

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.1943 of 2017

1.P.Nagarathinam
2.Sasikala
3.Balaji
4.Sumathi
5.Prabakaran

...Appellants/Petitioners

vs

1.K.Lathipa
2.Divisional Manager
The National Insurance Company Limited
No.19, Officers Line
Thiruvannamalai

..Respondents

Civil Miscellaneous Appeal filed against the judgment and decree dated 03.11.2010 made in M.A.C.T.O.P.No.34 of 2006 on the file of Motor Accident Claims Tribunal, District Judge, Thiruvannamalai.

For appellants : : M/s.M.Malar
for Respondents
for R1 : : Notice dispensed with
for R2 : : Mr.S.Arunkumar.

J U D G M E N T

This Civil Miscellaneous Appeal is filed by the appellants/claimants, challenging the judgment and decree dated 03.11.2010 made in M.A.C.T.O.P.No.34 of 2006 on the file of Motor Accident Claims Tribunal, District 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 27.11.2005 at about 02.30 p.m., when the deceased Babu was coming after closing his lathepattarai, in Activa TN-07-AC-7794, at Nehru Statue, Kathiappa Junction, Chennai, the driver of the first respondent drove the Maruthi omni van bearing Reg.No.TN-07-Q-9320 in a rash and negligent manner and dashed against the deceased. Due to the accident, the deceased sustained grievous injuries on his head and despite treatment, he died on 01.12.2005. The petitioners by stating that the accident was solely due to the rash and negligent

driving of the 1st respondent, claimed compensation of Rs.10,00,000/- from the respondents 1 and 2.

3. The 2nd respondent by filing counter averred that the age, occupation, income and the nature of injuries sustained by the deceased Babu at the time of accident are subject to strict proof of the same. The deceased did not possess a valid driving license to drive the Aactiva Motor Cycle. The 2nd respondent's liability is subject to the validity of the driving license of the driver, R.C.Permit and insurance coverage of the first respondent. It is also stated that the compensation claimed is highly excessive and sought to dismiss the petition.

4. Before the Tribunal, the petitioners examined P.W.1 to P.W.3 and marked documents Ex.P.1 to P.18. On the side of the 2nd respondent, R.W.1 was examined and Ex.R.1 Investigation Report has been marked. The Tribunal, based on the materials available on record, found that the accident has taken place due to the rash and negligent driving of the first respondent Maruthi Omni driver. Further, the Tribunal held that the respondents 1 and 2 shall pay the compensation.

5. As per Ex.P.6 Post Mortem Certificate, the deceased was aged 62 years and the Tribunal, by holding that there is no contra evidence to the same, adopted the said age of 62 years and adopted 5 multiplier. By taking into consideration the evidence of P.W.3 and Exhibits P.11 to P.18, the Tribunal fixed the monthly income of the deceased at Rs.4500/- and also deducted Rs.1500/- towards his personal expenses, taken Rs.3000/- as contribution to his family. The Tribunal calculated the loss of earnings to the Petitioners as under:-

Rs.3000 x 12 x 5 = Rs.1,80,000/-.

Further, The Tribunal, granted the following amounts as compensation to the petitioners/claimants:-

1) Loss or earning	Rs.3000x 12 x 5	= Rs.1,80,000/-
2) Loss of consortium		= Rs. 10,000/-
3) Loss of Love and affection	Rs.10,000 x 4	= Rs. 40,000/-
4) Funeral expenses		= Rs. 2,000/-
5) Transport Charges		= Rs. 500/-
6) Damage to cloth and articles		= Rs. 500/-
7) Medical Bills		= Rs. 32,000/-
Total		= Rs.2,65,000/-

Being not satisfied with the award amount, the Petitioners have come forward with the present appeal.

6. The learned counsel for the appellants/petitioners submitted that at the time of accident, the deceased was running Lathe work in the name and style of Bright Engineering Industries and was earning Rs.10,000/- per month, but the

Tribunal has fixed only a sum of Rs.4,500/- per month. The dependants of the deceased are 5 in numbers and therefore, the Tribunal ought to have deducted only 1/4th of the salary towards personal expenses of the deceased. The Tribunal failed to award any amount towards future prospects. There was no sum allotted towards loss of consortium. The award of Rs.2000/- under the head funeral expenses is meagre. Thus, the learned counsel sought for enhancement of the award amount.

7. On the other hand, the learned counsel appearing for the 2nd respondent submitted that the amount awarded by the Tribunal itself is excessive. The deceased was aged 62 years and in the absence of any document put forth by the appellants/petitioners to prove that he was running a lathe pattarai and the income claimed, the income fixed by the Tribunal is justifiable. The learned counsel further submitted that the award of the Tribunal needs no interference and the appeal may be dismissed.

8. Heard the learned counsel appearing for both sides and perused the materials available on record.

9. Since, no ground is raised by the learned counsel for the appellants/petitioners with regard to the issue of liability, the finding of the Tribunal that the accident has taken place due to the rash and negligent driving of the 1st respondent Maruthi Omni driver is confirmed.

