IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.01.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.2430 of 2017

1. Amutha
2. Kalpana
3. Karthick
4. Kalaiarasan .. Appellants/Petitioners

Versus

1. Babu

2. The Manager
Shriram General Insurance Co.Ltd.,
No.66, 2nd Floor, City Centre Complex,
Thirumalai Pillai Road,
Chennai, Tamil Nadu. .. Respondents/Respondent

Civil Miscellaneous Appeal filed against the award dated 08.04.2015 made in M.C.O.P.No.769 of 2013 on the file of Motor Accident Claims Tribunal, Principal District Judge, Puducherry.

For Appellant : : Mr.T.Ananthasekar
For Respondents : : S.Dhakshnamoorthy for R2

J U D G M E N T

The petitioners have filed this appeal against the Judgment and decree dated 08.04.2015 made in MCOP.No.769 of 2013 by Motor Accident Tribunal /Principal District Judge, Puducherry.

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

3. The brief facts of the case are that the petitioners are the wife, daughter and sons of the deceased Sandirakesan. On 01.11.2012 at about 6.30p.m at the junction of Mullodai border, Mullodai, Pondicherry, the deceased Sandirakesan was going by walk by crossing west to east, at that time, a vehicle bearing Regn.No.TN-31-AZ-8376 owned by the first respondent and insured with the second respondent, which was driven by its driver at high speed and in a rash and negligent manner dashed against the deceased and he sustained multiple injuries all over

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his body, due to which, he died subsequently on 07.11.2001. The petitioners state that the rash and negligent driving of the driver of the first respondent's vehicle alone caused the accident. Hence the both the respondents are liable to pay compensation for a sum of Rs.50,00,000/- to the petitioners who have lost the only breadwinner of the family in the above said accident.

4. On the other hand, opposing the petition, the second respondent insurance company contends that the accident had occurred only due to the negligence of the deceased Sandirakesan and the driver of the first respondent is not responsible for the accident. It is further contended that the driver of the first respondent's vehicle was not having valid driving licence and the vehicle was not insured with the second respondent. Hence the second respondent sought for dismissal of the petition.

5. The petitioners examined P.W.1 to P.W.3 and produced Ex.P.1 to Ex.P.10 before the Tribunal to prove the claim. On the side of the respondent, no oral or documentary evidence was produced. Ex.X1 was marked as Court document.

6. The Tribunal, on the basis of materials placed before it, found that the first respondent's driver is responsible for the accident and held that the owner and insurer of the vehicle ie., respondents 1 and 2 are liable to pay compensation to the petitioners. The Tribunal also fixed the award for a sum of Rs.23,04,500/- as compensation payable to the petitioners. Aggrieved over the said quantum of compensation, the petitioners have come forward with the appeal seeking enhancement of the award amount.

7. The learned counsel for the petitioners contended that the Tribunal failed to give future prospects and as such the deceased being 53 years old, 15% of the income should have been added towards future prospects but the Tribunal failed to do so. Further, the amount awarded under conventional heads are very low and same is to be enhanced. Thus the appellants seek to entertain the appeal.

8. On the other hand, the second respondent/insurance company contended that the Tribunal has arrived the claim by properly appreciating the available materials, monthly income fixed by the Tribunal is perfectly correct. Similarly the multiplier adopted by the Tribunal also correct and the award needs no interference. Thus, the second respondent seeks for dismissal of the appeal.

9. The finding of the Tribunal that the accident occurred due to the rash and negligent driving of the driver of the first

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respondent's vehicle is not challenged before this court. In such circumstances, on the basis of oral evidence of P.W.2 and documentary evidence Ex.P.1 F.I.R, the finding of the Tribunal that the first respondent's driver alone is responsible for the accident is to be upheld.

10. Admittedly, the driver of the first respondent was having valid driving licence as evidenced by Ex.P.5 Copy of driving licence of Raju. At the time of accident, the said vehicle bearing Regn.No.TN-31-AZ-8376 was properly insured with the second respondent as evidenced by Ex.P.4 Copy of Insurance Policy and as such the respondents 1 and 2 are liable to pay the compensation to the appellants/petitioners who are legal heirs of the deceased Sandirakesan as evidenced by Ex.P.8 copy of judgment passed by the Additional District Munsif, Pudhcherry.

