IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.2117 of 2014

1.M.Bharathi
2.Deepa
3.M.Ranjan
4.Dhivya (Minor)
5.Valliammal
(4th appellant minor is rep.by her mother and natural guardian/1st petitioner)
..Appellants/Petitioners

Versus

1.P.Ravikumar

2.The Branch Manager,
Shriram General Insurance Company Ltd.,
No.62, Thirumalai Pillai Street,
Chennai - 17. .. Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the order dated 04.02.2014 made in M.C.O.P.No.4255 of 2011 on the file of the Motor Accident Claims Tribunal, V Small Causes Court at Chennai.

For Appellant : Mr.T.G.Ravichandrran
For Respondents : Mr. A.R.Nixon [for R1]
Mr. M.Vijayaraghavan [for R2]

J U D G M E N T

The Petitioners/Claimants have filed this appeal against the order dated 04.02.2014 made in M.C.O.P.No.4255 of 2011 on the file of the Motor Accident Claims Tribunal, V Small Causes Court at Chennai.

2. For the sake of convenience, the parties are referred to hereunder according to their litigative status before the Tribunal.

3. The case of the petitioners is that on 28.05.2011 at about 10.30 hours, while the deceased was attending to his traffic control work near the Harbour opposite to CCTL, a Lorry bearing Registration No.TN-21-AX-4818 came at high speed dashed against the deceased causing fatal injuries, resulting in his death in the hospital. The accident occurred due to negligence of the 1st respondent lorry driver only. The petitioners who are the wife, children and mother of the deceased were dependents on the income of the deceased at the time of the accident. The deceased was aged 48 years and by working as security was earning Rs.12,900/- per month. Thus, the petitioners sought for a sum of Rs.18,00,000/- as compensation from the respondents who are the owner and insurer of the offending vehicle.

4. On the other hand, opposing the claim of the petitioners, by filing counter, the 2nd respondent/Insurance Company contends that the age, avocation and income of the deceased claimed by the petitioners is not true. The amount sought for by the petitioners as compensation is exorbitant. The accident occurred only due to negligence of the deceased who suddenly crossed the road without following the traffic rules. The occurrence itself is denied. There is no valid Insurance Policy for the lorry owned by the 1st respondent. The driver of the lorry did not possess valid driving license. The accident was not intimidated to the 2nd respondent/Insurance Company. Thus, the 2nd respondent/Insurance Company sought for dismissal of the petition.

5. Before the Tribunal, the petitioners examined P.W.1 and P.W.2, produced documents Exs.P.1 to P.11 to prove their claim. On the other hand, neither oral nor documentary evidence was let in by the respondents. The Tribunal, on the basis of available evidence on record, found that the negligence of the 1st respondent driver alone caused the accident, passed an award for a sum of Rs.10,22,600/- holding that the driver of the 1st respondent lorry driver alone caused the accident and the respondents who are the owner and insurer of the vehicle are liable to pay 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 petitioners/claimants contends that the Tribunal, after fixing the negligence on the part of the respondent driver alone caused the accident, failed to appreciate the evidence on record properly in fixing the quantum of the award. Even though the petitioners produced Ex.P.8 - Salary Certificate to show the monthly salary of the deceased was Rs.15,188/-, the Tribunal failed to look into it properly and wrongly fixed the notional monthly income of the deceased at Rs.6,000/-. The amount awarded under different heads

is very low. Thus, the petitioners 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 there is no merit in the appeal and the amount awarded by the Tribunal itself is excessive. Thus, the 2nd respondent/Insurance Company sought for dismissal of the appeal.

8. The appeal is filed only on the issue of quantum of the award passed by the Tribunal. No appeal or Cross Objection has been preferred by the 2nd respondent/Insurance Company. As such, the issue of negligence is not agitated and the finding of the Tribunal that the 1st respondent vehicle driver alone caused the accident, has become final. As such, the only issue to be considered is whether the quantum of the award passed by the Tribunal is to be enhanced. The wife of the deceased, who deposed as P.W.1 clearly stated that her husband died on 28.05.2011 as evidenced from Ex.P.11, - Death certificate and the age of the deceased is 48 years. It is clear from Ex.P.5 - Post mortem certificate, Ex.P.6 - Identity Card of the deceased and Ex.P.9 - Death certificate that the deceased was aged 48 years. Thus, his age is fixed as 48 years. For the said age, the multiplier to be applied is '13'.

