

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.760 of 2011

1.A.Noorjahan Beevi

2.A.Mohamed Sadiq

(declared as major vide order dated 19.03.2018
in CMP.Nos.17287 &17288/2017)

3.A.Yasmeen (minor)

4.A.Shafiya (minor)

minors 3 and 4 rep. By Paternal grandmother
and next friend 1st appellant.

5.D.Mohamed Kasim

6.K.Haffisa Bee ...Appellants/Petitioners

Versus

1.M.Chan Basha

2.The National Insurance Company Ltd.,
No.66, Greams Road
Thousand Lights,
Chennai-600 006

...Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 21.06.2010 made in M.C.O.P.No.4790 of 2008 on the file of the Motor Accident Claims Tribunal, Court of Small Causes, Chennai.

For Appellants

: Mr.M.Swamikannu

For respondents

: Mr.S.Arunkumar for R2
R-1 Remainal Exparte

J U D G M E N T

The appellants who are the Petitioners, filed this appeal against the judgment and decree dated 21.06.2010 made in MC.O.P.No.4790 of 2008 on the file of the Motor Accident Claims Tribunal, Court of Small Causes, Chennai.

2. For the sake of convenience, the parties are referred to hereunder according to their litigative status before the Tribunal. The case of the Petitioners is that on 05.10.2008 at about 00.45 hours, the deceased A.Sabiha was travelling as a pillion rider in the two wheeler bearing Reg.No.TN-07-AJ-6195 driven by her husband; while going near Balasubramaniam Petrol Bunk, Vandalur, the rider of the two wheeler lost control and the vehicle capsized, resulting in both the persons fell down and the above said A.Sabiha died in the accident. It is stated that due to rash and negligent driving of the rider of the two wheeler, the accident happened. The deceased was aged 29 years and by doing Tailoring Work at home, was earning Rs.5000/- to Rs.6000/- per month. The Petitioners, who are the children, parents and mother-in-law of the deceased Sabiha were stated to be dependent on her income. Hence, sought for a sum of Rs.16,00,000/- as compensation from the respondents, who are the owner and insurer of the vehicle.

3. On the other hand, the 2nd respondent-Insurance company, filed counter and contends that the petitioners are the legal heirs of the owner of the two wheeler bearing Reg.No.TN-07-AJ-6195 and he himself being the tortfeasor, the Petitioners are not entitled to seek compensation from the respondents. The claim of the Petitioners is exorbitant. Thus 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.7 to prove their claim. First respondent remained exparte. On the side of the 2nd respondent, neither oral nor documentary evidence was let in. Considering the overall evidence available on record, the Tribunal concluded that the accident occurred due to negligence of the rider of the two wheeler and passed award for a sum of Rs.6,25,000/-. Being not satisfied with the quantum of the award, the Petitioners/claimants have come forward with this appeal as appellants.

5. The learned counsel for the appellants/Petitioners contends that the Tribunal wrongly fixed the notional income of the deceased at Rs.4500/- per month even though she was earning Rs.6000/- per month. The Tribunal failed to consider the future prospects of the deceased properly. The Tribunal wrongly deducted 1/3rd of the income while the number of dependants are six. The Tribunal, instead of applying multiplier of '18' wrongly applied multiplier '17'. The amounts awarded under different heads is very low. Thus, the Petitioners sought for enhancement of the award amount by entertaining the appeal.

6. Per contra, the learned counsel for the 2nd respondent/Insurance company contends that the Tribunal has correctly assessed the monthly income and passed just and reasonable award. The claim for enhancement is unwarranted. As such, the 2nd respondent sought for dismissal of the appeal.

7. This is quantum appeal. Neither side has questioned the conclusion arrived at by the Tribunal on fixing the negligence on the part of the 1st respondent -rider of the two wheeler bearing Reg.No. TN-07-AJ-6195 as the cause for the accident. The Tribunal, on the basis of eyewitness account given by P.W.2 and contents of Ex.P.1-FIR found that the negligence of the 1st respondent driver alone caused the accident. There was no contra evidence to disprove the claim of the Petitioners. As such, the Tribunal has correctly fixed the negligence on the 1st respondent driver.

8. The 1st petitioner, who is the mother-in-law of the deceased stated that the deceased was aged 29 years. In the absence of any document, even though the age of the deceased was stated as 28 years in Post Mortem report, the Tribunal fixed as 29 years as mentioned in the Petition. The deceased is stated to be earning Rs.5000/- to Rs.6000/- per month by working as Tailor. However, considering the fact that the accident occurred in 2008, it will be appropriate to fix the monthly income of the deceased at Rs.7000/- as the deceased was aged 29 years and towards Future Prospects 40% of the income has to be added. Considering the fact that the 2nd petitioner is now declared as major and stated to be working and the 5th and 6th Petitioners are the parents of the deceased daughter Sabiha, who was living in her matrimonial home, they cannot be treated as dependants of the deceased. Hence, 1st, 3rd and 4th Petitioners alone are considered as dependants. As such, 1/3rd deduction towards personal expenses of the deceased is appropriate. Accordingly, the computation towards loss of dependency to the family of the deceased is as follows:-

Monthly salary = Rs.7000/-

Add 40% towards Future Prospects (2800)

7000 + 2800 = 9800.

Deduction 1/3rd towards personal expenses (3266)

9800 - 3266 = 6534.

6534 x 12 x 17 = 13,32,936/-

Further, by following the Apex Court Ruling reported in 2017(2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and Others], under conventional heads, Rs.15,000/- under the head "Funeral expenses" and Rs.15,000/- under the head "loss of estate", is awarded by this court.

9. In view of the foregoing discussion, the award amount is modified as follows:-

Sl.No.	Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this court (Rs.)
1.	Loss of dependency	6,12,000/-	13,32,936/-
2.	Loss of love and affection	10,000/-	---
3.	Funeral expenses	3,000/-	15,000/-
4.	Loss of estate	---	15,000/-
	Total	6,25,000/-	13,62,936/-

10. In the result,

(i) This Civil Miscellaneous Appeal is Partly Allowed;

(ii) The award amount is enhanced from Rs.6,25,000/- to Rs.13,62,936/-

(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 modified enhanced award amount along with proportionate interest and cost, within a period of six weeks from the date of receipt of a copy of this order.

(v) The Appellants/Petitioners are entitled to withdraw the award amount along with accrued interest in the following apportionment:-

1st Appellant/Petitioner -20%
2nd Appellant/Petitioner - 20%
3rd and 4th Appellants/Petitioners - 25% each
5th and 6th Petitioners - 5% each.

The Tribunal shall pass necessary orders following the appropriate procedure for disbursal of the award amount.

(vi) No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

nvsri
To

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

Copy to

The Section Officer,
VR Section,
High Court, Madras (2 Copies)

+1cc to M/S.M.Swamikkannu, Advocate Sr.31969

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