

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 02.03.2018

Coram

The Honourable Mr. Justice S.BASKARAN

Civil Miscellaneous Appeal No.2117 of 2017

1.L.Krishnaveni
2.L.Sekar
3.L.Somasundaram

... Appellants /Claimants

..vs..

1.Kaniyalal Tarachand
2.The Oriental Insurance Company Ltd,

... Respondents/Respondents

This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the Fair and Decreetal order dated 28.02.2005 made in MCOP.No.132 of 2001 on the file of the Motor Accident Claims Tribunal/Sub Court, Ponneri.

For Appellants : Mrs.R.Manoranjitham

For Respondents : Mr.J.Chandran for R-2.

JUDGMENT

Being not satisfied with the quantum of compensation awarded by the Tribunal, dated 28.02.2005 made in MCOP.No.132 of 2001 on the file of the Motor Accident Claims Tribunal/Sub Court, Ponneri, the present appeal has been filed by the petitioners/claimants to enhance the 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 28.01.2001 at about 20.30 hours, while the deceased was standing near Tondiarpet bus Depo, in Tondiarpet High Road, the two wheeler bearing Registration No.TN-04-8268 came at high speed from north to south and dashed against the deceased resulting in his instant death. The accident occurred due to the rash and negligent driving of the two wheeler by its rider. At the time

of accident, the deceased Loganathan was aged about 52 years and he was carrying on business as Hair Dresser earning a sum of Rs.5,000/- per month. The petitioners who are the wife and sons of the deceased are depending on the income of the deceased. Hence, they seek a sum of Rs.6,00,000/- as compensation from the respondent who are the owner and insurer of the offending vehicle.

4. On the other hand, opposing the claim petition, the second respondent Insurance company filed a counter contending that the accident did not occur in the manner as claimed by the petitioners. The age, avocation and monthly income of the deceased as stated in the petition is denied. The petitioners are to prove the rider of the two wheeler possessed valid driving licence and there was a policy coverage for the two wheeler at the time of the accident. The amount claimed by the petitioners is exorbitant. Thus, the second respondent seeks dismissal of the petition.

5. Before the Tribunal, the first petitioner examined herself as P.W.1 and eye witness to the occurrence one Venkatesan was examined as P.W.2 and produced documents Ex.P1 to Ex.P9 to substantiate their claim. On the side of the respondents, neither oral nor documentary evidence was let in.

6. The Tribunal, after considering the pleadings, oral and documentary evidence, concluded that the accident occurred only due to the rash and negligent driving of the driver of the offending vehicle owned by the first respondent and insured with the second respondent, directed the respondents jointly and severally to pay a sum of Rs.1,68,632/- as compensation. Being not satisfied with the quantum of compensation awarded by the Tribunal, the petitioners/claimants filed this present appeal seeking enhancement of Award amount.

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

8. The learned counsel appearing for the petitioners/claimants contends that the Tribunal failed to appreciate the evidence of P.W.1 properly and as such fixed the monthly income of the deceased very low. While the petitioners claims that the deceased was earning a sum of Rs.5,000/- to Rs.7,000/- per month, the Tribunal wrongly fixed the income at Rs.1500/- per month and awarded less amount as compensation. The amount awarded by the Tribunal under the different heads also is very low. Hence, the petitioners seek to entertain the appeal and to enhance the quantum of award passed by the Tribunal.

9. Per contra, the learned counsel appearing for the second respondent Insurance company contends that the claim of the petitioners is unjustified and the Tribunal, without properly appreciating the evidence, erroneously awarded compensation without any basis. The second respondent/Insurance Company further contends that the petitioners are not proved the monthly income of the deceased properly and as such the claim for enhancement is unwarranted. Thus, the second respondent seek dismissal of the present appeal.

10. According to the petitioners, while the deceased Loganathan was standing near the Tondiarpet bus Depo in Tondiarpet High Road, a two wheeler bearing Registration No.TN-04-8268 came at high speed from north to south dashed against the deceased causing him fatal injuries resulting in his death subsequently. The eye witness to the occurrence P.W.2 Vekatesan has categorically stated that the accident occurred only due to the rash and negligent driving of the two wheeler rider. The Police also registered a case against the rider of the two wheeler as per.Ex.P1. The Police after completing the investigation laid the charge sheet Ex.P2 against the rider of the two wheeler only. It is therefore clear from the eye witness account of P.W.2 as well as the documents Ex.P1 First Information Report and Ex.P2 Charge Sheet that the negligence of the first respondent two wheeler rider alone caused the accident.

