IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.2106 of 2017
and CMP.No.6605 of 2018

1.P.Balammal
2.P.Merlina Monika (Minor)
3.P.Steve Jerald (Minor)
4.I.Royappa
2 and 3 minor appellants are represented by their mother and next friend 1st appellant P.Balammal.

..Appellants/(Claimants)

VS

1.R.Elumalai

2.Shriram General Insurance Company Ltd.,
No.66, Thirumalai Pillai Road
T.Nagar, Chennai-17 ..Respondents(Respondents)

Now at : 1st Floor, Plot No.5, Ravechandran Street,
Seevaram Nagar, Seevaram, perungudi,
Chennai.

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 13.01.2015 made in MCOP.No.2364 of 2012 on the file of the Motor Accidents Claims tribunal, II Judge, Small Causes Court, Chennai.

For appellants : : Mr.A.N.Viswanatha Rao

for Respondents : : Mr.S.Dhakshanamoorthy for R2
R1-Notice dispensed with.

J U D G M E N T

This Civil Miscellaneous Appeal is filed by the appellants/claimants, challenging the judgment and decree dated 13.01.2015 made in MCOP.No.2364 of 2012 on the file of the Motor

Accidents Claims tribunal, II Judge, Small Causes Court, Chennai.

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 23.03.2012 at about 01.00 hours, the deceased Peter Martin was driving car bearing Reg.No.TN-22-BA-8425 in Uthiramerur to Chennai Road, while going near Paranur Toll Plaza, a Tanker Lorry bearing Reg.No.TN-02-C-1919 came at high speed, dashed from behind on the car driven by the deceased Peter Martin causing him fatal injuries resulting in his death. The deceased was aged 38 years and he was carrying on Travels Business, earning Rs.10,000/- per month. The Petitioners who are the wife, children and father of the deceased were depending on the earnings of the deceased. Hence the Petitioners sought for Rs.30,00,000/- as compensation from the respondents who are the owner and insurer of the offending vehicle.

3. Before the Tribunal, both the respondents remained exparte.

4. The Tribunal after considering the evidence let in by the Petitioners found negligence of the 1st respondent vehicle driver alone caused the accident and passed an award for a sum of Rs.23,45,000/- holding that the 1st respondent and the 2nd respondent/insurer are liable to pay the award amount.

5. Being not satisfied with the quantum of the award, the Petitioners have come forward with the present appeal.

6. The learned counsel for the appellants/Petitioners/claimants contended that the tribunal failed to consider the evidence on record properly and inspite of documents produced, fixed the earnings of the deceased at Rs.8000/- per month, even though he was earning Rs.10,000/- per month. The Tribunal has not provided for future prospects. The Tribunal ought to have fixed the monthly income of the deceased at Rs.12,000/- per month. The amount provided by the Tribunal under other heads is also meagre. Hence, the appellants sought for enhancement of the award amount by entertaining the appeal.

7. Per contra the learned counsel for the 2nd respondent/Insurance company contends that the Tribunal failed to appreciate the evidence on record properly and wrongly fixed the negligence on the 1st respondent vehicle driver. The quantum of the award passed by the Tribunal is highly excessive. Thus, the 2nd respondent sought for dismissal of the appeal.

8. The 1st petitioner who deposed as P.W.1 stated about the accident which took place on 23.03.2012. The eyewitness to the

accident who deposed as P.W.2 clearly stated that on 23.03.2012 at about 01.00 p.m., while he was driving his car bearing Reg.No.TN-21-AJ-7619 from Chengelpet to Chennai, while going near Paranur Toll Plaza, another car bearing Reg.No.TN-22-BA-8425 was going ahead of his car and at that time, a Tanker Lorry bearing Reg.No.TN-02-C-1919 came at high speed from behind, dashed against the car which was going ahead of P.W.2's car causing fatal injuries to the driver of the said car. P.W.2 clearly stated that the accident occurred only due to the negligence of the 1st respondent vehicle driver. There is no contra evidence let in by the respondent side to disprove the same. It is further pointed out that the Police registered FIR in Chengelpet Taluk Police Station Crime No.377/2012 against the driver of the 1st respondent vehicle. However, the copy of the FIR is not produced. Pointing it out, the learned counsel for the appellants/claimants contended that non filing of FIR is not fatal and negligence can be fixed on the oral evidence of eyewitness examined as P.W.2. In support of the same, the learned counsel for the appellants relied upon the Ruling of this Court reported in 2013 1 TNMAC 454 [Anbazhagan and others vs. Shankar]. In the case on hand also, P.W.2 clearly stated about the manner in which the accident occurred. There is no contra evidence let in by the respondent for the same. As such, the Tribunal has correctly considered the evidence on record and come to the conclusion that the negligence of the 1st respondent vehicle driver alone caused the accident.

