

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.299 of 2018

1.K.Marimuthu
2.K.Manickam
3.K.Rajendran
4.S.Parvathy
5.R.Selvi

..Appellants/Petitioners

Versus

1.M.V.Kumaresan

2.Reliance General Insurance Co.Limited,
RAIS Tower, 2nd Floor, Plot No.2054,
2nd Avenue, Anna Nagar, Chennai-40.

..Respondents/Respondents

Civil Miscellaneous Appeal filed against the judgment and decree dated 07.02.2017 made in M.C.O.P.No.2885 of 2014 on the file of the Motor Accident Claims Tribunal, Chief Small Causes Court, Chennai.

For Appellants : Mr.K.Varadha Kamaraj

For Respondents : Mr.S.Arunkumar for R2
R1 - Ex-parte

J U D G M E N T

The appellants/claimants have filed this appeal against the judgment and decree dated 07.02.2017 made in M.C.O.P.No.2885 of 2014 on the file of the Motor Accident Claims Tribunal, Chief Small Causes Court, Chennai.

2. By consent of both parties, this appeal is taken up for final disposal at the admission stage itself.

3. For the sake of convenience, the parties are referred to hereunder according to their litigative status.

4. The case of the appellants/claimants is that on 17.12.2013 at 20.30 hours, while the deceased was walking in GNT

Road near Puzhal Cycle Shop Bus Stop and about to cross the road, the Van bearing Registration No.TN-18-L-2229 came at high speed from Puzhal towards Madhavaram Roundana and dashed against the deceased, resulting in her instantaneous death. The accident occurred due to rash and negligent driving of the 1st respondent, Van driver only. At the time of the accident, the deceased was aged about 69 years and by working as coolie, was earning a sum of Rs.500/- per day. The appellants/claimants who are the children of the deceased seeks a sum of Rs.20,00,000/- as compensation from the respondents.

5. On the other hand, opposing the claim of the petition by filing counter, the 2nd respondent/Insurance Company contends that the manner of accident as alleged by the appellants/claimants is not correct. The negligence of the 1st respondent van driver is not responsible for the cause of the accident. The deceased being a old lady crossed the road without noticing the oncoming vehicle and only due to her negligence the accident occurred. The appellants/claimants are dependants of the deceased. The claim of the petitioner is exorbitant. Hence, the 2nd respondent/Insurance Company sought for dismissal of the appeal.

6. Before the Tribunal, on the side of the appellants/claimants two witnesses were examined as P.W.1 and P.W.2 and seven documents were marked as Exs.P.1 to P.7 to prove their claim. On the side of the respondents neither oral nor documentary evidence was let in. The Tribunal, on the basis of available materials found that the 1st respondent, vehicle driver alone was responsible for the accident and awarded a sum of Rs.2,60,000/- as compensation to the appellants/claimants. Being not satisfied with the award amount, the appellants/claimants have come forward with the present appeal.

7. The learned counsel for the appellants/claimants contended that the Tribunal fixed the notional income of the deceased at Rs.4,000/- per month, ignoring the claim of the appellants/claimants that the deceased was earning Rs.500 per day. The Tribunal awarded less amount under different heads, without considering the available evidence on record. Thus, the appellants/claimants seek enhancement of the award amount by entertaining the appeal.

8. Per contra, the learned counsel for the 2nd respondent/Insurance Company contended that the appellants/claimants are not dependants of the deceased and considering the age of the appellants/claimants they are not entitled to claim that they were depending on the income earned by the deceased, who is their mother. The Tribunal has awarded higher amount as compensation and no ground is made out by the

appellants/claimants to enhance the same. Thus, the 2nd respondent/Insurance Company sought for dismissal of the appeal.

