

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.01.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.656 of 2015

1.Uma Mageshwari
2.Shenbagavalli
3.Minor Karthikeyan
4.Minor Subramani
5.Paunammal (dead) ...Appellants/Petitioners

Death of Paunammal recorded and
cause title accepted vide order of
court dated 26.02.2015 made in M.P.No.1/15
in CMA SR No.46035 of 2013

Vs

1.T.D.Kumar
2.The Divisional Manager
National Insurance Company Limited
No.19, Officers Line
Vellore ...Respondents/Respondents

Prayer:Civil Miscellaneous Appeal filed against the judgment and
decree dated 04.02.2013 made in M.C.O.P.No.378 of 2011 on the
file of Motor Accident Claims Tribunal, Principal Sub Judge,
Thiruvannamalai.

For appellants : : M/s.M.Malar

for Respondents : : Mr.S.Arun Kumar for R2.

J U D G M E N T

This Civil Miscellaneous Appeal is filed by the
appellants/claimants, challenging the judgment and decree dated
04.02.2013 made in M.C.O.P.No.378 of 2011 on the file of Motor
Accident Claims Tribunal, Principal Sub Judge, Thiruvannamalai.

2. For the sake of convenience, the parties are referred to
as per their litigative status before the Tribunal. The case of
the petitioners is that on 12.04.2011 around 6.30 p.m. when the

deceased was going in a two wheeler bearing Reg.No. TN 22 BS 1283 from Chetpet, near the Post office at Nedungunam Village, at Chetpet-Vandavasi Road, the 1st respondent Tanker Lorry bearing Reg.No.49-V-4646 came from opposite direction at high speed and dashed against the two wheeler of the deceased resulting in the deceased suffering serious injuries and died on the way to hospital. The Petitioners, in their claim petition averred that the rash and negligent driving of the driver of the 1st respondent vehicle was the cause of the accident. The deceased was aged 45 years and earned Rs.10,000/- by working as driver. It is further averred that due to death of said Ramachandran, the Petitioners who are wife, children and mother of the deceased have lost the sole bread winner of the family and are suffering for their livelihood, due to loss of income. Thus, the Petitioner sought for compensation of a sum of Rs.30,00,000/-.

3. On the other hand, opposing the petition, by filing counter, the 2nd respondent/Insurance company contended that the petitioner has to prove the manner of the accident and also the negligence of the 1st respondent vehicle driver alone is the cause for the accident. The petitioners also have to prove the avocation, income and age of the deceased and they are dependant on the income of the deceased. The driver of the two wheeler was not having valid driving licence and the accident occurred only due to his negligence and as such the respondents are not liable to pay any compensation. Hence, the 2nd respondent sought for dismissal of the petition.

4. Before the tribunal, to prove their claim, the petitioners examined P.Ws.1 to 3 and also produced documents Exs.P.1 to P.12. On the side of the 2nd respondent, R.W.1 was examined and Ex.R.1 was marked. On the basis of the available materials, the Tribunal found that the 1st respondent vehicle driver alone caused the accident and awarded a sum of Rs.4,69,104/- as compensation to the petitioners. Being not satisfied with the quantum of the award, the legal heirs of the deceased Ramachandran, the petitioners/claimants have come forward with the appeal seeking enhancement of the award amount. During the pendency of the present Civil Miscellaneous Appeal, 5th petitioner/mother of the deceased reported dead and it is recorded vide order of this court dated 26.02.2015.

5. The learned counsel for the appellants/Petitioners contended that the oral evidence of P.W.1 and P.W.2 and the documents produced on the side of the petitioners was not properly appreciated by the Tribunal. At the time of the accident, the deceased was working as driver and earning Rs.10,000/- per month, but the Tribunal has fixed only Rs.3,500/- as income per month without any basis. The sum

awarded under other heads are very nominal. The deduction made towards personal expenses of the deceased is not proper. The Tribunal ought to have awarded 30% towards future prospects. Hence, the learned counsel seeks to entertain the appeal and to enhance the award amount as prayed for by them.

6. Per contra, the learned counsel for the 2nd respondent/Insurance Company contended that on the basis of the available evidence, the Tribunal has awarded the compensation, which itself is on the higher side and therefore, the appeal for enhancement may not be entertained.

