

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.1879 of 2014

- 1.P.Esther Pramila
- 2.P.Gowri (Minor)
- 3.P.Dhiviyapriya (Minor)
- 4.P.Hemalatha (Minor)

Minor appellants 2 to 4 are
represented by their mother
P.Esther Pramila 1st appellant
herein as their Natural guardian
and next friend.

5.V.Manjula ...Appellants/Petitioners

vs

1.D.Lingam

2.ICICI Lombard General Insurance
Company Ltd.,
1st floor, Arihant Plaza
No.84/85, Waltax Road
Chennai-3
now having their office at
No.140, Nungambakkam High Road, Chennai-34
Respondents

...

Civil Miscellaneous Appeals filed against the order and
decree dated 13.02.2014 made in M.C.O.P.No.1031 of 2011 on the
file of Motor Accident Claims Tribunal, II Additional District
Judge, Thiruvallur, at Poonamallee.

For appellants : : Mr.P.Natarajan

for Respondents: : Ms.R.Sreevidhya for R2.

R1-Set exparte before the Tribunal below.

J U D G M E N T

This Civil Miscellaneous Appeal is filed by the
appellants/claimants, challenging the decree and judgment dated
13.02.2014 made in M.C.O.P.No.1031 of 2011 on the file of Motor
Accident Claims Tribunal, II Additional District Judge Court,
Thiruvallur, at Poonamallee.

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 case of the Petitioners is that on 01.11.2011 at about 23.50 hours, while the deceased Parthasarathy was proceeding in his two wheeler bearing Reg.No.TN-22-AX-4680 near Perungalathur Signal Point, the 1st respondent van bearing Reg.No.TN-20-BF-7544 came from north to south in high speed, dashed against the two wheeler causing fatal injuries to the deceased, resulting in his death. The accident occurred only due to the rash and negligent driving by the 1st respondent van driver. At the time of the accident, the deceased was aged 37 years and was employed as Senior Flight Attendant earning Rs.14,399.35 as salary per month. The Petitioners are the wife, children and mother of the deceased. Since the Petitioners lost the only bread winner of the family, they suffered loss of income. As such, the Petitioners seek a sum of Rs.30,00,000/- as compensation from the respondents who are the owner and insurer of the offending vehicle.

3. On the other hand, opposing the claim of the Petitioners, by filing counter, the 2nd respondent/Insurance company contends that the accident did not occur in the manner alleged by the Petitioners. Further, the insurer of the two wheeler is not added as a party and hence the petition is bad for non-joinder of necessary parties. The accident occurred only due to negligence of the deceased. Further even assuming the 1st respondent van driver caused the accident, contributory negligence should be fixed on the part of the deceased. The claim of the Petitioners about the age, avocation and income of the deceased is disputed. The Petitioners' claim is exorbitant. As the accident occurred due to the negligence of the deceased, the Petitioners are not entitled to seek compensation. Thus the 2nd respondent-Insurance company sought for dismissal of the claim petition.

4. Before the Tribunal, the Petitioners examined P.W.1 to P.W.3, produced documents Ex.P.1 to Ex.P.29 to prove their claim. 1st respondent remained exparte. On the 2nd respondent's side, neither oral nor documentary evidence is produced. On the basis of available evidence on record, the Tribunal found the negligence of the 1st respondent driver alone caused the accident and passed award for a sum of Rs.20,97,106/-, payable by the respondents jointly and severally. Being not satisfied with the quantum of the award, the Petitioners have come forward with the present appeal.

5. The learned counsel for the appellants/Petitioners contends that the Tribunal failed to appreciate the oral evidence and documentary evidence let in by the Petitioners properly. The fact of the deceased was having a permanent job earning a monthly salary of Rs.14,400/- was not taken into

consideration by the Tribunal. The Tribunal ought to have provided for future prospects, but failed to do so. The Tribunal failed to consider the fact of number of dependants properly. The amount awarded under different heads is very nominal. Thus, the counsel for the appellants/Petitioners seeks enhancement of the award amount by entertaining the appeal.

6. Per contra, the learned counsel for the 2nd respondent/Insurance company contends that the accident occurred due to the negligence of the deceased only and as such, the Petitioners are not entitled to seek any compensation from the respondents. The amount awarded by the Tribunal itself is on the higher side. No ground is made out for enhancing the quantum of award. Hence, the 2nd respondent counsel seeks dismissal of the appeal.

7. The 1st petitioner, who deposed as P.W.1 has stated about the accident occurred on 01.11.2011. The eyewitness to the occurrence who deposed as P.W.2 stated clearly that as the deceased was waiting in front of the Akash Bhavan Hotel on the GST Road signal, the driver of the van bearing Reg.No.TN-2-BF-7144 dashed against the deceased from behind. The Police have registered Ex.P.1-FIR against the driver of the 1st respondent van only. Subsequently, the Police altered the provisions into Section 304(A) IPC as evidenced by Ex.P.4-Section Alteration Report. Ex.P.2-Rough sketch of the accident spot coupled with Ex.P.3 Death summary and Ex.P.4 Section alteration report shows that the accident occurred due to the rash and negligent driver of the 1st respondent vehicle. Further nothing is elicited in the cross examination of P.W.2 to discredit his version of the accident. As such, it is clear from the available evidence of P.W.2 that negligence on the part of the 1st respondent van driver alone caused the accident. Thus, the finding of the Tribunal in respect of negligence is confirmed.

