

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.316 of 2018
and CMP.No.3264 of 2018

M/s.New India Assurance Co.Ltd
80, Arcot Road
Porur
Chennai-600 116

..Appellant/2nd respondent.

Vs.

1.J.Milton Kumar
2.D.Greeta Padmini

..Respondents 1 and 2
/Petitioners

3.M.Baskaran

..Respondent.No.3
/1st respondent.

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 17.12.2012 passed in M.C.O.P.No.1270 of 2006 on the file of Motor Accidents Claims Tribunal, I Additional District Court, Salem.

For appellants : : Mr.R.Sivakumar

for Respondents : : Mr.T.M.Karthikeyan for R1 and R2.
R3-Exprte

J U D G M E N T

This Civil Miscellaneous Appeal is filed by the appellant/Insurance company, challenging the judgment and decree dated 17.12.2012 passed in M.C.O.P.No.1270 of 2006 on the file of Motor Accidents Claims Tribunal, I Additional District Court, Salem.

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 Petitioners who are the parents of the deceased

Shalini stated that on 11.06.2006 at about 2.30 p.m., as their deceased daughter was getting down from the bus at Raman Nagar bus stop, the lorry bearing Reg.No.TN-30-K-7913 belonging to the 1st respondent and insured with the 2nd respondent came at high speed, dashed against her, resulting in the death of the petitioners daughter on the spot itself. The accident occurred due to rash and negligent driving of the 1st respondent Lorry driver only. The deceased was aged 23 years and she was studying final year MCA course. According to the Petitioner, if she is alive, she would have definitely had a bright future as she was a brilliant student and sought for a sum of Rs.25,00,000/- as compensation from the respondents who are the owner and insurer of the vehicle.

3. On the other hand, opposing the claim of the Petitioners, by filing counter, the 2nd respondent-Insurance company disputed the allegations stated, in the petition. The claim of the Petitioners about the age and education of the deceased was denied. The 1st respondent Lorry driver is not responsible for the accident. The accident occurred only due to carelessness of the deceased who suddenly got down from the bus without noticing the lorry coming behind her. The claim of the Petitioners is exorbitant. Hence, the 2nd respondent sought for dismissal of the Petition.

4. Before the Tribunal, the Petitioners examined P.W.1 and P.W.2 and produced documents Ex.P.1 to Ex.P.14 to prove their claim; while the 1st respondent remained *exparte*, on the side of the 2nd respondent, neither oral nor documentary evidence was let in. On careful analysis of the evidence available on record, the Tribunal found that the negligence of the 1st respondent Lorry Driver alone caused the accident and passed award for a sum of Rs.10,76,000/- payable by the respondents to the Petitioner.

5. Being aggrieved over the said finding of the Tribunal, the insurer/2nd respondent has come forward with the present appeal as appellant.

6. The learned counsel for the appellant/2nd respondent/insurance company contends that the accident does not occur due to negligence of the 1st respondent Lorry driver and as such, the respondents are not liable to pay any compensation. The Tribunal erred in fixing the income of the deceased who was a final year student at Rs.12,000/- per month. The Tribunal adopted wrong multiplier and also deducted only 1/3rd towards personal expenses of the deceased instead of 50% deduction. The award passed by the Tribunal is excessive and exorbitant. Thus, the appellant/2nd respondent sought for setting aside the award

passed by the Tribunal by entertaining the appeal.

7. Per contra, the learned counsel for the Petitioners/claimants contended that the aged parents lost their only daughter who was in her verge of getting a placement in one of the leading IT companies. As such, the Tribunal has correctly passed a just and fair award which needs no interference. Thus the Petitioners/claimants sought for dismissal of the appeal.

8. The eyewitness to the occurrence who deposed as P.W.2 clearly stated that on 11.06.2006 at about 2.30 p.m., while he was near the Mettur Raman Nagar Bus stop, four people got down from the bus and as the said bus left the bus stop, the Respondent Lorry came at high speed and dashed against the persons who got down from the bus. In the said impact, the deceased woman as well as a young boy and another aged person suffered injury and the deceased Shalini died on the spot. The Police also registered Ex.P.1-FIR against the driver of the 1st respondent Lorry only. After completion of investigation, the Police laid Ex.P.4 Charge sheet against the driver of the 1st respondent lorry bearing Reg.No.TN-30-K-7913. It is evident from Ex.P.2 and Ex.P.3 MVI reports that there is no mechanical defect in the vehicles involved in the accident. As such, it is clearly established by the Petitioners that the accident occurred due to rash and negligent driving of the 1st respondent Lorry driver only. On the other hand, the respondent has not let in any oral or documentary evidence to rebut the version given by the Petitioner. Even the driver of the 1st respondent Lorry was not examined before the Tribunal. As such, the conclusion of the Tribunal that the negligence of the 1st respondent lorry driver alone caused the accident is just and proper and the same needs no interference.

9. Admittedly, the deceased was doing Final Year course in a Private Engineering College. The Petitioners produced Identity Card of the deceased as Ex.P.12 and her SSLC certificate as Ex.P.6 wherein, the Date of Birth of the deceased is stated as 04.01.1983. The copy of the Post Mortem certificate is also produced as Ex.P.5. It is evident from the same that the deceased was born on 04.01.1983 and as such, she was aged 23 years at the time of the accident.

10. The Petitioners produced mark statement of the deceased as Ex.P.10 series. The certificates of merit as Ex.P.11 series. The Provisional Certificate as Ex.P.8 and the Bonafide Certificate of the deceased as Ex.P.9. It is clear from the same that the deceased was a bright student as claimed by the Petitioners. The Tribunal also pointed out on the basis of Ex.P.11 series that the deceased was a leading Sports Woman in

Salem District. The Tribunal on the basis of Ruling reported in "2010 (1) TAC 664 A.P." [Andhra Pradesh High Court Division Bench Judgment] fixed the notional income of the deceased who was a final year MCA student at Rs.12,000/-. This the 2nd respondent/ insurer disputes and contends that it is on the higher side.

11. As such, considering the circumstances, it will be appropriate to fix the notional income of the deceased at Rs.9000/-. The deceased being a Spinster, 50% of the income is to be deducted towards her personal expenses and she is aged 23 years, the multiplier to be applied is 18 and not multiplier 11 as fixed by the Tribunal. Thus the loss of dependency is calculated as follows:-

Monthly salary - 9000/-

Deduction 50%(4500)

9000 - 4500 = 4500

4500 x 12 x 18 = 9,72,000

Thus, a sum of Rs.9,72,000/- is awarded under the head "loss of dependency".

12. The learned counsel for the Petitioners/claimants contends that due to sudden demise of the deceased Shalini, the petitioners 1 and 2 lost love and affection of their only daughter. He relied upon the Ruling of the Kerala High Court reported in 2017 SCC Ker 23174 [1.Valsamma and others Vs. V.A.Baiju, 2.Rev.FR.Joseph Vattakalam, and 3. The National Insurance Co.Ltd., - MACA.Nos.711 and 921 of 2010] and contended that the sum of Rs.10,000/- awarded by the Tribunal under the head "Loss of Love and affection" to petitioners 1 and 2 may be enhanced.

13. Considering the above submission, it will be appropriate to award a sum of Rs.40,000/- [Rs.20,000/- each] under the head "Loss of love and affection" to Petitioners 1 and 2. Further, the sum of Rs.5000/- awarded under the head "Transport expenses" is also just and reasonable and hence, the same is confirmed. Following the Apex court decision reported in 2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and Others], the compensation towards conventional heads, is awarded as under:-

Funeral expenses	-15,000/-
Loss of estate	-15,000/-
Add:Loss of love and affection	-40,000/-
Add: Loss of dependency	9,72,000/-
Add:Transport charges	5,000/-
Total =	Rs.10,47,000/-

Accordingly, the compensation awarded by the Tribunal stands modified and reduced from Rs.10,76,000/- to Rs.10,47,000/- and the same is as shown below.

