

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 23.02.2018

Coram

The Honourable Mr. Justice S.BASKARAN

Civil Miscellaneous Appeal Nos.1923 and 2277 of 2017

C.M.A.No.1923 of 2017

1.Saraswathi

2.Minor Pooja

3.Minor Nivetha

4.Selvi

(2nd and 3rd petitioners are rep.
their next friend and guardian
and mother the first appellant)

.... Appellants/claimants

...vs..

1.Saravanan

2.A.Prabhakar

3.The Divisional Manager,

New India Assurance Company,

Officer's Line,

Vellore, Vellore District.

.... Respondents/Respondents

(Respondents 1 and 2 remained exparte
in the Tribunal) and hence given up

C.M.A.No.2277 of 2017

1.Santhi

2.Vinothkumar

3.Vijayalakshmi

... Appellants/Petitioner

Vs.

1.Saravanan

2.A.Prabhakar

3.The Divisional Manager,

New India Assurance Company,

Officer's Line,

Vellore, Vellore District.

.... Respondents/Respondents

(Respondents 1 and 2 remained exparte in the Tribunal)

PRAYER IN C.M.A.NO.1923 OF 2017:

This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the Fair and Decreetal order dated 26.10.2016 made in MCOP.No.203 of 2016 on the file of the Motor Accident Claims Tribunal/(II Additional District and Sessions Judge, Vellore @ Ranipet.

PRAYER IN C.M.A.NO.2227 OF 2017:

This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the Fair and Decreetal order dated 26.10.2016 made in MCOP.No.282 of 2016 on the file of the Motor Accident Claims Tribunal/(II Additional District and Sessions Judge, Vellore @ Ranipet.

For Appellants : Mr.E.Kannadasan
(in both appeals)

For Respondents : Mr.J.Chandran for R-3
(in both appeals)

COMMON JUDGMENT

Being not satisfied with the quantum of compensation awarded by the Tribunal dated 26.10.2016 made in MCOP.No.203 of 2016 on the file of the Motor Accident Claims Tribunal/(II Additional District and Sessions Judge, Vellore @ Ranipet, the petitioners/claimants filed this present appeal seeking enhancement of award amount.

Being not satisfied with the quantum of compensation awarded by the Tribunal dated 26.10.2016 made in MCOP.No.282 of 2016 on the file of the Motor Accident Claims Tribunal/(II Additional District and Sessions Judge, Vellore @ Ranipet, the petitioners/claimants filed this present appeal seeking enhancement of 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 26.09.2013 at about 4.40.P.M., when the deceased Karthikeyan(M.C.O.P.No.282 of 2016) and Suresh(M.C.O.P.No.203 of 2016) were proceeding towards Ranipet, in a two wheeler bearing Registration No.TN-21-F-2559, near Palar bridge, Ranipet, a Tata Sumo Car bearing Registration No.TN-21-J-3494, came at high speed, driven in a rash and negligent manner dashed on the back side of the two wheeler, in

which the deceased were travelling. Due to the impact both the deceased Suresh and Karthikeyan got multiple fatal injuries and died subsequently. The accident occurred due to the rash and negligent driving of the driver of the Tata Sumo Car belonging to the respondents 1 and 2 and insured with the third respondent-Insurance Company.

4. The petitioners in M.C.O.P.No.203 of 2016, who are the wife, children and mother of the deceased Suresh stated that at the time of the accident, the deceased Suresh was aged about 28 years and working as sales man in a Private Company in Arcot, earning a sum of Rs.16,500/- per month. The petitioners were depending on the income of the deceased, who is the sole bread winner of the family. Hence, the petitioners seek a sum of Rs.25,00,000/- as compensation from the respondents who are the owner and insurer of the offending vehicle.

5. The petitioners in M.C.O.P.No.282 of 2016, who are the mother, brother and sister of the deceased Karthikeyan stated that at the time of the accident, the deceased Karthikeyan was aged about 30 years and working as sales man in a Private Company at Arcot, earning a sum of Rs.16,500/- per month. The petitioners were depending on the income of the deceased, who is the sole bread winner of the family. Due to the death of Karthikeyan, the petitioners suffered total loss of income. Hence, the petitioners seek a sum of Rs.25,00,000/- as compensation from the respondents who are the owner and insurer of the offending vehicle.

