IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 05.03.2018
Coram
The Honourable Mr. Justice S.BASKARAN
C.M.A.No.2531 of 2017

1. R.M.Lakshmanan
2.L.Theivanai ... Appellants

vs.

1. A.P.R.Logistic,
No.40, Vaithiyar Street,
Kancheepuram 631 501.

2. Future General India Insurance Co. Ltd.,
No.192, 18th Floor, Karumuthu Nilayam,
AnnaSalai, Chennai - 2. ... Respondents

This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 25.04.2014 made in M.C.O.P.No.1046 of 2011 on the file of the II Additional District Court, Tiruvallur at Poonamallee (Motor Accidents Claims Tribunal).

For Appellants : