

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 07.03.2018

Coram

The Honourable Mr. Justice S.BASKARAN

Civil Miscellaneous Appeal No.1891 of 2017

1.Madhammal

2.Madhu

... Appellants/Claimants

..vs..

1.The Correspondent,

Sri Vijay Vidhayalaya Matric Hr. Sec. School,
Pennagaram Road,
Dharmapuri District-636701.

2.The New India Assurance Company Ltd.,

Rep. by its Manager,
No.39-C, Bye-Pass Road,
Dharmapuri Town-636701.

.... Respondents/Respondents

This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the Fair and Decreetal order dated 23.02.2017 made in MCOP.No.782 of 2015 on the file of the Motor Accident Claims Tribunal/(Special District Judge), Dharmapuri.

For Appellants : Mr.A.Ilaya Perumal

For Respondents : Mr.J Chandran for R-2

JUDGMENT

Aggrieved over the quantum of compensation awarded by the Tribunal, dated 23.02.2017 made in MCOP.No.782 of 2015 on the file of the Motor Accident Claims Tribunal/(Special District Judge), Dharmapuri, 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 11.10.2015 at

about 1.00 p.m., as the deceased was riding his two wheeler bearing Registration No.TN-29-AU-8766 from Dharmapuri to his village, near Konagoundanoor in Dharmapuri to Karimangalam Road, the first respondent bus bearing Registration No.TN-29-AQ-1743, which was insured with the second respondent, came at high speed driven in a rash and negligent manner dashed against the two wheeler in which the deceased was riding causing him multiple grievous injuries all over the body. Due to the injuries suffered in the accident, subsequently, the rider of the two wheeler died in the hospital. At the time of the accident, the deceased was aged about 24 years and was earning a sum of Rs.15,000/- per month by doing tailoring work. The accident occurred only due to the negligence of the first respondent bus driver. The petitioners who are the parents of the deceased claim they were depending on the income of the deceased. Hence, the petitioners seek a sum of Rs.15,00,000/- as compensation from the respondents who are the owner and insurer of the offending vehicle.

4. Both the respondents did not come forward to contest the claim petition before the Tribunal and they remained exparte.

5. Before the Tribunal, the first petitioner examined herself as P.W.1 and one Lakshmanan was examined as P.W.2 and produced documents Ex.P1 to Ex.P14 to substantiate their claim.

6. The Tribunal on the basis of available evidence found the negligence on the part of the first respondent bus driver alone caused the accident and awarded a sum of Rs.8,52,000/- as compensation to the petitioners. Being not satisfied with the quantum of Award, the petitioners have come forward with this present appeal.

7. I have heard the learned counsel appearing for the appellant/Insurance Company and the learned counsel appearing for the petitioners/claimants and perused the materials available on record.

8. The learned counsel appearing for the petitioners/claimants contended that the Tribunal failed to provide any amount for the future prospects, even then the deceased was a young man. The Tribunal ought not to have deducted 50% of the income towards personal income of the deceased. The Tribunal also failed to fix the monthly income of the deceased properly. The amount awarded by the Tribunal under the different heads are on the lower side. The Tribunal, ought to have considered the evidence regarding the qualification of the deceased as a Tailor and fixed the income at Rs.15,000/- per month. Thus, the petitioners seek enhancement of quantum of

award by allowing this appeal.

9. Per contra, the learned counsel appearing for the second respondent/Insurance Company contends that as they failed to enter appearance before the Tribunal, they were not able to raise their objection and to let in contra evidence before the Tribunal. As such, the Tribunal considering the evidence of the petitioner's side alone awarded compensation and the same is on the higher side. The petitioners have not proved the income of the deceased properly and as such there is no need to enhance the quantum of award passed by the Tribunal. Thus, the second respondent seeks dismissal of the appeal.