6. On the other hand, the third respondent Insurance company opposed the claim petition by filing detailed common counter disputing the claim of the petitioners about the manner in which the accident occurred. The claim of the petitioners that the first respondent vehicle driver alone caused the accident due to his negligence is denied. The compensation claimed by the petitioners is exorbitant and arbitrary. The accident occurred only due to the negligence of the deceased and as such the third respondent is not liable to pay any compensation. The claim made under various heads are highly excessive. The age, avocation and income of the deceased is disputed. The first respondent has not co-operated with this respondent and has not furnished any details in respect of the alleged accident and further to produced the documents, namely, the driving licence of the alleged driver, the registration certificate and insurance policy. Thus, the third respondent seeks dismissal of the petitions.

7. Before the Tribunal, both the cases were taken up for joint trial and on the side of the petitioners P.W.1 to P.W.4 were examined and produced documents Ex.P1 to Ex.P14 and Ex.X1

to substantiate their claim. On the side of the respondents, neither oral nor documentary evidence was produced.

8. The Tribunal, on the basis of available materials on record, found the first and second respondent/owner lorry driver negligence alone caused the accident and as the owners and insurer of the offending vehicle viz., the respondents 1 to 3 are liable to pay compensation and awarded a sum of Rs.8,66,000/- to the petitioners in M.C.O.P.No.203 of 2016 (CMA.No.1923 of 2017) and to pay a sum of Rs.9,14,000/- as compensation to the petitioners in M.C.O.P.No.282 of 2016 (CMA.No.282 of 2016). Being not satisfied with the quantum of compensation awarded by the Tribunal, the petitioners/claimants in both the cases have come forward with the present appeals seeking enhancement of award amount

9. I have heard the learned counsel appearing for the appellants and the learned counsel appearing for the third respondent and perused the materials available on record.

10. The learned counsel appearing for the petitioners contended that the award passed by the Tribunal is very low and the income of the deceased has been wrongly fixed at Rs.6,000/- without considering the materials available on record. The Tribunal has rejected the claim of the petitioners without any reasoning. The Tribunal also deducted higher amount towards personal expenses of the deceased. The reasoning of the Tribunal for awarding lesser amount as compensation is not proper. Hence, the petitioners seek enhancement of the award amount, by entertaining the appeals.

11. Per contra, the learned counsel appearing for the third respondent-Insurance Company contends that the petitioners have not proved the actual income of the deceased and as such the Tribunal has rightly fixed the notional income of the deceased at Rs.6,000/- per month. The Tribunal has awarded higher amount as compensation without any basis and the same does not require any modification. Hence, the third respondent-Insurance Company seeks dismissal of the appeals.

12. The deceased, who were employed in the same company, were proceeding in the two wheeler towards Ranipet on the occurrence date. The petitioners states that when the deceased Suresh was driving the two wheeler bearing Registration No.TN-21-AF-2559 and the other deceased person Karthikeyan was travelling as pillion rider, at that time, the Tata Sumo Car bearing Registration No.TN-21-J-3494 came at high speed and dashed against the two wheeler in which the deceased were travelling and in the impact, the deceased Suresh suffered

severe head injuries and died subsequently and the deceased Karthikeyan also suffered head injuries and died on the same day. The police registered Ex.P1 First Information Report against the driver of the car only. Further, after completing the investigation, the police filed charge sheet Ex.P3 against the driver of the said Tata Sumo car driver alone. It is evident from the said documents that the negligence of the Tata Sumo car driver alone caused the accident. As per the evidence of P.W.2, who is an eye witness to the occurrence due to the rash and negligent driving of the driver of the Tata Sum Car only the accident occurred. The respondents has not chosen to let in oral or documentary evidence to contradict the version of P.W.3 or the contents of Ex.P1 First Information report and Ex.P3 Charge Sheet. Nothing is elicited from P.W.3 to discredit his evidence. As such, on the basis of eye witness account of P.W.3 Babu as well as the contents of Ex.P1 First Information report and Ex.P3 Charge Sheet, it is clearly established that the accident occurred due to the rash and negligent driving of the vehicle by the respondents 1 and 2 car driver only. Hence, the finding of the Tribunal in that regard is just and proper.

