

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.01.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.996 of 2011

1.N.Mahalakshmi
2.N.Kalaiyarasi (Minor)
3.N.Yuvaraj (Minor)
(Minors 2 and 3, rep. By their mother
1st appellant)
4.P.Annamalai
5.A.Suseela ...Appellants/Petitioners

Vs

1.R.Sundararajulu
2.The Royal Sundaram Alliance Insurance
Company Ltd.,
No.45 and 46, Whites Road
Royapettah, Chennai-600 014 ..Respondents/Respondents

Civil Miscellaneous Appeal filed against the judgment and decree dated 16.11.2010 made in M.C.O.P.No.4487 of 2008 on the file of Motor Accident Claims Tribunal, Small Causes Court, Chennai.

For appellants : : Ms.P.T.Salim Fathima
for Respondents : : R1- No appearance
R2-Mr.M.Vijayaraghavan

J U D G M E N T

This Civil Miscellaneous Appeal is filed by the appellants/claimants, challenging the judgment and decree dated 16.11.2010 made in M.C.O.P.No.4487 of 2008 on the file of Motor Accident Claims Tribunal, Small Causes Court, Chennai.

2. For the sake of convenience, the parties are referred to as per their litigative status before the Tribunal. The case of the petitioners is that on 08.11.2008 at about 15.30 hours, when the deceased Narayanan crossed Kilpauk Garden Road, near the junction of Big Street, the car bearing Reg.No.TN-10-K-0848 came

from west to east in high speed and dashed against the deceased, resulting in the deceased sustaining severe head injury and other multiple injuries and succumbed to it as inpatient after 4 days in the Hospital. It is averred in the claim petition that the driver of the 1st respondent car alone is responsible for the accident. At the time of the accident, the deceased was aged 29 years and was working as Security Guard and selling Vegetables in Hardcart at Kilpauk, Chennai, and earned Rs.6500/- to Rs.7000/- per month. The Petitioners, who are the wife, children and parents of the deceased Narayanan were said to be dependants. Thus, the Petitioners sought compensation of Rs.14,00,000/- from the respondents, who are the owner and insurer of the offending vehicle involved in the accident.

3. On the other hand, opposing the Petition, the 1st respondent/owner filed his counter contending that the claim made by the Petitioners that there is negligence on the part of the 1st Respondent car driver is not correct and only the deceased who was under the influence of alcohol, crossed the road without seeing the upcoming vehicle and the accident occurred and it is only due to the negligence of the deceased. It is stated that the car was properly insured and the driver was having valid driving licence at the time of the accident. Thus, the 1st respondent sought for dismissal of the claim Petition.

4. Similarly, opposing the claim Petition, the 2nd respondent/Insurance Company contends that the claim of the Petitioners is not maintainable and the accident did not occur in the manner alleged by the Petitioners. The Petitioners have to prove the age, avocation and income of the deceased. The amount claimed by the Petitioners is excessive and the Petition lacks merit and the same sought to be dismissed.

5. Before the Tribunal, to prove their claim, the Petitioners examined P.W.1 and P.W.2 and produced documents Ex.P.1 to Ex.P.4. On the side of the respondents, neither oral nor documentary evidence was produced. The Tribunal, after considering the materials available on record, found that the driver of the 1st respondent car is responsible for the accident and awarded Rs.7,15,000/- as compensation to the Petitioners. Being not satisfied with the quantum of the Award, the Petitioners/claimants have come forward with the present appeal.

6. The learned counsel for the appellants/Petitioners contends that the income of the deceased was about Rs.6500/- to Rs.7,000/- per month., but the Tribunal wrongly fixed at Rs.4500/-P.M. The Tribunal erred in deducting 1/4th of the income towards personal expenses of the deceased. The correct multiplier to be applied is 18, but the Tribunal applied 17 an

multiplier. The Tribunal awarded very lesser amount as compensation under various heads. Thus the learned counsel for person seeks enhancement of the award amount by entertaining the appeal.

7. Per contra, the learned counsel for the 2nd respondent contends that the claim of the Petitioners is false one and the age, avocation and income of the deceased has not been established. The manner of the accident is also not proved or established. The amount arrived at by the Tribunal itself is on the higher side and as such the claim of the Petitioners for enhancement is to be negatived. Thus the learned counsel for the 2nd respondent seeks dismissal of the appeal.

8. The Petitioners who are the legal heirs of the deceased Narayanan claims that on the fateful day, on 09.11.2008, at 15.30 hours, the deceased crossed the Kilpauk Garden Road and reached Southern side of the road near the junction of Big Street, at that time, the 1st respondent vehicle came at high speed and dashed against the deceased causing him serious head injury which consequently resulted in his death. Thus, the Petitioners contend that the negligence of the 1st respondent driver alone is the cause of the accident. The Petitioners examined P.W.2 eyewitness to the occurrence and also produced documents Ex.P.1-FIR, Ex.P.2-Chargesheet to prove their contention. Admittedly, the Police have registered a case against the 1st respondent car driver and after investigation, charge sheet was laid against him only. The independent eyewitness to the occurrence viz., P.W.2 has clearly spoken about the manner of the accident.