10. The fact that the first respondent is the owner of the vehicle and the same was insured with the second respondent is not disputed. The petitioners stated that on 11.10.2015, as the deceased was proceeding in his two wheeler, the first respondent bus came at high speed dashed against the two wheeler resulting in the accident. The eye witness to the occurrence who deposed as P.W.2 also clearly stated that he was travelling as pillion rider in the two wheeler driven by the deceased and at about 1.00 p.m., on 11.10.2015, near Konagoundanoor in Dharmapuri to Karimangalam Road, the first respondent bus came at high speed from the opposite direction dashed against the two wheeler, in which he was travelling with the deceased causing fatal injuries to the deceased. The Police also registered a case against the driver of the first respondent owned bus as evidenced by Ex.P4 First Information Report. As the respondents remained exparte, no contra evidence was let in before the Tribunal. As such based on the oral evidence of P.W.2 who is an eye witness to the occurrence and the contents of Ex.P1 First Information Report, the Tribunal fixed the negligence of the first respondent bus driver alone caused the accident. The same is not seriously disputed by the second respondent-Insurance Company before this Court. As such, the finding of the Tribunal fixing the negligence on the part of the first respondent driver is just and proper.

11. The first petitioner who deposed as P.W.1 clearly stated that his son, the deceased Periyannan @ Shankar was aged about 24 years. As per Ex.P2 Postmortem Certificate, the age of the deceased is sated to be 24 years. The School Transfer Certificate is also produced as Ex.P10. Hence, the age of the deceased is fixed as 24 years. Thus, the multiplier to be applied is 18. The deceased was stated to be working as Tailor earning a sum of Rs.15,000/- per month. However, there is no proof for the same. In such circumstances, the Tribunal fixed the notional income at Rs.6,500/- and the same appears to be just and proper. As the deceased was aged 24 years and he was as self employed man, 40% of the income is added towards future

prospects. Thus, the income is calculated as Rs.6,500/- + 40% of the income at Rs.2,600/- = Rs.9,100/-. As the deceased was bachelor, 50% of the income is deducted towards his personal income. The contribution to the family will be Rs.9,100/- - 50 % of the income at Rs.4,550/- = Rs.4,550/-. Accordingly, the loss of dependency is calculated as follows:-

Rs.4,550/- x 12 = Rs. 54,600/- x 18 = Rs.9,82,800/-.
Thus, the notional loss of income would be Rs.9,82,800/-.

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
Transportation = Rs. 10,000.00
Funeral Expenses = Rs. 15,000.00

13. The Tribunal has awarded a sum of Rs.1,00,000/- under the head of loss of love and affection. Opposing the same, the learned counsel for the second respondent Insurance Company contended that Following the Apex Court decision reported in 2017 (2) TN MAG 609 (SC) NATIONAL INSURANCE CO. LTD., Vs. PRANAY SETHI AND OTHERS, such provision is not permissible. In the light of the above said ruling, the contention of the learned counsel appearing for the second respondent/Insurance Company is accepted. Hence, the sum of Rs.1,00,000/- awarded by the Tribunal under head of loss of love and affection is hereby set aside.

14. 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	7,02,000.00	9,82,800.00
2.	Loss of Estate	-	15,000.00
3.	Funeral Expenses	25,000.00	15,000.00
4.	Transportation	25,000.00	10,000.00
5	Loss of love and affection	1,00,000.00	-
	Total	8,52,000.00	10,22,800.00

15. In the result, the civil miscellaneous appeal is partly allowed. No costs. The amount of Rs.8,52,000/- awarded by the Tribunal dated 23.02.2017 made in MCOP.No.782 of 2015 on the

file of the Motor Accident Claims Tribunal/(Special District Judge), Dharmapuri is enhanced to Rs.10,22,800/-. The second respondent/Insurance Company is directed to deposit the entire award amount of Rs.10,22,800/- 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. The apportionment fixed by the Tribunal is confirmed. On such deposit, the petitioners/claimants are permitted to withdraw their respective share with accrued interest by filing necessary application before the Tribunal.

Sd/-
Assistant Registrar(CS VIII)

//True copy//

Sub Assistant Registrar

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To

The Special District Judge,
The Motor Accident Claims Tribunal
Dharmapuri.

Copy To

The Section Officer,
VR Section, High Court,
Madras.

+1cc to Mr.A.Ilayaperumal, Advocate SR.No.17241

+1cc to Mr.J.Chandran, Advocate SR.No.18077

C.M.A.No.1891 of 2017

PVS (CO)
GN(04/06/2018)

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