13. M.C.O.P.No.203 of 2016 (C.M.A.No.1923 of 2017):-

The petitioners, who are the wife, children and mother of the deceased stated that the deceased Suresh was aged about 28 years and he was working as Sales man in Anu Agency, Arcot, earning a sum of Rs.16,500/- per month. The petitioners produced Ex.P4 Death Certificate and Ex.P5 Legal Heir Certificate of deceased Suresh. It is stated in the said certificate that the petitioners are his legal heirs. As per Ex.P13 the Staff Attendance Register, the deceased Suresh was found to be employed as Sales Man in Anu Trading Company. The proprietor of the said company, who deposed as P.W.4 clearly stated the same and he also produced Registration Certificate of Anu Trading Company as Ex.P10 and stated the salary of the deceased Suresh was Rs.16,500/-. The Xerox copy of the salary register is produced as Ex.P11. It is admitted by P.W.4 that in Ex.P14 Salary Register, no deduction was found in respect of Gratuity and ESI. There is nothing on record to show what was the actual salary amount disbursed to the deceased. Further, in Ex.P14 neither the Factory Inspector Signature nor that of Auditor is found. As such, on the basis of P.W.4 evidence and the document produced by him, it will be appropriate to fix the monthly income of the deceased at Rs.8,000/- instead of Rs.6,000/- as fixed by the Tribunal. The deceased was stated to be 28 years old as per Ex.P2 Postmortem Certificate. Hence, the correct multiplier to be applied is 17. Thus, the loss of income of the deceased Suresh is calculated is as follows:-

(1) Rs.8,000/-, + 40% of the amount of Rs.3,200/- towards future prospects of the deceased = Rs.11,200/-.

(2) Rs.11,200/-, deducted 1/4th amount of Rs.2,800/- towards personal expenses of the deceased = Rs.8,400/- will be monthly income.

(3) Rs.8,400/ x 12 = 1,00,800/- x 17 = Rs.17,13,600/- as total loss income.

13.1 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 Consortium	=	Rs.40,000.00
Loss of Estate	=	Rs.15,000.00
Funeral Expenses	=	Rs.15,000.00
Transportation	=	Rs.10,000.00

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	8,16,000.00	17,13,600.00
2.	Loss of Estate	-	15,000.00
3.	Loss of Consortium	10,000.00	40,000.00
4.	Loss of love and affection	15,000.00	-
5.	Funeral Expenses	20,000.00	15,000.00
6.	Transportation	5,000.00	10,000.00
	Total	8,66,000.00	17,93,000.00

14. M.C.O.P.No.282 of 2016 (C.M.A.No.2277 of 2017):-

The petitioners, who are the mother, brother and sister of the deceased stated that the deceased Karthikeyan was aged about 30 years and he was working as Sales man in Anu Agency, Arcot, earning a sum of Rs.16,500/- per month. The petitioners produced Ex.P7 Postmortem Certificate and Ex.P8 Legal Heir Certificate of deceased Karthikeyan. It is stated in the said

certificate that the petitioners are his legal heirs. As per Ex.P13 the Staff Attendance Register, the deceased Karthikeyan was found to be employed as sales man in Anu Trading Company. The proprietor of the said company who deposed as P.W.4 clearly stated so and he also produced Registration Certificate of Anu Trading Company as Ex.P10. He stated the salary of the deceased Karthikeyan was Rs.16,500/-. The Xerox copy of the salary register is produced as Ex.P11. It is admitted by P.W.4 that in Ex.P14 Salary Register, no deduction was found in respect of Gratuity and ESI. There is nothing on record to show what was the actual salary amount disbursed to the deceased. Further, in Ex.P14 neither the Factory Inspector Signature nor that of Auditor is found. As such, on the basis of P.W.4 evidence and the document produced by him, it will be appropriate to fix the monthly income of the deceased at Rs.8,000/- instead of Rs.6,000/- as fixed by the Tribunal. The deceased was stated to be 30 years old as per Ex.P7 Postmortem Certificate. Hence, the correct multiplier to be applied is 17. Thus, the loss of income of the deceased Karthikeyan is calculated is as follows:-

