

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.01.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.2411 of 2017

1.V.Vinayagam
2.Harikrishnan
3.Dhanapackiam

..Appellants/Petitioners

vs

1.M.Velu
2.ICICI Lombard General
Insurance Company Limited

..Respondents

Civil Miscellaneous Appeal filed against the judgment and decree dated 22.09.2014 made in M.A.C.T.O.P.No.768 of 2013 on the file of Motor Accident Claims Tribunal, Poonamallee, II Additional District Judge, at Poonamallee.

For appellants : : Ms.M.Malar

For Respondents : :

for R1 : : Remained Exparte before Tribunal

सत्यमेव जयते
Notice dispensed with.

for R2 : : Mr.R.Sreevidhya

J U D G M E N T

The appellants/Claimants have filed this appeal against the judgment and decree dated 22.09.2014 made in MACT.O.P.No.768 of 2013 on the file of Motor Accident Claims Tribunal (II additional District Judge) at Poonamallee.

2. Heard the learned counsel for the Appellants/Claimants and the learned counsel appearing for the 2nd respondent/Insurance Company.

3. For convenience sake, the parties are referred to hereunder according to their litigative status before the Tribunal. It is a fatal case. The case of the Petitioners is that on 03.03.2013, at 8 pm., when the deceased Jayalakshmi was walking near the Kerala Jewellers Shop at Porur, a Motor cycle bearing Registration No.TN 22 BJ 2498 owned by the 1st respondent and insured with the 2nd respondent, came at high speed and dashed against the said Jayalakshmi resulting in fatal injuries to her. She died on the way to hospital. Hence, the petitioners who were the husband and children of the deceased Jayalakshmi have come forward with claim petition seeking compensation of Rs.10,00,000/-.

4. On the other hand, opposing the petition, the 2nd respondent/Insurance Company, contends that the accident did not occur as alleged by the petitioners. According to the 2nd respondent, the deceased after getting down from the bus at Porur bus stop, Mount to Poonamallee road, crossed the road along with her husband from North to South, through the gap in the Central Median without noticing the upcoming vehicle and due to that she was hit by the Motor cycle of the 1st respondent. Thus, the contention of the 2nd respondent is that the victim contributed to the accident and as such, her negligence also is responsible for the accident.

Further, the 2nd respondent disputes the claim of the petitioner about the age and earning capacity of the deceased as well as the contention of the 1st respondent vehicle being insured with them. Hence, the 2nd respondent seeks dismissal of the petition.

5. The petitioner examined P.W.1 and produced Ex.P.1 to P.6 documents before the Tribunal to prove the claim. On the side of the respondent, no oral or documentary evidence was produced. On the basis of the available material evidence, the Tribunal found the first respondent motor cycle rider was responsible for the accident and awarded a sum of Rs.8,26,000/- as compensation to the petitioners. The Tribunal's award under various heads with interest at 7.5% per annum is as shown below:-

Sl.No.	Head	Amount granted by the Tribunal
1	Loss of income	Rs. 7,80,000/-
2	Funeral expenses	Rs. 10,000/-
3	Transport expenses	Rs. 5,000/-
4	Loss of consortium	Rs. 10,000/-
5	Loss of love and affection(2 nd & 3 rd petitioners)	Rs. 20,000/-
6	Damages towards clothing	Rs. 1,000/-
	Total	Rs. 8,26,000/-

6. Aggrieved over the same, on the ground that the compensation awarded by the Tribunal is on the lower side, the claimants/ petitioners have come forward with the present appeal.

7. According to the petitioners, the Tribunal failed to consider the occupation and income of the deceased properly. The contention of the petitioners is that the deceased was doing cloth business and was earning a sum of Rs.10,000/- per month. However the Tribunal fixed the income of the deceased at Rs.6500/- per month and also failed to consider the future prospects of the deceased who was aged only 45 years at the time of the accident. The amount awarded by the Tribunal under other heads is also stated to be on the lower side. Hence the Petitioners seek enhancement of the award amount. Hence, the appeal.

8. The Petitioners have categorically stated that only due to the rash and negligent driving of the 1st respondent motor cycle, the accident took place. P.W.1 the husband of the deceased who is also eyewitness to the occurrence categorically stated that while his wife Jayalakshmi was walking along the road, near Kerala Jewellers, the motor cycle bearing Reg.No.TN-22-BJ-2498 came from east to west at high speed and dashed against his wife resulting in her death. The same is corroborated by the contents of Ex.P.1 FIR wherein, the case is registered against the rider of the 1st respondent motor cycle. The petitioners also produced Ex.P.6 driving licence of the rider of the motor cycle. On the other hand, the 2nd respondent has not let in oral or documentary evidence to disprove the claim of the petitioners in that regard. On the basis of P.W.1 evidence and Ex.P.1 FIR, it is clear that the accident occurred only due to rash and negligent driving of the

rider of the motor cycle viz., the 1st respondent. Thus the finding of the tribunal that negligent riding of the 1st respondent motor cycle alone is the cause of the accident is proper and the same needs no interference.

