IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.455 of 2018

1.Pappa
2.Gokul raj (Minor)
3.Deepanraj (Minor)
4.Pavadarini (Minor)
Minors 2 to 4 are represented by their mother/1st appellant Viz Pappa.
5.Madammal ..Appellants/Claimants

Vs.

1.Kubendiran
2.United India Insurance Company Ltd.,
Divisional Office-1, 2nd floor
Door No.104-A, Peramanoor Main Road
Salem-7 ..Respondents/Respondents

Civil Miscellaneous Appeal filed u/s. 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 26.09.2013 passed in M.C.O.P.No.1012 of 2010 on the file of Motor Accidents Claims Tribunal, Special District Judge, Salem.

For appellants : : Mr.S.P.Yuaraj
for Respondents : : Mr.J.Chandran for R2.
R1-exparte

J U D G M E N T

This Civil Miscellaneous Appeal is filed by the appellant/injured Petitioner, challenging the judgment and decree dated 26.09.2013 passed in M.C.O.P.No.1012 of 2010 on the file of Motor Accidents Claims Tribunal, Special District Judge, Salem.

2. For the sake of convenience, the parties are referred to as per their litigative status before the Tribunal. It is a fatal case. The case of the petitioners is that on 14.10.2009 at about 6.10 p.m., when the deceased Govindaraj was proceeding in front of Punjabi Dhaba Hotel near Puliampatti, the lorry bearing

Reg.No.KA-01-C-6156 came from Salem at high speed and the driver of the said lorry drove in a rash and negligent manner and dashed against the said Govindaraj. Due to the said impact, the said Govindaraj fell down and sustained grievous injuries, resulting in his death on way to Government Hospital, Omalur. At the time of the accident, the deceased was aged 32 years and by doing Electrician work, was earning Rs.10,000/- per month. The Petitioners, who are the wife, children and mother of the deceased were depending on the income of the said Govindaraj, who was the sole bread winner of the family. The Petitioners sought a sum of Rs.20,00,000/- as compensation from the respondents.

3. On the other hand, opposing the claim of the Petitioners, by filing counter, the 2nd respondent-Insurance company contends that the accident did not occur in the manner alleged by the Petitioners. The Petitioners are not legal heirs of the deceased and they are not entitled to seek compensation. The claim of the Petitioners is exorbitant. Thus, the 2nd respondent sought for dismissal of the Claim Petition.

4. Before the Tribunal, the 1st petitioner examined herself as P.W.1 and eyewitness to the occurrence as P.W.2, produced Exhibits Ex.P.1 to Ex.P.4 to prove her claim. On the other hand, 1st respondent remained exparte. On the side of the 2nd respondent, neither oral nor documentary evidence was let in.

5. On the basis of the available materials on record, the Tribunal fixed negligence on the part of the 1st respondent driver and held that 1st respondent driver alone caused the accident and awarded Rs.4,68,000/- as compensation and directed the 2nd respondent/Insurance company to pay the amount. Being not satisfied with the quantum of the award, the Petitioners/appellants have come forward with the present appeal.

6. The learned counsel for the appellants/Petitioners contends that the Tribunal failed to consider the future prospects of the deceased and also without taking into consideration the number of dependants i.e., five in numbers, deducted 1/3rd towards personal expenses of the deceased. Hence, the appellants seek for enhancement of the quantum of award.

7. Per contra, the learned counsel for the 2nd respondent-Insurance company(ICICI) contends that as the quantum of the award passed by the tribunal itself is on higher side, there is no need to enhance the same as sought for by the Petitioners. Thus the 2nd respondent seeks dismissal of the appeal.

8. The 1st Petitioner/P.W.1, wife of the deceased and P.W.2 eyewitness to the occurrence/accident, deposed about the manner in which the accident took place. The 2nd respondent did not let in any evidence to contradict the evidence given by P.W.2. The Police registered the case as per Ex.P.1-FIR against the driver of the 1st respondent vehicle only. The contents of Ex.P.1- FIR corroborates the oral evidence of P.W.2. On the other hand, there is no contra evidence on the side of the 2nd respondent. Therefore, it is clear from the evidence of P.W.1 and contents of Ex.P.1-FIR that the accident occurred in the manner alleged by the Petitioners due to negligence of the 1st respondent Lorry driver only. Therefore, the finding of the Tribunal in respect of negligence aspect is confirmed.

