IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 18.04.2018

Coram

The Honourable Mr. Justice S.BASKARAN

Civil Miscellaneous Appeal No.447 of 2018

1.Kannagi
2.Kaveri
3.Minor Mugareeshwaran
4.Minor Motheesh
The Minors 3 and 4 are rep. By next friend
and Guardian mother namely, 2nd petitioner herein.
... Appellants /Petitioners

..vs..

1.Sangani Durga Prasad
2.The Manager,
M/s.Future General India Insurance
Company Limited,
No.55, 3rd Floor, Vijayaragava Road,
T.Nagar, Chennai-600017. ... Respondents/Respondents

This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the Fair and Decreetal order dated 28.09.2015 made in MCOP.No.458 of 2014 on the file of the Motor Accident Claims Tribunal/III Additional District Judge, Puducherry.

For Appellants : Mr.T.Ananthasekar

For Respondents : Mr.N.Vijayaraghavan for R-2

JUDGMENT

Being not satisfied with the quantum of compensation awarded by the Tribunal, dated 28.09.2015 made in MCOP.No.458 of 2014 on the file of the Motor Accident Claims Tribunal/III Additional District Judge, Puducherry, the petitioners/claimants have come forward with this present appeal seeking to enhancement of the award amount.

2. With both parties consent, the matter is disposed of at the stage of admission itself.

3. For the sake of convenience, the parties will be hereinafter referred to in this judgment as arrayed before the Tribunal.

4. The case of the petitioners is that on 09.04.2014 at about 12.00 noon, as the deceased Moorthy was riding his Motor Cycle bearing Registration No.PY-01-BN-1682 with his wife and another person Duraisamy as pillion rider in Elliesh Chathiram Bye Pass Road, V.Palayam, Villupuram District, a Tata Van bearing Registration No.AP-26-TA-3465 belonging to the first respondent came at high speed dashed against the two wheeler in which the deceased was proceeding resulting in the death of Moorthy on the spot itself, while other persons suffered multiple injuries all over the body. The accident occurred only due to the negligence of the first respondent vehicle driver. The deceased Moorthy was aged about 38 years and by working as painter was earning a sum of Rs.30,000/- per month. Due to his sudden demise, the petitioners who are the mother, wife and children of the deceased are suffering loss of monitory contribution by the deceased who was the sole bread winner of the family and also loss of love and affection. Thus, the petitioners sought for a sum of Rs.25,00,000/- as compensation from the respondents who are the owner and insurer of the offending vehicle.

5. On the other hand, opposing the claim petition, the second respondent-Insurance company filed counter contending that the accident does not occurred in the manner alleged by the petitioners. The first respondent's vehicle bearing Registration No.AP-26-TA-3465 was not involved in the accident. While the deceased was riding a two wheeler with two pillion riders in a rash and negligent manner in the Elliesh Chathiram Bye Pass Road, due to the pillion riders shaking the two wheeler, the rider of the motor cycle, namely, Moorthy lost control and fell down on the road sustained fatal injuries resulting in his death. There was no involvement of the van bearing Registration No. AP-26-TA-3465 in the accident. The deceased did not posses any valid driving licence at the time of accident. The driver of the first respondent van also had no valid licence. The claim of the petitioners about the age, avocation and income of the deceased is denied. It is falsely alleged that the deceased Moorthy died due to the injuries suffered in the accident dated 09.045.2014. The claim of the petitioners is exorbitant. Thus, the second respondent-Insurance Company sought for dismissal of the petition.

6. Before the Tribunal, the petitioners examined P.W.1 and P.W.2, produced documents Ex.P1 to Ex.P14 to prove their claim. On the side of the respondents, neither oral nor documentary evidence was let in.

7. The Tribunal, after analsing the evidence available on record found the negligence on the part of the first respondent vehicle driver alone is the cause for the accident, passed a Award for a sum of Rs.8,11,875/- as compensation to the petitioners. Being not satisfied with the quantum of compensation awarded by the Tribunal, the petitioners/claimants has come forward with this present appeal seeking to enhance the award passed by the Tribunal.

8. I have heard the learned counsel appearing for the appellants/petitioners and the learned counsel appearing for the second respondent-Insurance Company and perused the materials available on record.

9. The learned counsel appearing for the appellants/petitioners contended that the Tribunal failed to notice that the Criminal case was registered on the basis of complaint given by one Arulnithi against the first respondent driver only. The Tribunal also failed to considered the fact that the oral evidence of P.Ws.1 and 2 corroborated the contents of Ex.P1 First Information Report registered against the driver of the van. There is no evidence available on record to show that the deceased contributed to the accident. The Tribunal ought to have provided for future prospects. The amount awarded under the different heads is very nominal. Thus, the petitioners/claimants sought for enhancement of the quantum of award passed by the Tribunal by entertaining the appeal.

10. Per contra, opposing the claim of the petitioner, the learned counsel appearing for the second respondent-Insurance Company contends that the amount awarded under different heads by the Tribunal itself is on the higher side and there is no need for enhancement of the award amount. Thus, the second respondent-Insurance company sought for dismissal of this appeal.

