry, the two wheeler dashed against the Bullock, which was going on the left side of the

road, resulting in the rider being thrown away and as he fell down, he suffered fatal injuries and died on the spot itself. The accident occurred only due to rash and negligent driving by the rider of the two wheeler, in which the deceased was going as a pillion rider. At that point of time, the deceased was aged 19 years and by working as a Sculptor was earning Rs.300/- per day. The petitioners who are the parents of the deceased were depending on the income of their only son, who died in the accident. As such, the petitioners seek a sum of Rs.7,00,000/- as compensation from the respondents who are the owner and insurer of the vehicle.

4. On the other hand, opposing the claim petition by filing counter, the 2nd respondent/Insurance Company contends that the place, date and time of the accident as alleged by the petitioners are not admitted. The accident did not occur in the manner alleged by the petitioners. It was only due to negligence of the deceased the accident had occurred. The claim of the petitioners about the age, avocation and income of the deceased is disputed. The two wheeler bearing Registration No.TN-99-6817 was not insured with the 2nd respondent/Insurance Company and the rider of the vehicle did not possess valid driving license. Thus, the 2nd respondent/Insurance Company sought for dismissal of the petition.

5. Before the Tribunal, the petitioners examined P.W.1 and P.W.2, produced documents Exs.P.1 to P.6 to prove their claim. On the side of the respondents, neither oral nor documentary evidence was let in. On the basis of the available evidence on record, the Tribunal found the negligence on the part of the 1st respondent vehicle driver alone caused the accident, passed an award for a sum of Rs.4,45,000/-. Being not satisfied with the quantum of the award passed by the Tribunal, the petitioners/claimants have come forward with the present appeal.

6. Contentions raised on the side of Appellant/Petitioner:- The petitioners/claimants contends that as the deceased was aged 19 years and earning Rs.300/- per day, without considering the same, the Tribunal fixed the notional income at Rs.4,500/- and the same is not correct. The Tribunal erred in fixing the age of the deceased. The Tribunal failed to appreciate the evidence properly and even in calculating the amount awarded as compensation. Thus, the petitioners sought for enhancing the quantum of award by entertaining the appeal.

7. Contentions raised on the side of 2nd respondent/Insurance Company:- Per contra, the learned counsel for the 2nd respondent/Insurance Company contends that the accident occurred only due to the negligence of the deceased and as such he is not entitled to seek any compensation. The claim of the petitioners for enhancement is not supported by any

acceptable evidence and as such, the same should not be entertained. Thus, the 2nd respondent/Insurance Company sought for dismissal of the appeal.

8. Heard both sides and perused the available evidence on record.

9. Discussion Regarding Negligence aspect:- The 2nd petitioner/mother of the deceased who deposed as P.W.1 has clearly stated about the accident. However, the Tribunal is correct in not accepting the version of the evidence, since she is not an eye-witness to the accident. However, P.W.2 - Ayyappan has clearly stated that he witnessed the occurrence, while he was proceeding in his bicycle to purchase plumbing materials. On the fateful day, according the P.W.2 he witnessed the motorcycle bearing Reg.No.TN-19-6817 which was going ahead of him, tried to over take a lorry and at that time, a bullock came across the road, due to which the rider of the two wheeler, in spite of applying the breaks dashed against the said Bullock, resulting in both the rider as well as pillion rider suffering injuries. Thus, P.W.2 clearly stated that only due to sudden crossing of the road by the bullock, the rider of the two wheeler dashed against the same, resulting in the accident. Further, in Ex.P.1 - F.I.R, it is clearly stated that as the rider of the two wheeler tried to over take the lorry, the sudden entry of the bullock from the left side, resulted in the accident. As such, in the absence of any contra evidence let in by the respondents, on the basis of Ex.P.1 - F.I.R as well as the oral version of the evidence given by P.W.2, it is clear that the rider of the 1st respondent motor cycle caused the accident, due to his negligence.