(1) Rs.8,000/-, + 40% of the amount of Rs.3,200/- towards future prospects of the deceased = Rs.11,200/-.

(2) Rs.11,200/-, deducted 50% of the amount of Rs.5,600/- towards personal expenses of the deceased = Rs.5,600/- will be monthly income.

(3) Rs.5,600/ x 12 = 67,200- x 17 = Rs.11,42,400/- as total loss income.

14.1. 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
Transportation	=	Rs.10,000.00

Accordingly, the compensation warded by the Tribunal is modified as follows:-

S1 No	Heads	Amount awarded by the Tribunal	Awarded by this Court
1.	Pecuniary Loss of income	8,64,000.00	11,42,400.00
2.	Loss of Estate	-	15,000.00
4.	Loss of love and affection	30,000.00	-
5.	Funeral Expenses	20,000.00	15,000.00
6.	Transportation	-	10,000.00
	Total	9,14,000.00	11,82,400.00

15. C.M.A.No.1923 of 2017:-

In the result, the civil miscellaneous appeal is partly allowed. No costs. The amount of Rs.8,66,000/- awarded by the Tribunal dated 26.10.2016 made in MCOP.No.203 of 2016 on the file of the Motor Accident Claims Tribunal/(II Additional District and Sessions Judge, Vellore @ Ranipet is enhanced to Rs.17,93,000/- as compensation. The third respondent/Insurance Company is directed to deposit the entire enhanced award amount of Rs.17,93,000/- 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. On such deposit, the first petitioner/first claimant is entitled to 50% of the award amount and the petitioners 2 and 3/claimants 2 and 3 are each entitled to 20% of the award amount and the 4th petitioner/4th claimant is entitled to 10% of the award amount. The petitioners 1 and 4/claimants 1 and 4 are permitted to withdraw their respective share with accrued interest by filing necessary application before the Tribunal. The petitioners 2 and 3/ Claimants 2 and 3 are minor, their share amount shall be deposited in any one of the Nationalized Bank till they attain majority. The first petitioner/first claimant is permitted to the withdraw the accrued interest once in three months. The petitioners are directed to pay the deficit Court fee within a period of 10 days from the date of receipt of a copy of this order.

16. C.M.A.No.2277 of 2017:-

In the result, the civil miscellaneous appeal is partly allowed. No costs. The amount of Rs.9,14,000/- awarded by the Tribunal dated 26.10.2016 made in MCOP.No.282 of 2016 on the file of the Motor Accident Claims Tribunal/(II Additional

District and Sessions Judge, Vellore @ Ranipet, is enhanced to Rs.11,82,400/-. The third respondent/Insurance Company is directed to deposit the entire enhanced award amount of Rs.11,82,400/- with interest at the rate of 7.5% p.a. from the date of filing the 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. On such deposit, the first petitioner/first claimant is entitled to 50% of the award amount and the petitioners 2 and 3/claimants 2 and 3 are each entitled to 25% of the award amount. The petitioners/claimants are permitted to withdraw their respective share with accrued interest by filing necessary application before the Tribunal.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

rrg

To

The II Additional District and Sessions Judge,
The Motor Accident Claims Tribunal,
Vellore @ Ranipet.

+2ccs to Mr.J.Chandran, Advocate, S.R.No.14371 & 14374

+2ccs to Mr.E.Kannadasan, Advocate, S.R.No.14088 & 14089

C.M.A.Nos.1923 & 2277 of 2017

SSV(CO)

CS/11/04/18

सत्यमेव जयते

WEB COPY