

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.2331 of 2014
and CMP.No.5327 of 2018

1.V.Alamelu

2.Arjunan

2nd petitioner declared as major
vide court order dated 27.02.2018
in CMP.No.2156 and 2157/2018.

3.Prithiv Raj(minor-3rep.
by Mother and Next Friend V.Alamelu)

4.Ramasamy Nadar

5.Thangammal

...Appellants/Petitioners

Vs

1.V.Rajan

2.ICICI Lombard Gen. Insurance Co.Ltd.,

C/o.Motor Third Party Cell

1st floor, Arihant Plaza

No.84/85, Waltax Road,

Parry's Corner

Chennai-600 003

..Respondents.

(CRI set-exparte in Lower court)

Civil Miscellaneous Appeal filed against the judgment and decree dated 22.08.2013 passed in M.C.O.P.No.2816 of 2010 on the file of Motor Accidents Claims Tribunal, Small Causes Court at Chennai.

For appellants : : Mr.T.G.Balachandran
for Respondents : : Ms.R.Sreevidhya for R2.
:R1-set-exparte

J U D G M E N T

This Civil Miscellaneous Appeal is filed by the appellant/Petitioner, challenging the judgment and decree dated 22.08.2013 passed in M.C.O.P.No.2816 of 2010 on the file of Motor Accidents Claims Tribunal, Small Causes Court at Chennai.

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 28.06.2010 at about 22.45 hours, as the deceased R.Vijayan was proceeding in the E.C.R.Road, from Thiruvannamiyur and as he was crossing the RTO Office Signal towards South in his Motor Cycle bearing Reg.No.TN-67-J-9067, an Indica Car bearing Reg.No.TN-21-AW-4857 came at high speed from Kottivakkam and without noticing the oncoming traffic on the main road, took a right turn in the RTO Office signal, dashed against the two wheeler in which the deceased was going, causing him fatal injuries resulting in his death. The accident occurred only due to rash and negligent driving by the 1st respondent owned vehicle driver and the said vehicle was insured with the 2nd respondent. The deceased was aged 35 years and was employed as Waiter in a Private Food Court, earning Rs.6000/- per month. The Petitioners who are the wife, children and parents of the deceased were depending on the earning of the deceased. Thus, the Petitioners are denied his love and affection and the monthly contribution to the family run by the deceased R.Vijayan. Thus, the Petitioners sought for a sum of Rs.10,00,000/- as compensation from the respondents who are the owner and insurer of the said Indica Car.

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. As the insured and the insurer of the two wheeler bearing Reg.No.TN-67-J-9067 is not added as parties, the petition is to be dismissed for non-joinder of necessary parties. The age, avocation and income of the deceased as stated in the petition, is denied. The accident occurred only due to negligence of the deceased and he contributed to the accident. As such, the respondents are not liable to pay any compensation. Thus, the 2nd respondent sought for dismissal of the Petition.

4. Before the Tribunal, the Petitioners examined P.W.1 and P.W.2, produced documents Ex.P.1 to Ex.P.7 to prove their claim. On the side of the respondents, neither oral nor documentary evidence was let in. On the basis of available evidence on record, the Tribunal found that the negligence of the 1st respondent vehicle driver alone caused the accident and passed award of Rs.7,95,000/- payable by the respondents. Being not satisfied with the quantum of the award passed by the Tribunal, the Petitioners/claimants have come forward with the present appeal.

5. The learned counsel for the appellants/petitioners contend that the Tribunal without considering the evidence on

record properly fixed the monthly income of the deceased at Rs.5000/-, whereas he was actually earning Rs.6000/-. Further, the Tribunal failed to provide for future prospects of the deceased, who was aged 35 years only. The amount awarded under different heads is very nominal. The Tribunal failed to consider and provide for any amount towards loss of love and affection suffered by the minor petitioners. Thus, the Petitioners/claimants sought for enhancement of the award amount by entertaining the appeal.

6. Per contra, the learned counsel for the 2nd respondent/Insurance company contends that the accident occurred only due to the negligence of the deceased and as such, the petitioners are not entitled to seek any enhancement of the award amount passed by the Tribunal. The Tribunal, after analysing the evidence on record passed on award and that itself is on the higher side. No ground is made out by the Petitioners/appellants to enhance the quantum of the award. Hence, the 2nd respondent/Insurance company sought for dismissal of the appeal.