10. The learned counsel for the appellants advanced his arguments in respect of quantum of compensation. It is pointed out that the salary of the deceased fixed at a sum of Rs.4,500/- per month is meagre and the tribunal failed to take into consideration that the deceased was running Lathe work. Taking into consideration the fact that the Engineering Industry is a flourishing field and the documents produced by the Petitioners particularly Ex.P.11-Registration copy of the Small Scale Industries, this court is of the view that Rs.6500/- can be fixed as notional income of the deceased. Further, by following the Ruling of the Apex Court reported in 2009 (2) TN MAC 1 (SC) [Sarla Verma V. Delhi Transport Corporation], the correct multiplier to be applied is 7. Considering the number of dependants who are 5 in numbers, this court deems it fit to deduct 1/3rd of the income towards personal expenses of the deceased. Accordingly, the total loss of income to the dependants is calculated as under:-

Rs.6500 - 1/3rd deduction (Rs.2166)

6500 - 2166 = Rs.4330

Rs.4330 x 12 x 7 = Rs.3,63,720/-

Thus a sum of Rs.3,63,720/- is awarded as Loss of income to the dependants by this court. Further by following the Apex Court

Ruling 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 sums as award under conventional heads, by setting aside the award granted by the Tribunal, under other heads.

Loss of Estate	= Rs.15,000/-
Funeral Expenses	= Rs.15,000/-
Transportation	= Rs.10,000/-
Loss of Consortium	= Rs.40,000/-
Add:Loss of income to dependants	= Rs.3,63,720/-

Total = Rs.4,43,720/-.

11. Accordingly, the compensation awarded by the Tribunal stands enhanced to Rs.4,43,720/- by this court. In the result, the Civil Miscellaneous Appeal is Partly Allowed.

- (i) The award of the Tribunal is enhanced to Rs.4,43,720/- from Rs.2,65,000/-;
- (ii) The award amount will carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.
- (iii) In view of the above enhanced award amount, the 2nd respondent/Insurance Company is directed to deposit the award amount with proportionate interest and costs, less the amount, if any, already deposited, within a period of six weeks from the date of receipt of a copy of this order.
- (iv) On such deposit, the appellants 1 to 5 /claimants are permitted to withdraw the amount awarded as above by filing proper application before the Tribunal, less the amount if any already withdrawn, with accrued interest. The Tribunal shall pass appropriate directions for the disbursal of the amount as stated supra on the filing of such application.
- (v) Since the appellants/petitioners have filed the CMA with the delay of 954 days, interest is waived off for the default period. No cost.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

nvsri

To

1.The Motor Accidents Claims Tribunal,
District Judge, Thiruvannamalai.

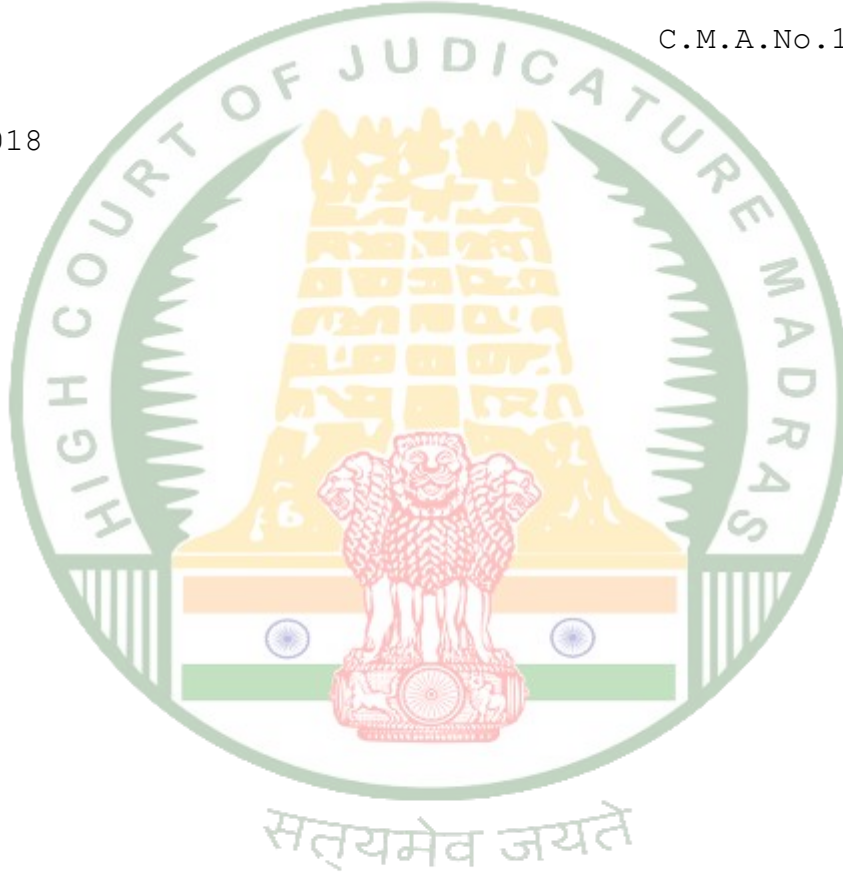
2.The Section Officer,
V.R.Section, High Court, Madras.

+1 cc to M/s.M.Malar Advocate sr 8918

+1 cc to Mr.S.Arunkumar Advocate sr 9076

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