7. The Petitioners claimed that the deceased Ramachandran and his friend Nagarajan went in the two wheeler bearing Reg.No.TN-22-BS-1283 and at that time, the 1st respondent lorry came at high speed and dashed against them resulting in the accident. As per the case registered by Chetpet Police Station in Ex.P.1-FIR, it is clear that the lorry driver alone caused the accident and a case has been registered against him, in this regard. There is nothing on record to show that the accident occurred due to the negligent driving of the deceased Ramachandran. As per the evidence of P.W.2 and the averments made in Ex.P.1-FIR, it is clearly proved that the negligent driving of the 1st respondent lorry driver alone caused the accident. As such, the finding of the Tribunal that the accident occurred only due to the 1st respondent Lorry driver's negligence is just and proper and the same is confirmed.

8. According to the Appellants/Petitioners, the deceased Ramachandran was aged 45 years at the time of the accident. As per Ex.P.3-Post Mortem Report and Ex.P.4-Death Certificate, the age of the deceased is 45. Thus, the Tribunal fixed the age of the deceased as 45. The Petitioners produced Ex.P.6-Driving Licence of the deceased and contended that the deceased by working as driver earned Rs.10,000/-. However, it is apparent from Ex.P.6 that the deceased was having only two wheeler driving licence. Thus the claim of the Petitioners that the deceased worked as driver and earned Rs.10,000/- per month cannot be accepted. The Tribunal, on the basis of the averments placed before it, fixed the monthly income of the deceased at Rs.3500/-. However, considering the prevailing situation, it will be appropriate to fix the notional income of deceased at Rs.7,500/-. Considering the age of the deceased was 45 years, it will be appropriate to add 25% towards future prospects. Taking into consideration the number of dependants of the deceased, it will be appropriate to deduct 1/4th towards personal expenses of the deceased. Further, the correct multiplier to be applied is 14. Thus, the loss of dependency to the Petitioners is calculated as under:-

Rs.7500 + 25% future prospects (1875) = Rs.9375/-

Rs.9375 - 1/4th deduction (2343) = Rs.7032/-

rounded off to Rs.7030/-

Rs.7030/- x 12 x 14 = 11,81,040/-

Thus, a sum of Rs.11,81,040/- is awarded under the head "Loss of dependency". Further, following the decision of Apex Court reported in 2017 (2) TN MAC 609 (SC) [National Insurance Co.Ltd., Vs Pranay Sethi and Others], this court is also inclined to award the following amounts as compensation under conventional heads:-

Funeral Expenses = Rs. 15,000/-

Loss of Estate = Rs. 15,000/-

Loss of consortium = Rs. 40,000/-

Add: Loss of dependency= Rs. 11,81,040/-

Total = Rs. 12,51,040/-.

Thus, the modified enhanced compensation granted by this Court is Rs.12,51,040/-. The Petitioners/claimants 1 to 4 are each entitled to 25% of the award amount.

9. In the result, the Civil Miscellaneous Appeal is Partly allowed in the terms as shown below:-

(1) The award granted by the Tribunal is enhanced to Rs. 12,51,040/- from Rs.4,69,104/-. The Petitioners are each entitled to 25% of the award amount.

(2) The award amount will carry interest at the rate of 7.5% per annum from the date of petition till the date of realisation.

(3) The 2nd respondent/Insurance Company is directed to deposit the enhanced award of Rs.12,51,040/-, less the amount, if any already deposited, along with proportionate accrued interest and costs, within a period of six weeks from the date of receipt of a copy of this order.

(4) The Appellants 1 and 2 are permitted to withdraw the award amount along with accrued interest as per the apportionment ordered above, by following the due procedure before the Tribunal. Insofar as the share of Appellants 3 and 4 is concerned, their share shall be deposited in fixed deposit in Nationalised Bank till they attain majority and the interest accrued therein shall be withdrawn by 1st petitioner/mother for their maintenance.

(5) The petitioners are also directed to pay the required additional court fee for the enhanced award amount, at the time of receiving copy of the decree. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

nvsri
To

1.The Motor Accidents Claims Tribunal,
Principal Sub Judge, Thiruvannamalai.

2.The Section Officer,
V.R.Section, High Court, Madras. [2 Copies]

+1cc to Mr.S.Arunkumar, Advocate Sr.3823

+1cc to Ms.M.Malar, Advocate Sr.3850

C.M.A.No.656 of 2015

mr[co]
srg 06/07/2018

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