

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 29.01.2018

Coram

The Honourable Mr. Justice S.BASKARAN

Civil Miscellaneous Appeal No.1843 of 2017

1.G.Tomas Iccac Benjamin
2.Esther Lilli(died)
3.T.Glory Flawrance

..Appellants/Petitioner/
Petitioner

..vs..

1.Sivapriya
2.The New India Assurance Co, Ltd.,
No.45,Moore Street, 2nd Line Beach,
Chennai.

..Respondents/Respondents/
Respondents

Prayer: This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the Fair and Decreetal order dated 12.04.2013 made in MCOP.No.3844 of 2009 on the file of the Motor Accident Claims Tribunal/Chief Judge, Small Causes Court, Chennai.

For Appellants : Mr.A.N.Viswanatharao

For Respondent : Mr.C.Ramesh Babu for R-2

JUDGMENT

This civil miscellaneous appeal arises out of the Judgment and decree dated 12.04.2013 made in MCOP.No.3844 of 2009 on the file of the Motor Accident Claims Tribunal/Chief Judge, Small Causes Court.

2. For 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 20.04.2009 at about 16.00 hours, while the deceased was standing on the Road near Pondicherry University, Subramaniya Bharathiar Gents

Hostel to cross the road, the driver of the first respondent bus bearing Registration No.PY-01-S-6399 came at high speed in a rash and negligent manner in the reverse direction and dashed against the deceased resulting in her death. The petitioners states that the negligent driving of the first respondent's bus driver alone is responsible for the accident. Further, the petitioners states that the deceased was working as Assistant Professor in Department of Food Science Nutrition, Pondicherry University and earning a sum of Rs.32,624/- per month. She was aged about 26 years at the time of accident. Thus, the petitioners, who are the parents and sister of the deceased claims a compensation of Rs.30,00,000/- from the respondents, who are the owner and insurer of the offending vehicle involved in the accident.

4. On the other hand, opposing the petition, the second respondent/Insurance Company contends that the vehicle involved in the accident does not have valid fitness certificate and the driver of the bus was not having any valid license at the time of accident. Further, the accident occurred only due to the carelessness of the deceased, who negligently cross the road without noticing the on coming vehicle. Further, the parents and sister of the deceased, namely, the petitioners are not dependent of the deceased and the compensation claimed by the petitioners is very high. The claim of the petitioners regarding the age of the deceased, avocation and monthly income is also disputed. The 2nd respondent further stated that the bus involved in the accident was entrusted with the first respondent herein on hire basis and he committed violation of the permit and policy condition. Thus, the second respondent sought for dismissal of the petition.

5. To substantiate their claim, the first petitioner examined himself as P.W.1 and examined P.W.2 and P.W.3 and produced Ex.P1 to Ex.P16 to prove their claim. On the side of the respondents, no oral evidence was let in and no document was produced.

6. The Tribunal, after considering the pleadings, oral and documentary evidence, concluded that the accident occurred only due to the rash and negligent driving of the driver of the offending vehicle owned by the first respondent and insured with the second respondent and directed the respondents to pay a sum of Rs.29,06,225/- as compensation. Being not satisfied with the quantum of compensation awarded by the Tribunal, the petitioners/claimants has filed the present appeal for enhancing the quantum of compensation.

7. The learned counsel appearing for the petitioners/claimants contends that the victim was getting a monthly salary of Rs.36,136/- per month. As evidenced by Ex.P16 Salary Certificate, she received a monthly salary of Rs.36,136/- during April,2009. Further, P.W.3 who was working in the administrative branch of the Pondicherry University stated that Jacqueline Elisabeth(deceased) was working as Assistant Professor in Pondicherry University and her appointment order is Ex.P15. It is further stated that the pay slip issued to the deceased by the University is Ex.P9. It is therefore clear that the victim was working as Assistant Professor in Pondicherry University at the time of the accident and she was getting a monthly salary of Rs.36,136/-. The learned counsel for the petitioners/claimants further contended that the Tribunal failed to take into consideration the monthly salary of the deceased as Rs.36,136/- and wrongly deducted 20% of the income towards income tax. It is further contended that the Tribunal wrongly adopted the multiplier 11 instead of 18 as per the age of the deceased. The amount given under the other conventional heads is also very nominal. Hence, the petitioners/claimants seeks to entertain the appeal and to enhance the quantum of compensation awarded by the Tribunal.

8. On the other hand, the learned counsel appearing for the second respondent contended that the Tribunal has rightly appreciated the materials available on record and awarded compensation correctly. Further the multiplier to be adopted is only 11 and not 18 as claimed by the petitioners. Thus, the respondent sought of dismissal of the appeal.