7. Heard both sides and perused the records carefully.

8. The appeal is filed only on the issue of quantum of the award. Both sides have not disputed the conclusion of the Tribunal regarding the liability aspect. The Tribunal, on the basis of eyewitness account of the accident stated by P.W.2 who witnessed the accident and also on the basis of Ex.P.1-FIR registered by the Police against the driver of the 1st respondent vehicle bearing Reg.No.TN-21-AW-4857 and Ex.P.3-Copy of the Charge sheet filed against the said driver as well as Ex.P.2-Copy of Rough Sketch of the occurrence spot fixed negligence on the 1st respondent vehicle driver alone has caused the accident. As the said finding of the Tribunal is not challenged and on completion of P.W.2 oral evidence as well as contents of Ex.P.1-FIR, Ex.P.3-Charge sheet, this court finds that the conclusion of the Tribunal regarding the negligence of the 1st respondent vehicle driver alone was the cause for the accident is just and proper and the same needs no interference.

9.1. Income:- Regarding the quantum of the Award arrived at by the Tribunal, the Petitioners contend that the deceased by working as Waiter in a Fast Food Stall, was earning Rs.6000/- per month and the same has been clearly established with proper evidence. Before the Tribunal, but without considering the same, the monthly income of the deceased was fixed wrongly at Rs.5000/- by the Tribunal. However, the petitioner has not examined any one from the establishment wherein the deceased was employed or produced any Salary certificate or any proof for the monthly income of the deceased. As such, the conclusion of the

Tribunal fixing Rs.5000/- as monthly income of the deceased is just and proper and the same is confirmed.

9.2. Age:- The Petitioners claim that the deceased was aged 35 years. It is clear from Ex.P.7-Driving Licence of the deceased that his date of birth was 18.02.1975. In Ex.P.4-Post Mortem Certificate and Ex.P.5-Death Certificate, the age of the deceased is stated to be 35 years. As such, his age is fixed as 35. For the said age group and a person employed on fixed salary, it will be appropriate to apply 40% towards Future Prospects. Following 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 multiplier to be applied is '16'.

9.3. Deduction towards Personal expenses:- Considering the fact that five Petitioners are the legal heirs of the deceased as per Ex.P.6-Legal Heir Certificate and they were depending on the income earned by the deceased, 1/4th of the income has to be deducted towards personal expenses of the deceased. As such, the loss of dependency is calculated as follows:-

Monthly Salary : Rs.5000/-

Add:40% towards Future Prospects (2000)

5000 + 2000 = Rs.7000/-

Deduction:1/4th towards Personal expenses (1750)

7000 - 1750 = Rs.5250

Loss of dependency to the Petitioners

5250 x 12 x 16 = Rs.10,08,000/-.

Thus, a sum of Rs.10,08,000/- is awarded under the head "loss of dependency".

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/-

Loss of Love and affection:- The petitioners claim that due to sudden demise of Vijayan in the accident, his children, viz., 2nd and 3rd petitioners have lost guidance, love and affection at the young age of 7 and 11 years. As such, they are entitled for compensation towards loss of love and affection. In support of the same, he relied upon Rulings 2017 SCC Ker 23174 [1.Valsamma and others Vs. V.A.Baiju, 2. Rev.FR.Joseph Vattakalam, and 3.The National Insurance Co.Ltd., - MACA.Nos.711 and 921 of 2010]. Following the above said Ruling and the fact that the minor petitioners have lost love and affection of their father, it will be appropriate to award Rs.25,000/- each in total Rs.50,000/- under the head "loss of love and affection to petitioners 2 and 3". This court also deems it fit to award Rs.10,000/- towards "Transportation charges". Accordingly, the

modified compensation payable to the appellants/petitioners is as under:-

Sl.N o.	Heads	Amount awarded by the Tribunal	Amount awarded by this Court
1.	Loss of dependency	Rs.7,20,000/-	Rs.10,08,000/-
2.	Loss of consortium	Rs. 25,000/-	Rs. 40,000/-
3.	Loss of love and affection	Rs. 40,000/-	Rs. 50,000/-
4.	Funeral expenses	Rs. 10,000/-	Rs. 15,000/-
5.	Transport expenses	---	Rs. 10,000/-
6.	Loss of estate	---	Rs. 15,000/-
	Total	Rs.7,95,000/-	Rs.11,38,000/-.

