

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 27.02.2018

Coram

The Honourable Mr. Justice S.BASKARAN

C.M.A.No.547 of 2015

1. Kala
 2. Sundari
 3. Usha
 4. Manjula
 5. Nagammal (died)
 6. Sarathammal ... Appellants/Petitioners
- (Cause title accepted vide order of Court dated 11/07/2014 made in M.P.1 of 14 in CMA Sr.40638 of 2014)

..vs..

1. The Managing Director
Rep. by PSTS Heavy lifts and shifts ltd.,
No.48, 5th Street, Rajaji Salai,
Chennai - 600 001.
2. The Reliance General Insurance Company Ltd.,
Haddows Road, Nungambakkam,
Chennai - 34. ... Respondents

This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 30.08.2012 made in M.C.O.P.No.607 of 2009, on the file of the Motor Accident Claims Tribunal, III Addl. District & Sessions Judge, Poonamallee.

For Appellants :Mr.K.Varadhakamaraj

For Respondent :N.Vijayaraghavan
M/s.M.B.Gopalan and Associates
for R2

JUDGMENT

This civil miscellaneous appeal has been filed against the judgment and decree dated 30.08.2012 made in M.C.O.P.No.607 of 2009, on the file of the Motor Accident Claims Tribunal, III Addl. District & Sessions Judge, Poonamallee.

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/claimants is that on 07.05.2009 at 9.30 p.m., while the deceased was proceeding in his two wheeler bearing Reg.No.TN 20 AA 7484 from Poonamallee to Thiruvallur, at that time, a lorry bearing Reg.No.TN 28 P 9259 belonging to the first respondent was standing without any signal in the middle of the road and the deceased dashed against the backside of the stationary lorry resulting in his death on the spot, due to grievous injuries sustained by him. The petitioners/claimants are the legal heirs of the deceased Sundaram. The accident occurred only due to parking of first respondent lorry on the road without any warning or signal. Hence the petitioners/claimants seeks 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 petitioners by filing counter, the learned counsel for the second respondent/Insurance Company contended that the accident did not occur in the manner alleged by the petitioners/claimants. The second respondent/Insurance Company disputed the claim of the petitioners/claimants regarding the age, avocation and also monthly income of the deceased. Hence the learned counsel second respondent/Insurance Company sought for dismissal of the claim petition.

5 To substantiate their claim before the Tribunal, the first petitioner/claimant examined P.W.1 and eye witness to the occurrence as 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, on appreciation of the materials available on record, found that the first respondent vehicle driver negligence alone caused the accident and passed an award for a sum of Rs.4,88,000/- payable by the second respondent/Insurance Company.

7 Being not satisfied with the quantum of award, the petitioners/claimants have come forward with the present appeal.

8 The learned counsel for the petitioners/claimants contended that the Tribunal wrongly fixed the monthly income of the deceased at Rs.4,500/-, while the deceased was earning Rs.6,000/- p.m. The Tribunal ought to have deducted 1/4 of the amount towards personal expenses and not 1/3, as there are six dependents. The amount awarded by the Tribunal under various heads are very low. Thus the petitioners/claimants seeks to entertain the appeal and to enhance the quantum of award passed by the Tribunal.

9 Per contra, the learned counsel appearing for the second respondent/Insurance Company contended that the claim of the petitioners is totally false and the respondents are not liable to pay any compensation. The learned counsel also contended that on proper appreciation of evidence, the Tribunal has already passed an award, which itself is on higher side and as such no ground is made out to interfere with the finding of the Tribunal. Hence the learned counsel for the second respondent/Insurance Company seeks dismissal of the appeal preferred by the petitioners/claimants.

10 Heard the learned counsel appearing for the petitioners/claimants and the learned counsel appearing for the second respondent/Insurance Company and perused the materials available on record.