9. The Petitioner states that the deceased Govindaraj was aged 32 years and by working as Electrician was earning Rs.10,000/- per month. The Petitioners have not produced any document relating to the age, avocation and income of the deceased Govindaraj. Under Ex.P.2-Post Mortem Report, the age of the deceased is stated to be 32 years. Thus, on the basis of Ex.P.2 Post Mortem Report and Ex.P.3-Death certificate, the age of the deceased Govindaraj is correctly fixed by the Tribunal as 32 years. Since there is no substantive proof for arriving at the income of the deceased, the Tribunal fixed the notional income of the deceased at Rs.3,500/- per month and awarded Rs.4,48,000/- as compensation towards loss of dependency. This court, while taking into consideration the date of accident ie., 14.10.2009, it will be appropriate to fix the notional monthly salary of the deceased at Rs.6,500/-. Further, following the decision of Supreme Court reported in 2017 (2) TN MAC (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and others], 40% of the income is to be added towards Future Prospects of the deceased. Applying the Ruling of the Apex Court reported in 2009 (2) TN MAC 1 (SC) in Smt.Sarla Verma and others, Vs. Delhi Transport Corporation and another, the correct multiplier to be applied is '16'. Accordingly, the loss of dependency to the family of the deceased Govindaraj is computed as follows:-
Monthly salary - Rs.6,500/-
Addition of 40% future prospects (2600) 6500 + 2600 =9100
Deduction 1/4th towards personal expenses of the deceased:-
9100 - 1/4th (2275) = 6825/-
6825 x 12 x16 = 13,10,400/-. Thus, a sum of Rs.13,10,400/- is awarded under the head "Loss of dependency to the family of the deceased."

10. Compensation towards Conventional Heads:- Following the decision of the Constitution Bench judgment of the Supreme Court reported in 2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and Others], the following amounts are awarded under conventional heads:-

Loss of consortium -Rs.40,000/-
Loss of estate -Rs.15,000/-
Funeral expenses -Rs.15,000/-

The compensation amount awarded by the Tribunal under other heads are set aside. Accordingly, the modified compensation payable to the appellants/petitioners is as under:-

Sl.No.	Heads	Amount awarded by the Tribunal	Amount awarded by this Court
1.	Loss of dependency	Rs.4,48,000/-	Rs.13,10,400/-
2.	Loss of consortium	---	Rs. 40,000/-
3.	Loss of love and affection	Rs. 10,000/-	---
4.	Funeral expenses	Rs. 10,000/-	Rs. 15,000/-
5.	Loss of estate	----	Rs. 15,000/-
	Total	Rs.4,68,000/-	Rs.13,80,400/-

11. In the result,

(i) The Civil Miscellaneous Appeal is Allowed;

(ii) The appellants/Petitioners are entitled to award amount of Rs.13,80,400/- which carry interest at the rate of 7.5% per annum from the date of petition till the date of realisation. The appellants/claimants are not entitled to interest for the default period of 1007 days in filing the CMA.

(iii) The apportionment of the award amount is as under:-

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

(iv) The 2nd respondent/Insurance company is directed to deposit the award amount of Rs.13,80,400/-(Rupees Thirteen Lakhs Eighty Thousand four hundred only] within a period of six weeks from the date of receipt of a copy of this order, less the amount deposited, if any. On such deposit, the appellants 1 and 5 are permitted to withdraw their share, by filing necessary application before the Tribunal. Insofar as share of the minor 2nd, 3rd and 4th appellants are concerned, the same shall be invested in a Fixed Deposit in a Nationalised Bank till they attain majority. The accrued interest in the minors share shall be withdrawn by the mother/1st appellant once in three months. No costs.

nvsri

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

To

The Special District Judge,
Motor Accidents Claims Tribunal, Salem.

+ 1 cc to Mr. S.P. Yuaraj, Advocate Sr.16531

+ 1 cc to Mr.J. Chandan, Advocate Sr.16198

C.M.A.No.455 of 2018

(CS-VI)
EU(29/06/2018)