8. The wife of the deceased who is the 1st petitioner deposed as P.W.1. She stated that her husband/deceased G.Parthasarathy was employed as Senior Flight Attendant in M/s.Oberoi Flight Services, Chennai. The petitioners produced the Appointment Letter-Ex.P.12; I.D.Card-Ex.P.14; Pay Slip-Ex.P.15; Bank Statement-Ex.P.16. The staff from M/s.Oberoi Flight Services Ltd., viz., P.W.3 Saravanan was examined. On the basis of documents produced by the Petitioners and on the basis of evidence let in on the side of the Petitioners, the Tribunal fixed the monthly salary of the deceased at Rs.14,400/-. The deceased was stated to be 37 years old and his date of birth is given as 12.12.1974. As such, following the Ruling of the Apex Court reported in 2009 (2) TN MAC 1 (SC) in Smt.Sarla Verma and Others Vs. Delhi Transport Corporation and another, the correct multiplier to be applied herein is '15'.

Further as the deceased was a permanent employee in a private concern and aged 37 years, by applying the decision of Constitution Bench Judgment of the Supreme Court reported in 2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and Others], 40% of the established income has to be added towards Future Prospects, but the Tribunal failed to provide for the same. Taking into consideration the number of dependants of the deceased, it will be appropriate to deduct 1/4th of the income towards personal expenses of the deceased. Further, towards income tax deduction, 10% of the income to be deducted. Hence, the loss of dependency due to the death of the deceased is computed as follows:-

14,400 + 40% Future Prospects (5760)

14,400 + 5760 = Rs.20,160/-.

20,160/- - 1/4th deduction towards personal expenses of the deceased(5040)

20,160 - 5040 = 15,120/-

15,120/- - 10% deduction towards income tax.(1512)

15,120 - 1512 =13,608/-

13,608 x 12 x 15 = Rs.24,49,440/-.

Thus, a sum of Rs.24,49,440/- is awarded under the head "Loss of dependency to the family of the deceased."

9. Compensation towards Conventional Heads:- Following the decision of 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], the following amounts are awarded under conventional heads:-

Loss of consortium -Rs.40,000/-

Loss of estate -Rs.15,000/-

Funeral expenses -Rs.15,000/-

The compensation amount awarded by the Tribunal under other heads are set aside. Accordingly, the modified compensation payable to the appellants/petitioners is as under:-

Sl.N o.	Heads	Amount awarded by the Tribunal	Amount awarded by this Court
1.	Loss of dependency	Rs.19,90,656/-	Rs.24,49,440/-
2.	Loss of consortium	Rs. 50,000/-	Rs. 40,000/-
3.	Loss of love and affection	Rs. 35,000/-	---
4.	Funeral expenses	Rs. 15,250/-	Rs. 15,000/-
5.	Transport expenses	Rs. 6,200/-	---
6.	Loss of estate	----	Rs. 15,000/-
	Total	Rs.20,97,106/-	Rs.25,19,440/-

10. In the result,

(i) The Civil Miscellaneous Appeal is Allowed;

(ii) The appellants/Petitioners are entitled to award

amount of Rs.25,19,440/- which carry interest at the rate of 7.5% per annum from the date of petition till the date of realisation;

(iii) The apportionment of the award amount is as under:-

1st petitioner - 30%
2nd, 3rd and 4th petitioners - 20% each
5th petitioner - 10%

(iv) The 2nd respondent/Insurance company is directed to deposit the award amount of Rs.25,19,440/- (Rupees Twenty Five Lakhs nineteen thousand four hundred forty only) within a period of six weeks from the date of receipt of a copy of this order, less the amount deposited, if any. On such deposit, the appellants 1 and 5 are permitted to withdraw their share, by filing necessary application before the Tribunal. Insofar as share of the minor 2nd, 3rd and 4th appellants are concerned, the same shall be invested in a Fixed Deposit in a Nationalised Bank till they attain majority. The accrued interest in the minors share shall be withdrawn by the mother/1st appellant once in three months. No costs.

Sd/-
Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

nvsri

To.

1. The Motor Accident Claims tribunal,
II Additional District Judge Court,
Thiruvallur, at Poonamallee.
2. The Section Officer,
V.R. Section, High Court, Madras.(2 copies)

+1cc to Mr.P.NATARAJAN, Advocate, S.R.No.21644

C.M.A.No.1879 of 2014

NA (CO)
TR(28/06/2018)

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