11. In the result,

(i) The Civil Miscellaneous Appeal is Allowed;

(ii) The appellants/Petitioners are entitled to award amount of Rs.11,38,000/- which carry interest at the rate of 7.5% per annum from the date of petition till the date of realisation;

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

1st petitioner - 40%

2nd and 3rd petitioners - 20% each

4th and 5th petitioners - 10% each

(iv) The 2nd respondent/Insurance company is directed to deposit the award amount of Rs.11,38,000/- (Rupees Eleven Lakhs Thirty eight thousand only) within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the appellants 1, 2, 4 and 5 are permitted to withdraw the same, by filing necessary application before the Tribunal. Insofar as share of the minor 3rd appellant is concerned, the same shall be invested in a Fixed Deposit in a Nationalised Bank till they attain majority. The accrued interest in the minor share shall be withdrawn by the mother/1st appellant once in three months. The appellants are directed to pay the required court fee for the enhanced award amount within a period of one week from the date of receipt of a copy of this order. No costs. Consequently, connected CMP is closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

To

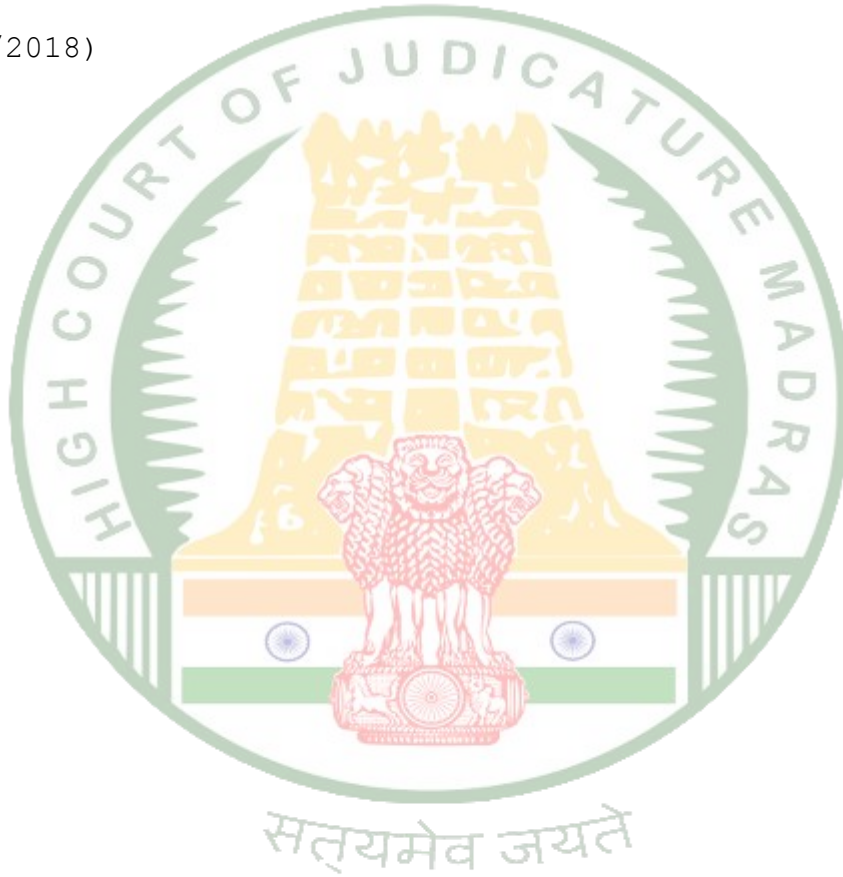
1. The II Judge
Small Causes Court at Chennai.
The Motor Accident Claims Tribunal

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

+lcc to MR.T.G.Balachandran,Advocate,sr29369

C.M.A.No.2331 of 2014

MG(CO)
GSP(07/08/2018)



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