11. The first petitioner who deposed as P.W.1 clearly stated about the accident which took place on 09.04.2014 wherein her husband, the deceased Moorthy suffered fatal injuries. The other person who deposed as P.W.2 also clearly stated that the accident occurred only due to the rash and negligent driving by the first respondent's van driver. The police also registered Ex.P1 First Information Report against the first respondent's vehicle driver only. Admittedly, the first petitioner

accompanied the deceased/husband in the two wheeler. The petitioners also produced a copy of the driving licence of the deceased as Ex.P7. It is clear from the evidence of P.W.1 and P.W.2 and the contents of Ex.P1 First Information Report that the accident occurred only due to the negligence of the first respondent's driver only. To contradict the same, the respondent has not examined any witness nor produced any documents. However, the Tribunal taking note of the complaint lodged by one Aruljothi and on the basis of the same Ex.P1 First Information Report was registered and also the fact that the deceased was riding his motor cycle with two pillion riders which amounts to violation of Section 128 of Motor Vehicles Act, found the deceased also contributed to the accident. Hence, the Tribunal concluded that apart from the negligent driving of the first respondent vehicle driver, the deceased also contributed to the accident. Thus, the Tribunal is justified in concluding that both the drivers of the vehicles involved in the accident were negligent and correctly fixed the same at 75% and 25% on the first respondent driver and the deceased. There is no valued reason advanced by either side to interfere with the same. Thus, the finding of the Tribunal on the negligence aspect of the Tribunal is confirmed.

12. As stated earlier, the petitioners have come forward with the appeal only being not satisfied with the quantum of award. The deceased was stated to be aged 38 years and by working as painting contractor, was earning a sum of Rs.30,000/- per month. As per Ex.P9 Postmortem certificate, the deceased was stated to be 45 years. The copy of the driving licence of the deceased is produced as Ex.P7. On the basis of the same, the age of the deceased is fixed as 45 years. Even though the petitioners claim that the deceased was earning a sum of Rs.30,000/-, no proof is produced to substantiate the same. Further, there is nothing on record to show that the deceased paid income tax. As such, the Tribunal fixed the notional income of the deceased at Rs.7,500/- which appears to be proper. As the deceased was aged 45 years, the correct multiplier to be applied is 14 instead of 15 applied by the Tribunal, which is not proper. As the deceased was aged 45 years, it will be appropriate 25% income is added towards future prospects. As the dependents and four in numbers, $1/4^{th}$ of income has to be deducted towards personal expenses. As such, the loss of income is calculated as follows:-

"Rs.7,500/- added 25% amount towards future prospects = Rs.9,375/-. Rs.9375/- deducted $1/4^{th}$ of amount of Rs.2343/- towards personal expenses = Rs.7,032/-. Rs.7,032/- x 12 = Rs.84,384/- x 14 = Rs.11,81,376/-"

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 Estate	Rs.15,000.00
Loss of consortium	Rs.40,000.00
Funeral Expenses	Rs.15,000.00
	Rs.70,000.00

The award of Rs.10,000/- towards Transportation Charges by the Tribunal is confirmed.

14. Accordingly, the compensation awarded by the Tribunal is modified as follows:-

Sl No	Heads	Amount awarded by the Tribunal	Awarded by this Court
1.	Pecuniary Loss of income	10,12,500.00	11,81,376.00
2.	Funeral Expenses	10,000.00	15,000.00
3.	Loss of love and affection	30,000.00	1,00,000.00
4.	Loss of Estate	-	15,000.00
5.	Transportation	10,000.00	10,000.00
6.	Loss of consortium	20,000.00	40,000.00
	Total	10,82,500.00	13,61,376.00

Accordingly, the quantum of compensation warded by the Tribunal is modified and the same is enhanced to Rs.13,61,376/- and the same is rounded to Rs.13,61,500/-. As already fixed the contributory negligence at the rate of 75% on the part of the second respondent insurance company and 25% on the part of the deceased. Hence, 25% of the amount of Rs.3,40,375/- deducted and the balance amount would be Rs.10,21,125/-. Accordingly, the second respondent Insurance Company is directed to pay a sum of Rs.10,21,125/- to the petitioners as compensation.

15. In the result, the civil miscellaneous appeal is partly allowed. No costs. The amount of Rs.8,11,875/- awarded by the Tribunal dated 28.09.2015 made in MCOP.No.458 of 2014 on the file of the Motor Accident Claims Tribunal/III Additional District Judge, Puducherry, is hereby enhanced to Rs.10,21,125/-. The second respondent Insurance company is directed to deposit the entire award amount of Rs.10,21,125/- with interest at the rate of 7.5% p.a. from the date of claim

petition till the date of deposit the 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 second appellant/second petitioner is entitled to 40% of the award amount and the appellants 1,3,4/petitioners 1,3,4 are entitled to each 20% of the award amount. The appellants 1 and 2/claimants 1 and 2 are permitted to withdraw their respective share with accrued interest by filing necessary application before the Tribunal. The appellants 3 and 4 are minors, their share amount shall be deposited in any one of the Nationalized Bank till they attain majority. The second appellant is permitted to withdraw the accrued the interest once in three months.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

rrg
To

The III Additional District Judge,
Motor Accident Claims Tribunal,
Pondicherry.

+1cc to Mr.T.Ananthasekar, Advocate Sr.28759
+1cc to Mr.N.Vijayaraghavan, Advocate Sr.29299

gj[co]
srg 06/06/2018