11.The respondents have not let in any evidence to contradict the claim of the petitioners. Further nothing was elicited during the cross examination of P.W.2 to disbelieve his version of the accident. As such, it is apparent from the evidence let in by the petitioners that the accident occurred only due to the negligence of the first respondent two wheeler rider. The finding of the Tribunal on the liability aspect is not challenged seriously by the respondent Insurance Company before this Court. Thus, the conclusion arrived at by the Tribunal that the rider of the first respondent vehicle alone caused the accident is confirmed.

12. The petitioners/claimants have filed this appeal only on the issue of quantum of award passed by the Tribunal. The petitioners state that the deceased was aged about 52 years and he was a proprietor of Jayaram Hair Dresser in Seniamman Kovil Street, Chennai-84. As proprietor of the same, the deceased was earning a sum of Rs.5,000/- per month as hair dresser. The wife of the deceased who deposed as P.W.1 stated that her husband earned a sum of Rs.5,000/- to Rs.7,000/- per month. The petitioners also produced Ex.P5, wherein it is stated that the deceased Lognathan was running business in the shop for which, the monthly rent of Rs.500/-was paid, but the Tribunal

considering the evidence on record concluded that the deceased would have earned only Rs.50/- per day. The petitioners contend that as hair dresser, the deceased was getting much higher income per day, but the Tribunal wrongly fixed Rs.50/- only as earning of the deceased per day. Considering the normal rates collected by the hair dresser, this Court is of the view that the deceased could have earned a sum of Rs.5,000/- per month. To prove the age of the deceased which is stated to be 52 years in the postmortem certificate as Ex.P8 and death certificate as Ex.P7. In Ex.P8 Postmortem Certificate, the age of the deceased is stated to be 55 years. Hence, the age of the deceased is fixed as 55. Thus the multiplier is to be applied is 11. As there are three dependents, a sum of Rs.2,000/- is deducted towards his personal expenses. As such, the loss of dependency is calculated as follows:-

- (1) $\text{Rs.}3,000/- \times 12 = \text{Rs.}36,000/- \times 11 = \text{Rs.}3,96,000/-$.
- (2) $\text{Rs.}3,96,000/- - 1/3^{\text{rd}}$ amount of $\text{Rs.}1,32,000/-$, the balance amount would be $\text{Rs.}2,64,000/-$ as loss of income to the petitioners.

13. 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
Funeral Expenses	=	Rs. 15,000.00
Loss of Estate	=	Rs. 15,000.00

14. 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	1,48,632.00	2,64,000.00
2.	Loss of Estate	-	15,000.00
4.	Loss of love and affection	10,000.00	-
5.	Funeral Expenses	10,000.00	15,000.00
6.	Loss of consortium	-	40,000.00
	Total	1,68,632.00	3,34,000.00

Accordingly, the compensation awarded by the Tribunal is modified and the same is enhanced to Rs.3,34,000/-.

15. In this case, the learned counsel appearing for the second respondent Insurance Company contended that the petitioner after filing the appeal, kept quiet for 10 years

without taking any steps and as such they are not entitled for interest for that period. Accepting the same, the learned counsel appearing for the petitioners stated that she will not claim interest up to 31.12.2008. Thus, the petitioners consented to forego interest for the period of 9 years and filed memo to that effect. The learned counsel appearing for the second respondent Insurance Company also agreed to the same and took notice of the said memo. Thus, the petitioners are entitled for interest only from 01.01.2009 till the date of deposit of the entire award amount at 7.5 p.m., .

16. In the result, the Civil Miscellaneous Appeal is partly allowed. No costs. The amount of Rs.1,68,632/- awarded by the Tribunal dated 28.02.2005 made in MCOP.No.132 of 2001 on the file of the Motor Accident Claims Tribunal/Sub Court, Ponneri, is enhanced to Rs.3,34,000/-. The Second respondent/Insurance Company is directed to deposit the entire enhanced award amount of Rs.3,34,000/- with interest at the rate of 7.5% p.a. from 01.01.2009 to till the date of deposit the entire 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 40% of the award amount and the petitioners 2 and 3/claimants 2 and 3 are each entitled to 30% 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 (CS-viii)

//True Copy//

Sub Assistant Registrar

rrg

To

1. The Sub Judge,
Motor Accident Claims Tribunal
Ponneri.

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

+1cc to Mr.R. MANORAJNITHAM, Advocate, S.R.No. 16131

+1cc to Mr.J.CHANDRAN, Advocate, S.R.No. 16197

C.M.A.No.2117 of 2017

KJI (CO)
TR(23/03/2018)