11. The age of the deceased was stated to be 40 years at the time of accident. However it is evident from Ex.X1 copy of Pension Payment order in which it is stated that the deceased was born on 11.06.1959 and at the time of accident, the deceased was aged about 53 years. It is conceded by both sides that for the said age, correct multiplier to be applied is 11. It is evident from Exhibit. P.7 Salary Certificate that the deceased who was working as Head Constable in the Police Department, Puducherry was getting a monthly salary of Rs.23,383/-. Eventhough, the appellants claim that the deceased was getting salary of Rs.36,000/- per month. There is no proof for the same. Hence on the basis of Ex.P.7 Salary Certificate, monthly income of the deceased is fixed at Rs.23,000/- per month . By deducting 1/4 of the income towards the personal expenses of the deceased, the loss of annual dependency is Rs.2,76,000/- (-) Rs.69,000/- = Rs.2,07,000/- and multiplier 11 is adopted, the total loss of dependency of the petitioners are Rs.2,07,000/- x 11 = Rs.22,77,000/- .
The details of the compensation awarded by the Tribunal is as follows:-

Sl. No.	Head	Amount granted by the Tribunal
	Loss of pecuniary benefits to the dependants of the deceased (Rs.23,000 x 12 x 1/4 x 11)	Rs.22,77,00/-
2	Loss of consortium to the first petitioner	Rs. 10,000/-
3	Loss of Estate	Rs. 10,000/-
4	Funeral expenses	Rs.7,500/-
	Total	Rs.23,04,500/-

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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 Consortium = Rs.40,000.00
Loss of Estate = Rs.15,000.00
Funeral Expenses = Rs.15,000.00

Considering the fact that the four petitioners are dependants on him. Out of the monthly income 1/4th amount has to be deducted towards personal expenses of the deceased. Admittedly, 15% has to be given as Future

Prospects. Hence, the loss of dependency of the petitioners is calculated as follows:

The monthly income of the deceased being Rs.23,000/- towards Future Prospects , 15% of the same to be added . Thus the total income is Rs.23,000 /- (+) Rs.3450 = 26,450/- out of the same 1/4th is to be deducted towards personal expenses of the deceased. Thus 19,838/- x 12 x 11=26,18,616/-. The total loss of dependency of the petitioners are Rs.26,18,616/-. Accordingly, the compensation granted by the Tribunal is modified as follows:-

Sl. No.	Head	Amount granted by the Tribunal	Amount granted by this Court
1	For Loss of earning	Rs.22,77,000/-	Rs.26,18,616/-
2	Loss of consortium to the 1st petitioner	Rs. 10,000/-	Rs.40,000/-
3	Loss of Estate	Rs.10,000/-	Rs.15,000/-
4	Funeral Expenses	Rs.7,500/-	Rs.15,000/-
	Total	Rs.23,04,500/	Rs.26,88,000/-

In the light of the foregoing discussion, the award of the Tribunal is modified on the above terms. The award granted by the Tribunal is enhanced from Rs.23,04,500/- to Rs.26,88,616/-.

12. In the result, this appeal is partly allowed with cost and award passed by the Tribunal is enhanced as shown above. The second respondent/Insurance company is directed to deposit the award amount with 7.5% from the date of petition till the date of deposit within a period of six weeks from the date of receipt of a copy of this order less the amount, if already deposited. The petitioners are entitled to get 25% each of the enhanced award amount, the petitioners/claimants are permitted

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to withdraw their entire award amount with proportionate interest and costs by filing necessary applications before the Tribunal.

Sd/-
Assistant Registrar(CS V)

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Sub Assistant Registrar

vv

To

1. The Motor Accident Claims Tribunal,
   Principal District Judge, Puducherry.

2. The Section Officer, VR Section,
   High Court, Madras.

+1cc to Mr. S.Dhakshnamoorthy, Advocate SR.No.5934

C.M.A.No.2430 of 2017

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