9. On the other hand, the respondents have not chosen to produce any oral or documentary evidence to contradict the claim of the Petitioners. As such, it is clearly established by Ex.P.1 FIR and Ex.P.2-Charge sheet, the averments in the claim Petition as well as the oral evidence of P.W.2 that the accident occurred only due to the rash and negligent driving of the 1st respondent car driver. In such circumstances, the conclusion arrived at by the Tribunal is well founded and the same needs no interference.

10. As stated above, the appellants/petitioners not being satisfied with the quantum of the award i.e., Rs.7,15,000/- granted by the Tribunal, have come forward with the present appeal seeking enhancement of the award amount. The Petitioners claim that the deceased was working as Security Guard and also did vegetable vending business earning Rs.6500/- to Rs.7000/- per month. Except for the interested witness viz., the evidence of the wife of the deceased who deposed as P.W.1, no other acceptable material is placed before the court to prove the

avocation and income of the deceased. However, considering the normal earning of any vegetable vendor and salary of anyone who is working as Security Guard, it is appropriate to fix the notional monthly income of the deceased at Rs.6500/- instead of Rs.4500/- per month, as fixed by the Tribunal.

11. The Petitioners claimed that the deceased was aged 29 years at the time of the accident. It is evident from Ex.P.3 Post Mortem Certificate that the deceased was aged 29 years. The correct multiplier to be applied is 17. Since there is no evidence to prove the deceased was under regular employment as Security Guard, a claim to be Vegetable Vendor work as part time, treated him as self employer, towards Future Prospects, 40% is to be added to the income of the deceased. Further, taking into account that the Petitioners/claimants are 5 in number, who are stated to be dependants of the deceased, it will be appropriate to deduct 1/4th towards personal expenses of the deceased to arrive at the loss of dependency to the Petitioners. As such, the loss of dependency is calculated as under:-

Rs.6500/- + 40% future prospects (2600) = Rs.9100/-

Rs.9100/- - 1/4th deduction (2275) = 6825/-

6825 x 12 x 17 = 13,92,300/-

Thus, a sum of Rs.13,92,300/- is awarded under the head "Loss of dependency". Taking into consideration the admitted fact that the deceased underwent treatment as inpatient for 4 days and subsequently died in the Hospital, it is appropriate to award Rs.10,000/- towards "Transport Expenses". Further, following the decision of Apex Court reported in 2017 (2) TN MAC 609 (SC) [National Insurance Co.Ltd., Vs Pranay Sethi and Others], this court is also inclined to award the following amounts as compensation under conventional heads:-

Funeral Expenses	-	Rs.	15,000/-
Loss of Estate	-	Rs.	15,000/-
Loss of consortium	-	Rs.	40,000/-

Add: Loss of dependency	-	Rs.	13,92,300/-
Transport expenses	-	Rs.	10,000/-

Total Rs.14,72,300/-

Thus, the modified enhanced compensation granted by this Court is Rs.14,72,300/-. The apportionment of the Award amount to the Petitioners/claimants 1 to 5 is as follows:-

1st Petitioner/Wife - 30%

Petitioners 2 and 3 (minor children) - 25% each.

Petitioners 4 and 5 - 10% each.

12. In the result, the Civil Miscellaneous Appeal is Partly allowed with costs in the terms as shown below:-

- (1) The award granted by the Tribunal is enhanced to Rs. 14,72,300/- from Rs.7,15,000/-;
- (2) The award amount will carry interest at the rate of 7.5% per annum from the date of petition till the date of deposit.
- (3) The 2nd respondent/Insurance Company is directed to deposit the enhanced award of Rs. 14,72,300/-, less the amount, if any already deposited, along with proportionate accrued interest and costs, within a period of six weeks from the date of receipt of a copy of this order.
- (4) The Petitioners/Appellants 1, 4 and 5 are permitted to withdraw the award amount along with accrued interest as per the apportionment ordered above, by following the due procedure before the Tribunal. Insofar as the share of Appellants 2 and 3 are concerned, their share shall be deposited in fixed deposit in a Nationalised Bank till they attain majority and the interest accrued therein shall be withdrawn by the 1st petitioner/mother for their maintenance.
- (5) The petitioners are also directed to pay the required additional court fee for the enhanced award amount, at the time of receiving the order copy.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

nvsri

To

1. The Chief Judge, The Motor Accidents Claims Tribunal,
Small Causes Court, Chennai.
2. The Section Officer, सत्यमेव जयते
V.R. Section, High Court, Madras. (2 copies)

+1cc to Mr.M.SWAMIKANNAU, Advocate, S.R.No.4220

C.M.A.No.996 of 2011

KJ(CO)
TR(14/05/2018)