9. The 1st petitioner who deposed as P.W.1 stated that her husband was aged 38 years and she produced driving licence of the deceased as Ex.P.11. The Post Mortem Certificate is produced as Ex.P.1. It is clear from Ex.P.11 that the date of birth of the deceased is 20.01.1972. Thus, the deceased was aged 40 years and the same is reflected in Ex.P.1-Post Mortem, Ex.P.3-Death Report and Ex.P.4 Death Certificate of the deceased. Thus, the age of the deceased is fixed as 40 years by the Tribunal is correct.

10. The Petitioners claim that the deceased was carrying on travels business and he is the owner of Merlina Travels, earning Rs.10,000/- per month. The Petitioners produced Ex.P.12 Copy of Work Payment Details, Ex.P.13-Copy of Company Incorporation Certificate and Ex.P.14-Salary Certificate. Taking note of all the above, the Tribunal fixed the income of the deceased at Rs.8000/- per month. Keeping in mind the submissions made on the side of the appellants and the documents produced before the Tribunal, it will be appropriate to fix Rs.9000/- as monthly income of the deceased. Since the deceased was aged 40 years and self employed, by following the decision of 2017 (2) TN MAC 609 (SC) [National Insurance Co Ltd., Vs. Pranay Sethi and Others], 25% of the income has to be added towards future prospects.

Considering the number of dependants viz., 4 in number, 1/4th of the income shall be deducted towards personal expenses of the deceased. The correct multiplier to be applied herein is '15'. Accordingly, the loss of dependency is calculated as under:-

Monthly income- 9000
25% added towards future prospects - 2250
9000 + 2250 = 11,250/-.
1/4th deduction towards personal expenses of the deceased (2812)
11,250 - 2812 = 8438 rounded off to Rs.8400/-
8400 x 12 x 15 = 15,12,000/-

11. 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 as under:-

Loss of consortium -40,000/-

Funeral expenses -15,000/-

Loss of estate -15,000/-

12. The learned counsel for the Appellants/Petitioners contended that the amounts granted under the head "loss of love and affection" would be confirmed. However, in view of the decision reported in 2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and Others], this court is not inclined to grant any sum under the head "loss of love and affection". Under Medical Bills, the amount of Rs.8,15,000/- granted by the Tribunal is confirmed. The modified award amount is as shown below:-

Sl.No.	Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)
1.	Loss of dependency	10,80,000	15,12,000
2.	Loss of love and affection	2,25,000	--
3.	Loss of consortium	1,00,000	40,000
4.	Funeral expenses	25,000	15,000
5.	Loss of estate	1,00,000	15,000
6.	Medical expenses	8,15,000	8,15,000
	Total	23,45,000	23,97,000

12. In the result,

(i) This Civil Miscellaneous Appeal is Partly Allowed;
(ii) The award amount is enhanced to Rs.23,97,000/- from Rs.23,45,000/-.
(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 2nd respondent-Insurance company is directed to deposit the entire award amount, along with interest and cost, within a period of six weeks from the date of receipt of a copy of this order, less the amount, if any already deposited.

(v) The Appellants 1 and 4 are entitled to the award amount on the following apportionment:-

1st appellant/wife -40%
2nd and 3rd appellants/ minor claimants - 25% each
4th appellant/father - 10%.

The Appellants 1 and 4 are entitled to withdraw their respective shares of the award amount along with accrued interest. As far as minor's share amount is concerned, the same shall be invested in a fixed deposit in a Nationalised Bank, which shall be renewed periodically, until they attain majority. The interest accrued therein shall be withdrawn by the mother/1st appellant once in three months. The Tribunal shall pass necessary orders for disbursal of the award amount. No costs. Consequently, connected MP is closed.

Sd/-
Assistant Registrar(CS VII)

//True copy//

Sub Assistant Registrar

nvsri

To

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

Copy TO

The Section Officer,
VR Section, High Court,
Madras-104.

+1cc to Mr.Dhakshinamoorthy, Advocate SR.No.38429

C.M.A.No.2106 of 2017

SV(CO)
GN(30/07/2018)