9. Considered the rival submissions and perused the materials available on record.

10. It is evident from the evidence of P.W.1 and P.W.2 and Ex.P1 First Information Report that the negligence driver of the first respondent bus alone caused the accident. The eye witness to the occurrence P.W.2 has categorically stated about the manner in which the accident took place. It is also evident from Ex.P5 that mechanical defect was not the cause for the accident and nothing was extracted from P.W.2, as to disbelieve his version of the accident. As such, the finding of the trial Court that the accident occurred only due to the careless and negligent driving by the driver of the first respondent bus is just and correct and the same needs no interference.

11. The petitioners/claimants, who are aggrieved over the award of compensation of Rs.29,06,225/-, has come forward with this appeal. It is also evident from Ex.P4 Postmortem Certificate and Ex.P8 Educational certificate of the deceased

that she was aged about 26 years at the time of the accident. The Tribunal instead of taking the age of the deceased into consideration by fixing the multiplier to be applied on took the age of the first petitioner to considerable for fixing the multiplier as 11. Thus the correct multiplier to be applied in this case is 17. As evidenced by Ex.P9 salary certificate and Ex.P16 Revision Pay Certificate it is clear that the monthly salary of the deceased was Rs.36,316/-, and the same is to be treated as the monthly income of the deceased. Considering the age of the deceased was 26 only, 50% of the said amount is to be added towards future prospectus. Thus, the loss of income to the dependents is calculated as under:-

Rs.36316/- + 50% (18158) addition towards future prospectus.

Rs.36,316/- + Rs.18,158/- = Rs.54,474/-

Rs.54,474/- x 12 (x 17) = Rs. 6,53,668/-.

As rightly held by the Tribunal, 20% of the amount of Rs.1,30,738/- has to be deducted towards income tax.

Rs.6,53,668/- - 20% (Rs.1,30,737) deduction towards income tax.

Rs.6,53,668/- - Rs.1,30,737/- = Rs.5,22,931/- rounded off to Rs.522,950/-

Thus including the future prospectus and after deduction of 20% towards income tax, the deceased would have earned a sum of Rs.5,22,950/- per annum. Since the deceased is a bachelor, 50% of deduction has to be made towards his personal expenses.

Rs.5,22,950/- - 50% deduction towards personal expenses (Rs.2,61,475/-).

Thus the pecuniary loss to the family of the deceased per annum comes to a sum of Rs.2,61,475/-. Taking into consideration that the multiplier to be applied is 17. Accordingly, the loss of income for the family of the deceased is as under:-

Rs.2,61,475/- x 17 = Rs.44,45,075/-.

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

Funeral Expenses = Rs.15,000.00

A sum of Rs.10,000/- awarded by the Tribunal under the head of Loss of love and affection is hereby set aside.

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

S1 No	Heads	Amount awarded by the Tribunal	Awarded by this Court
1.	Loss of income	29,06,225.00	44,45,075.00
2.	Loss of love and affection	10,000.00	-

S1 No	Heads	Amount awarded by the Tribunal	Awarded by this Court
3.	Loss of Estate	10,000.00	15,000.00
4.	Funeral Expenses	-	15,000.00
	Total	29,06,225.00	44,75,075.00

14. In view of the above modification, the civil miscellaneous appeal is allowed with costs. The second respondent/Insurance Company is directed to deposit the entire enhanced award amount of Rs.44,75,075/- with interest at the rate of 7.5% p.a. 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. The petitioners/appellants are not entitled to the interest for the default of period of 1357 days. The petitioners/claimants are directed to pay the Court fee for the enhancement award amount within a period of 10 days from the date of receipt of a copy of this order. On such deposit, the first petitioner/claimant is permitted to withdraw 75% of the award amount and the 3rd petitioner/3rd appellant is permitted to withdraw 25% of the award amount respectively with proportionate interest and costs, by filing necessary application before the Tribunal. The petitioners/claimants are directed to pay the Court fee for the enhancement award amount within a period of 10 days from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

rrg

To

The Motor Accident Claims Tribunal

The Chief Judge,

Small Causes Court, Chennai.

Copy to: The Section Officer, Vr Section, High Court, Madras.

+ 2 ccs to Mr. A.N. Viswanatha Rao, Advocate Sr.6829

+ 1 cc to Mr. C. Rameshbabu, Advocate Sr.6348

C.M.A.No.1843 of 2017

MR(CO)

EU(27/02/2018)