11 The petitioners who are the wife, daughters and mother of the deceased contended that the lorry bearing Reg.No.TN 28 P 9259 was parked in Poonamallee to Thiruvallur road without any signal, in violation of traffic rules and the deceased Sundaram, who was riding his two wheeler, due to non visibility of parked vehicle dashed against the rear side of the lorry, resulting in his death on the spot. The petitioners/claimants produced postmortem report as Ex.P2 and the death certificate as Ex.P3. The eye witness to the occurrence, who deposed as P.W.2 has clearly stated that the first respondent lorry was parked without any proper signal. The police also registered Ex.P1 FIR against the driver of the lorry only. As such in the absence of any contra evidence let in by the second respondent/Insurance Company with regard to P.W.2 evidence and Ex.P1 FIR, it is clear that negligence of the first respondent vehicle driver alone caused the accident.

12 The learned counsel for the petitioners/claimants states that at the time of accident, the deceased was aged about 50 years and by doing agricultural cooli works was earning Rs.200/- per day. The petitioners claim about the age of the deceased is not supported by any document. However, in Ex.P2 postmortem report, the age of the deceased is mentioned as 50

years and in Ex.P3 death certificate also the same is mentioned. As there is no vehement denial or dispute about the age of the deceased by the second respondent/Insurance Company and considering the fact that no evidence was let in on the side of the second respondent/Insurance Company to contradict the evidence of P.W.1 and the contents of Ex.P2 postmortem report then the same is to be accepted and the age of the deceased is fixed as 50 years. The Tribunal fixed the income of the deceased as Rs.4500/- p.m. The petitioners/claimants claimed that the deceased was earning Rs.200/- per day as agricultural cooli. Considering the demand for agricultural labours and average pay for them, it would be appropriate to fix the monthly income of the deceased at Rs.6000/- p.m. instead of Rs.4500/- fixed by the Tribunal. The deceased was stated to be 50 years old and also self employed agricultural cooli, 25% of monthly income is to be added towards future prospects. Thus the monthly income of the deceased would be Rs.7500/-. Considering the fact that there are six dependents on the deceased, 1/4 amount is to be deducted towards his personal expenses. The Tribunal has applied the multiplier as 13, which is just and proper. Hence the loss of income calculated as follows:

$$6000 \times 25/100 (25\% \text{ future prospects}) = 1500 + 6000 \\ = \text{Rs.}7500/-$$

$$7500 \times 3/4 (1/4 \text{ deduction}) = 5625 \times 12 \times 13 = \text{Rs.}8,77,500/-$$

Loss of income is Rs.8,77,500/-

13 Further, 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 grant the compensation as under:-

Loss of estate	: Rs.40,000/-
Loss of Consortium	: Rs.15,000/-
Funeral Expenses	: Rs.15,000/-

14 Accordingly, the compensation of Rs.4,88,000/- awarded by the Tribunal is modified as follows:-

Sl No	Heads	Awarded by the Tribunal	Awarded by this Court
1.	Loss of income	4,68,000.00	8,77,500.00
2.	Funeral Expenses	5,000.00	15,000.00
3.	Loss of love and affection	10,000.00	-
4.	Loss of consortium	5,000.00	40,000.00
5.	Loss of estate	-	15,000.00
	Total	4,88,000.00	9,47,500.00

15 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 modified award of Rs.9,47,500/- with interest at the rate of 7.5% p.a. after deducting the amount that has already been deposited by them, if any, within a period of six weeks from the date of receipt of copy of this order. The first petitioner/claimant is entitled to 50% of the award amount and second to sixth petitioners/claimants are entitled to 10% each. The petitioners/claimants are directed to pay deficit court fee for the enhanced amount, if any, within a period of two weeks from the date of receipt of a copy of this order. On such deposit, the petitioners/claimants are permitted to withdraw their respective share amount with proportionate interest and costs, deposited by the second respondent/Insurance Company, by filing necessary application before the Tribunal.

Sd/-
Assistant Registrar(CS VIII)

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Sub Assistant Registrar

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To

1. The Motor Accident Claims Tribunal,
III Addl. District & Sessions Judge,
Poonamallee.
2. The Reliance General Insurance Company Ltd.,
Haddows Road, Nungambakkam, Chennai - 34.
3. The Section Officer,
V.R.Section, High Court, Madras.

+1cc to Mr.M.B.Gopalan, Advocate, S.R.No.15013
+1cc to Mr.K.Varadhakamaraj, Advocate, S.R.No.14815

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