

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.3254 of 2011  
and M.P.No.1 of 2011

M/s.National Insurance Co.Ltd.,  
3<sup>rd</sup> Floor, Anuradha Complex  
Bangalore Road, New Pet  
Krishnagiri Town & Taluk ...Appellant/  
2<sup>nd</sup> respondent

Vs

1.C.Murugan

2.Kaveri

..Respondents 1 and 2

/Petitioners 1 and 2

3.P.Saroja

(3<sup>rd</sup> respondent ex parte in Lower court) .. 3<sup>rd</sup> Respondents/  
1<sup>st</sup> respondent.

Prayer:- Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Order and Decree dated 12.04.2011 passed by the Motor Accident Claims Tribunal, Principal District Court, Krishnagiri, in MCOP.No.737 of 2007.

For Appellant :: Mr.B.Raghavan

For respondents:: Mr.V.Rameshvel for R1 and R2.

R3-Remained Exparte before Tribunal.

JUDGMENT

This Civil Miscellaneous Appeal is filed by the appellant/Insurance company, challenging the Order and Decree dated 12.04.2011 passed by the Motor Accident Claims Tribunal, Principal District Court, Krishnagiri, in MCOP.No.737 of 2007.

2. For the sake of convenience, the parties are referred to as per their litigative status before the Tribunal. It is a fatal case. The case of the Petitioners is that on 19.11.2006 at about 3.30 p.m., while the deceased was proceeding from R.C.Church, Gandhi Road, in Krishnagiri Town, while going near Dharmaraja Tank Autostand, the 1<sup>st</sup> respondent Auto came at high speed and dashed against the back side of the deceased Chenniappan, which forced the petitioner to fell down and he

suffered multiple injuries all over his body. Subsequently, the father of the Petitioners/claimants viz., Chenniappan/deceased died in the hospital. The accident occurred only due to negligence of the 1<sup>st</sup> respondent auto driver. The deceased was aged 53 years and by working as a Shoe maker was earning Rs.3000/- per month. Originally claim application was filed by C.Murugan/1<sup>st</sup> Petitioner and later, 2<sup>nd</sup> petitioner C.Kaveri was added as a party and they are son and daughter of the deceased and they claim that the deceased was supporting them. The Petitioners sought for compensation of Rs.10,00,000/- from the respondents, who are the owner and insurer of the offending vehicle.

3. On the other hand, by filing counter, the 2<sup>nd</sup> respondent/Insurance company contends that the accident does not occur in the manner alleged by the Petitioners. The auto driver was proceeding slowly but the deceased without noticing the oncoming vehicle suddenly crossed the road without caring for the oncoming vehicle and the 1<sup>st</sup> respondent auto driver applied brake, but the deceased dashed against the auto resulting in the accident. It is only due to the negligence of the deceased, the accident occurred. The claim of the Petitioners is exorbitant. The claim of the Petitioners about the age, avocation of the deceased is not true. The respondent sought for dismissal of the Petition.

4. Before the tribunal, on the side of the Petitioners, P.W.1 and P.W.2 were examined and produced documents Ex.A.1 to Ex.A.4. On the side of the respondents, 1<sup>st</sup> respondent remained exparte and on behalf of 2<sup>nd</sup> respondent, neither oral nor documentary evidence was let in.

5. On careful analysis of the evidence available before it, the Tribunal passed an award for a sum of Rs.2,72,000 payable by the respondents 1 and 2 jointly and severally to the Petitioners/claimants. Aggrieved over the said finding of the Tribunal, the 2<sup>nd</sup> respondent/Insurance company has come forward with the present appeal.

6. The learned counsel for the appellant/2<sup>nd</sup> respondent/Insurance company contends that the Tribunal erred in fixing the age of the deceased as 53 years while the claimants who are the son and daughter of the deceased are stated to be 35 and 45 years old respectively. The Tribunal fixed the monthly income at Rs.3000/- without any evidence. The quantum of the award passed by the Tribunal is on the higher side. Hence, the 2<sup>nd</sup> respondent/Insurance company sought for setting aside the award passed by the Tribunal by entertaining the appeal.

7. Per contra, the learned counsel for the Petitioners/claimants contends that the accident occurred only due to careless driving of the Auto driver and as such, the Tribunal correctly fixed negligence on first respondent's vehicle driver and passed just and fair award which needs no interference. Thus, the Petitioners/claimants sought for dismissal of the appeal.