9. The petitioners are agitated over the quantum of compensation fixed by the Tribunal and contends that the Tribunal has fixed the income of the deceased very low and failed to provide future prospects. It is evident from Ex.P.3 post mortem report that the deceased was aged 45 years. The petitioners are the legal heirs of the deceased is proved by Ex.P.4 legal heir certificate. According to the petitioners, the deceased Jayalakshmi was carrying on cloth business and was earning Rs.10,000/- per month. However, there is no oral evidence or documentary proof to prove the said claim of the petitioners. As there was no particulars furnished as to where the cloth business carried on by the deceased Jayalakshmi on the side of the petitioners, the Tribunal fixed the notional income of the deceased at Rs.6,500/-. The learned counsel for the petitioners contended before the Court that as the accident took place in 2013, notional income of the deceased should be fixed at Rs.10,000/-.

10. The learned counsel for the 2nd respondent contended that income fixed by the Tribunal is correct and needs no interference. However, considering the circumstances, this court is of the view that it will be appropriate to fix the notional income of the deceased at Rs.7500/- per

month, as the deceased was aged 45 years and the correct multiplier to be adopted is 14. By applying the decision of Constitution Bench Judgment of Honourable Supreme Court reported in **2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and Others]**, while determining the income of self-employed person in the age group between 40-50 years, addition of 25% is made towards future prospects. Out of the alleged income of the deceased, 1/3rd has to be deducted towards her personal expenses, hence, the loss of dependency is calculated as follows:-

7500 + 1875 (25% future prospects) Future prospects 25% = 1875 = 9375/-
 9375 - 1/3 = 9375 - 3125 = 6250 x 12 x 14 = 10,50,000/-.

The petitioners are also entitled for the compensation under the conventional heads as follows:-

Funeral expenses = Rs.15,000/-

Loss of estate = Rs.15,000/-

Loss of consortium = Rs.40,000/-.

Thus, the total award amount modified by this court is Rs.11,20,000/-.

Further, this court is of the considered opinion that the amount awarded by the Tribunal, under the other heads are not sustainable and the same is liable to be set aside. Accordingly, the compensation granted by the Tribunal is modified and enhanced to Rs.11,20,000/-.

11. In the result, the Civil Miscellaneous Appeal is partly allowed. The 2nd respondent/Insurance Company is directed to deposit the modified

award amount with interest at 7.5% per annum from the date of petition till the date of deposit with costs, within a period of six weeks from the date of receipt of a copy of this order, less the amount already deposited, if any. Further, in view of this court order dated 27.07.2017 passed in C.M.P.No.10207 of 2017 in CMA.Sr.No.45978 of 2017, for the delay period of 815 days in filing the appeal, the interest is waived off.

12. The 1st claimant/husband is entitled to get 40% of the award amount, viz., 4,48,000/- while the children of the deceased, the 2nd and 3rd claimants/petitioners are entitled for each 30% of the award amount viz., 3,36,000/- each. The claimants are permitted to withdraw their entire share with accrued interest and costs by filing necessary application before the Tribunal, less the amount already withdrawn, if any. The petitioners are directed to pay additional court fee for the modified award amount at the time of receiving order copy of the appeal. No costs.

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Index:Yes/No

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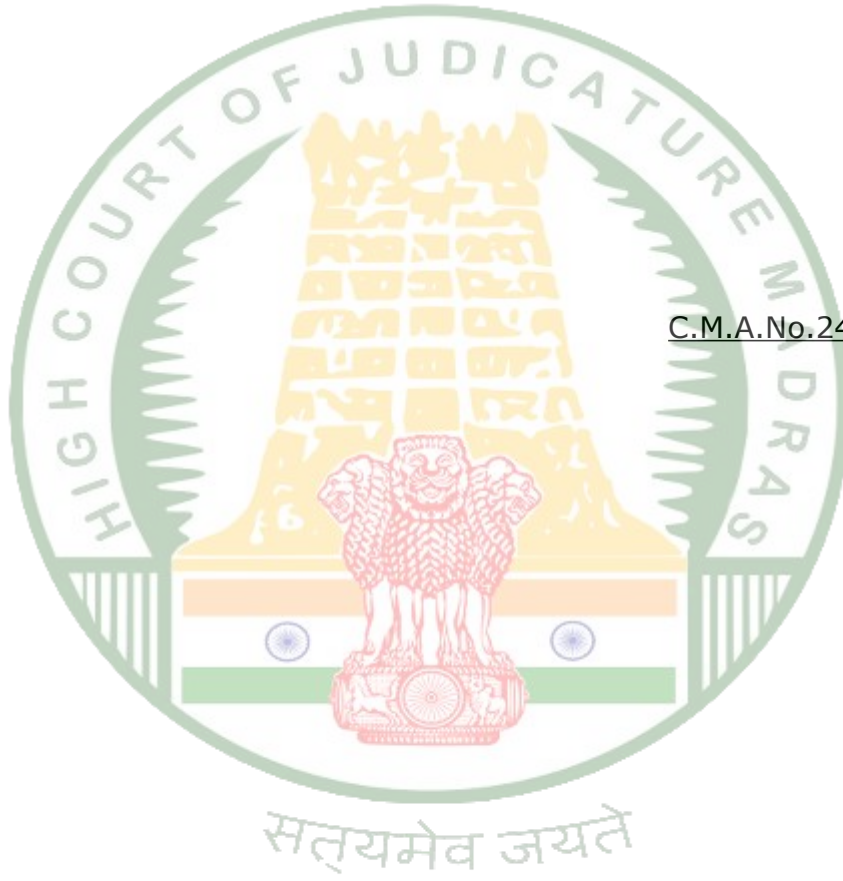
1.The Motor Accidents Claims Tribunal,
II Additional District Judge, at Poonamallee.

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

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S.BASKARAN, J.

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