9. The main contention of the petitioners/claimants is that in spite of the petitioners/claimants producing Ex.P.8 - Salary certificate, wherein the monthly income of the deceased was clearly given as Rs.15,188/-, the Tribunal wrongly fixed the monthly income of the deceased at Rs.6,000/-. The learned counsel for the petitioners/claimants contends that the Tribunal ought to have accepted Ex.P.8 - Salary certificate in full. However, the petitioners have not examined the authority which issued Ex.P.8 - Salary certificate or any person from the private agency, in which the deceased was employed as security guard. Therefore, the Tribunal is justified in not accepting the Ex.P.8 in toto. However, considering the fact that the accident occurred during 2011 and the deceased admittedly was employed as security as evidenced by Ex.P.6 - Identity Card, it will be appropriate to fix the notional monthly income of the deceased at Rs.10,000/-. The deceased was aged 48 years. The Tribunal provided 30% of the income towards future prospects. There is nothing on record to show that the deceased was a permanently employed person. As per Ex.P.8 - Salary certificate, he was employed only on temporary contract basis. As such, it is not appropriate to provide 30% income towards future prospects and it will be appropriate to provide 25% only towards future prospects. Thus, loss of income of the deceased is calculated as follows:-

[(Rs.10,000 *25%) + 2500] = Rs.12,500/-

As the number of dependents are 5, 1/4th of the income is to be deducted towards personal expenses, the correct multiplier to be applied between 46-50 is '13', thus, the loss of dependency is calculated as follows:-

[Rs.12,500-(Rs.12,500x1/4)x12x13] = Rs.14,62,500/-

Thus, a sum of Rs.14,62,500/- is granted as compensation under the head “Loss of Dependency”.

10. The Tribunal has awarded amounts for loss of consortium and funeral expenses at Rs.15,000/- and Rs.20,000/- respectively. In view of the judgment of the Supreme Court reported in 2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and Others], the compensation has to be awarded towards loss of estate, loss of consortium and funeral expenses and thus, this court is inclined to grant a sum of Rs.15,000/- towards loss of estate and for funeral expenses and loss of consortium the award amount is modified to a sum of Rs.15,000/- and Rs.40,000/- respectively.

11. The learned counsel for the petitioners/claimants contended that the 2nd to 4th petitioners who are the children of the deceased lost the Love and Affection of the father and the 5th petitioner has lost the Love and Affection of her son, as such, the Tribunal has awarded Rs.40,000/- at a rate of Rs.10,000/- each of them and the same appears to be just and proper. Hence, the same needs no interference. Thus, the award passed by the Tribunal is modified as follows:-

Sl. No.	Head	Amount granted by the Tribunal (Rs.)	Amount awarded by this Court(Rs.)
1	Pecuniary loss	9,12,600.00	-
2	Funeral Expenses	20,000.00	15,000.00
3	Loss of Consortium	50,000.00	40,000.00
4	Loss of Estate		15,000.00
5	Love and Affection	40,000.00	40,000.00
6	Loss of Dependency		14,62,500.00
7	Total	10,22,600.00	15,72,500.00

12. In the result, the Civil Miscellaneous Appeal is Allowed as follows:-

(i) The award of the Tribunal is enhanced to Rs.15,72,500/- from Rs.10,22,600/-.

(ii) The award amount will carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

(iii) In view of the above modified award amount, the 2nd respondent/Insurance Company is directed to deposit the award amount, less the amount, if any, already deposited, along with accrued interest within a period of six weeks from the date of receipt of a copy of this judgment.

(iv) The apportionment of the modified enhanced award amount is as follows:-

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

(v) On such deposit, the 1st to 3rd and 5th petitioners/1st to 3rd and 5th claimants are permitted to withdraw the amount awarded as above by filing proper application before the Tribunal. The Tribunal shall pass appropriate directions for the disbursal of the amount as stated supra on the filing of such application.

(vi) The share of the 4th petitioner/minor is directed to be deposited in any one of the nationalised bank till they attain majority. The 1st petitioner/guardian of the 4th petitioner is permitted to withdraw the accrued interest once in three months.

(vii) Petitioners/Claimants shall pay necessary court fee before receiving the copy of this judgment for the enhanced compensation amount, if not paid earlier.

No costs.

-s/d-
Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

To

1.The V Small Causes Court,
Chennai.

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

+1 CC to Mr.N. Vijayaraghavan, Advocate sr 32637.
+1 CC to Mr.T.G. Ravichandran, Advocate sr 31718.

C.M.A.No.2117 of 2014

SP(06/07/2018)