8. The 1<sup>st</sup> Petitioner who is the son of the deceased stated that the accident took place on 19.11.2006 resulting in his father's death. However, he is not the eyewitness to the occurrence. The person who witnessed the accident deposed as P.W.2 and clearly stated on 19.11.2006 at about 3.30 pm., while the deceased was proceeding from RC Church towards Old Pet area, at that time, the Auto bearing Reg.No.TN-29-C-3921 came from R.C. Church side at high speed and dashed from behind on the deceased Chenniappan and as a result of the same, the deceased fell down, suffered injuries in his head, right leg and his right thigh bone was fractured. Subsequently, the said Chenniappan died at Hospital on the next day. Thus, P.W.2 has clearly stated about the high speed in which the 1<sup>st</sup> respondent Auto was driven which resulted in the accident. The Police also registered Ex.P.1-FIR against the driver of the 1<sup>st</sup> respondent vehicle only. There is no contra evidence let in on the side of respondents to contradict the Petitioners' version. As such, the Tribunal has correctly concluded on the basis of P.W.2 evidence as well as Ex.P.1-FIR that the negligence of the 1<sup>st</sup> respondent Auto driver alone caused the accident.

9. The deceased was stated to be working as Shoe maker, earning Rs.3000/- per month. Even though no independent evidence was let in, considering P.W.1 evidence as well as the nature of job done by the deceased, it will be appropriate to fix the notional income at Rs.3000/- per month.

10. The 1<sup>st</sup> petitioner who is the son of the deceased, while deposing as P.W.1 stated that the 2<sup>nd</sup> petitioner is his sister and their father deceased Chenniappan was aged 53 years. In Ex.A.2-Post Mortem Certificate, the age of the deceased is stated as 53 years. In the absence of any other age proof produced, the Tribunal has fixed the age of deceased as 53 years on the basis of Ex.P.2-Post Mortem Report and applied multiplier 11. The same is disputed by the appellant/2<sup>nd</sup> respondent/insurance company.

11. It is pointed out by the learned counsel for the appellant/2<sup>nd</sup> respondent/Insurance company that in the petition itself, the age of the Petitioners who are the son and daughter of the deceased is stated as 35 and 45 years and as such contends that the age of deceased could not be 53 years. The

said contention is appropriate and the same is to be accepted. As such, the age of the deceased is fixed as 60 years. For the said age group, the correct multiplier to be applied is '9'. Considering the number of dependants, 1/3<sup>rd</sup> has to be deducted towards personal expenses of the deceased. Thus, the loss of dependency is calculated as under:-

Rs.3000/- - 1/3<sup>rd</sup> (1000)

Rs.2000 x 12 x 9 = Rs.2,16,000/-

12. Further, in view of the judgment of the Supreme Court reported in 2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and Others], it will be appropriate to provide compensation of Rs.15,000/- towards "loss of estate" and Rs.15,000/- towards "funeral expenses" instead of Rs.3000/- provided by the Tribunal. Accordingly, this court is inclined to modify the award granted by the Tribunal as follows:-

| Sl.No | Heads              | Amount awarded by the Tribunal | Amount awarded by this Court |
|-------|--------------------|--------------------------------|------------------------------|
| 1.    | Loss of dependency | Rs.2,64,000                    | Rs.2,16,000/-                |
| 2.    | Transportation     | Rs. 5,000/-                    | Rs. 5,000/-                  |
| 3.    | Funeral expenses   | Rs. 3,000/-                    | Rs. 15,000/-                 |
| 4.    | Loss of estate     | --                             | Rs. 15,000/-                 |
|       | Total              | Rs.2,72,000/-                  | Rs.2,51,000/-                |

13. In the result,  
(i) This Civil Miscellaneous Appeal is Partly Allowed;  
(ii) The award amount is reduced to Rs.2,51,000/- from Rs.2,72,000/-;  
(iii) The award amount will carry interest at the rate of 7.5% p.a. from the date of petition till the date of realisation;  
(iv) This court by order dated 09.11.2011 directed the appellant/Insurance company to deposit Rs.2,00,000/-. Hence, the appellant is directed to deposit the modified award amount along with proportionate interest and cost, less the amount already deposited, within a period of six weeks from the date of receipt of a copy of this order.  
(v) The Claimants 1 and 2 are entitled to the award amount in equal share. The Tribunal shall pass necessary orders for disbursement of the award amount. No costs. Consequently, connected MP is closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1.The Principal District Judge,  
The Motor Accident Claims Tribunal, Krishnagiri.

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

+1cc to Mr.N.Vijayaraghavan, Advocate SR.NO.38027

+1cc to Mr.V.Rameshvel, Advocate SR.NO.37450

SV(CO)

sm:28.9.2018

C.M.A.No.3254 of 2011



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