9. The fact that the deceased is the mother of the appellants/claimants and she died in the road accident is admitted. The appellants/claimants stated that the accident occurred due to a rash and negligent driving of the 1st respondent, van driver. The eye-witness to the occurrence, who deposed as P.W.2 clearly stated that the accident occurred around 08.30p.m., on 17.12.2013 and one old aged lady, while crossing the GNT Road, a Van bearing Registration No.TN-16-L-2229, came at high speed and dashed against the said lady causing grievous injuries all over her body. Thus, P.W.2 clearly stated the rash and negligent driving of the van driver alone caused the accident. There is no contra evidence let in by the respondents to disprove the version of P.W.2 - Eye-witness. Nothing was extracted during the cross-examination of P.W.2 to disbelieve or to discredit his evidence. Further the police have registered Ex.P.1 - F.I.R against the driver of the 1st respondent vehicle only. The contents of Ex.P.6 - Post Mortem certificate clearly shows that the deceased died due to the head injury suffered by her. It is therefore, clear from P.W.2's evidence and the contents of Ex.P.1 - F.I.R that the negligence of 1st respondent vehicle driver alone caused the accident.

10. In the claim petition, the age of the deceased is stated to be 69 years at the time of the accident. However, in Ex.P.6 - Post Mortem certificate, the age of the deceased was stated as 70 years. Hence, the age of the deceased is fixed as 70 years. The deceased was stated to be earning Rs.500/- per day by working as a coolie. However, there is no proof for the same. The Tribunal, fixed the notional income of the deceased at Rs.4,000/- per month. Considering the normal earning of a coolie these days it will be appropriate to fix the notional income of the deceased at Rs.6,500/- per month. The deceased being 70 years, the correct multiplier is to be applied is 5. Since there are five dependants, 1/4th of the income is to be deducted towards personal expenses of the deceased. With thus, the loss of income of the deceased is calculated as follows:-

Monthly income = Rs.6,500

1/4th deduction towards personal expenses (Rs.1625)

Rs.6500 - 1/4 (Rs.1625) = Rs.4875/-

By applying multiplier of 5,

Rs.4875 x 12 x 5 = Rs.2,92,500/-

Thus, a sum of Rs.2,92,500/- is granted as compensation under the head "Loss of Income".

11. In respect of awarding compensation under conventional heads, as per the Constitution Bench judgment of the Supreme Court reported in 2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and Others], towards loss of estate 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

		Rs.30,000.00

12. Accordingly, the compensation awarded by the Tribunal stands modified as follows:

Sl. No.	Head	Amount granted by the Tribunal	Amount awarded by this Court
1	Loss of Income	Rs.1,80,000.00	Rs.2,92,500.00
2	Loss of love and affection to petitioners 1 to 5 at Rs.1000/- each	Rs. 50,000.00	-
3	Transport Charges	Rs. 5,000.00	-
4	Funeral Expenses	Rs. 25,000.00	Rs. 15,000.00
5	Loss of Estate	-	Rs. 15,000.00
6	Total	Rs.2,60,000.00	Rs.3,22,500.00

13. In the result, the Civil Miscellaneous Appeal is Partly Allowed as follows:-

- (i) The award of the Tribunal is enhanced to Rs.3,22,500/- from Rs.2,60,000/-
- (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, less the amount, if any, already deposited, along with accrued interest within a period of six weeks from the date of receipt of a copy of this order.
- (iv) On such deposit, the appellants/claimants are permitted to withdraw the amount, awarded as above, by filing proper application before the Tribunal. The Tribunal shall pass appropriate directions for the disbursal of the amount as stated supra on the filing of such application.
- (v) Since there is enhancement in the award amount each

appellants/claimants are entitled to 20% of the award amount.

(vi) Appellants 1 to 5 shall pay necessary court fee before receiving the copy of this judgment for the enhanced compensation amount.

(vii) There will be no order as to cost in this appeal.

Sd/-

Assistant Registrar(CS II)

//True copy//

Sub Assistant Registrar

bri

To

1.The Chief Judge,
The Motor Accident Claims Tribunal,
Chief Small Causes Court,
Chennai.

2.The Section Officer,
V.R.Section, High Court, Madras.(2 Copies)

+1cc to Mr.S.Arun Kumar, Advocate SR.No.13863

+1cc to Mr.K.varadha Kamaraj, Advocate SR.No.13879

C.M.A.No.299 of 2018

BR(CO)
GN(04/05/2018)

सत्यमेव जयते

WEB COPY