Sl.N o.	Heads	Amount awarded by the tribunal	Amount awarded by this Court
1	Loss of dependency	Rs. 10,56,000	Rs. 9,72,000
2.	Loss of love and affection	Rs. 10,000	Rs. 40,000
3.	Transportation	Rs. 5,000	Rs. 5,000
4.	Funeral expenses	Rs. 5,000	Rs. 15,000
5	Loss of Estate	---	Rs. 15,000
	Total	Rs. 10,76,000	Rs. 10,47,000

15. In the result,
 (i) This Civil Miscellaneous Appeal is Partly Allowed;
 (ii) The award amount is reduced to Rs.10,47,000/- from Rs.10,76,000/-.
 (iii) The award amount will carry interest at the rate of 7.5% from the date of petition till the date of realisation;
 (iv) The appellant/ Insurance Company is directed to deposit the entire award amount along with proportionate interest and cost, as ordered by this court, less the amount, if any already deposited.
 (v) On being such deposit the Petitioners 1 and 2/Respondents 1 and 2 are entitled to the award amount on equal apportionment:- The Petitioners 1 and 2/Respondents 1 and 2 are entitled to withdraw their respective shares of the award amount along with accrued interest. The Tribunal shall pass necessary orders for disbursement of the award amount by following the appropriate procedure.

(vi) No costs. Consequently, connected MP is closed.

Sd/--

Assistant Registrar(CS V)

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Sub Assistant Registrar

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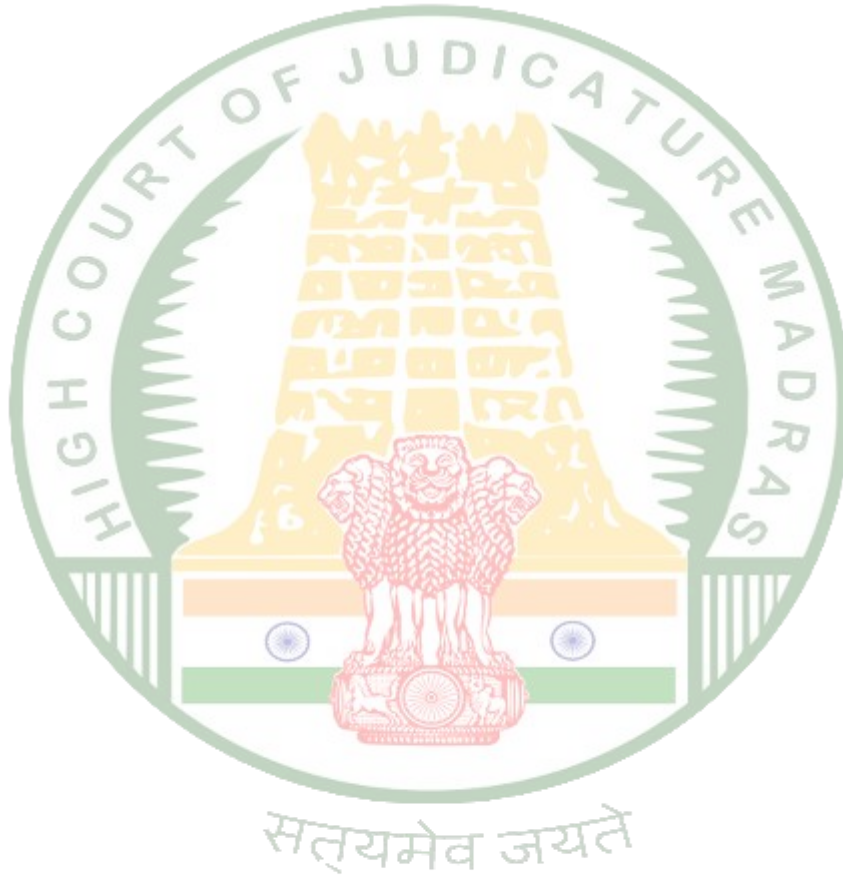
1.The Motor Accidents Claims Tribunal,
 I Additional District Judge, Salem.

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

+1cc to M/s.T.M.Karthikeyan, Advocate Sr.No.35266
+1cc to M/s.R.Sivakumar, Advocate Sr.No.35187

NMI (CO)
sm:27.6.2018

C.M.A.No.316 of 2018



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