10. Discussion regarding Quantum of Award:-

(i) Age:- The petitioners claimed before the Tribunal that due to the injuries suffered in the accident, their son died and they also produced Ex.P.2 - Post mortem certificate issued by the Government Hospital, Chengalpattu and Ex.P.3 - death certificate. The petitioners claimed that the deceased was aged 19 years at the time of the death. The petitioners also produced the transfer certificate of the deceased as Ex.P.5 to prove their claim. Considering the fact that the deceased was stated to be 19 years old as evidenced by Ex.P.2 - Post mortem report and on the basis of Ex.P.5 - Transfer certificate his age is fixed as 19 years. It is clear f rom Ex.P.4 - Legal heir certificate, the petitioners are the legal heirs of the deceased.

(ii) Income:- The Tribunal after considering the oral evidence of P.W.1 and Ex.P.6 - Salary certificate under which the petitioners claimed that the deceased was employed as Sculptor and earning Rs.300/- per day, held that the employer who issued Ex.P.6 - Salary certificate is not examined and fixed the notional income of the deceased at Rs.4,500/- per month. However, now, the same is opposed by the appellant/petitioner. Taking into account, the fact that accident occurred in the year

2009 and the deceased was stated to be sculptor, it will be appropriate to fix the notional monthly income at Rs.6,000/-.

(iii) Multiplier & Future Prospects:- The Tribunal instead of taking into account, the age of the deceased had applied the multiplier wrongly by taking the age of the petitioners and the same is not correct. For applying the correct multiplier, the age of the deceased alone has to be taken into account. Further, as the deceased was aged 19 years, it will be appropriate to take into account 40% of the income towards the future prospects and the correct multiplier to be adopted is '18'.

(iv) Deductions:- Taking into account the fact that the deceased was a Bachelor, 50% of the income is to be deducted towards personal expenses. Thus, the pecuniary loss suffered by the petitioner is calculated as follows,

[(Rs.6000 + 40%) - 50%] = Rs.4,200/-
Rs.4200 x 12 x 18 = Rs.9,07,200/-

Thus, a sum of Rs.9,07,200/- is granted as compensation under the head "Loss of Pecuniary benefits to the Appellant/Petitioner ".

(v) Compensation under Conventional Heads:-

In respect of awarding compensation under other conventional heads, as per the judgment of the Supreme Court reported in 2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and Others], towards "loss of estate" and "funeral expenses" this court is inclined to grant a sum of Rs.15,000/- each.

(vi) Loss of Love and Affection :- Since the father of the deceased Amul Raj died only after the award passed by the Tribunal, the learned counsel for the Sole Appellant/Petitioner submits that the compensation amount of Rs.30,000/- granted by the Tribunal under the head "Loss of love and affection to parents" is inevitable and nominal and the same may be enhanced. In support of his argument, the learned counsel relied upon the Ruling of the Kerala High Court reported in 2017 SCC Ker 23174 [1.Valsamma and others Vs. V.A.Baiju, 2. Rev.FR.Joseph Vattakalam, and 3.The National Insurance Co.Ltd., - MACA.Nos.711 and 921 of 2010]. Accepting the contention of the learned counsel for the appellant, this court holds that the parents of the deceased Amul Raj are entitled to compensation amount of Rs.40,000/- under the head "Loss of Love and Affection".

Accordingly, the compensation awarded by the Tribunal stands modified as follows:-

Sl. No.	Head	Amount granted by the Tribunal (Rs.)	Amount awarded by this Court(Rs.)
1	Loss of Pecuniary	4,05,000.00	9,07,200.00
2	Funeral Expenses	10,000.00	15,000.00
3	Loss of Estate	-	15,000.00
4	Love and Affection	30,000.00	40,000.00

Sl. No.	Head	Amount granted by the Tribunal (Rs.)	Amount awarded by this Court(Rs.)
5	Total	4,45,000.00	9,77,200.00

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

(i) The award of the Tribunal is enhanced to Rs.9,77,200/- from Rs.4,45,000/-.

(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) On such deposit, appellant/petitioner 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) The appellant/petitioner is not entitled to any interest for the condoned delay (default), period, if any.

(vi) Appellant/Petitioner shall pay necessary court fee within two weeks from the date of receipt of the copy of this judgment for the enhanced compensation amount. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

Bri
To

1.The V Judge,
Small Causes Court, Chennai.

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

+1cc to M/s.M.B.Gopalan Associates, Advocate sr.no.26893
+1cc to M/s.A.N.Viswanatha Rao, Advocate sr.no.26089

C.M.A.No.216 of 2018

nr 07/06/2018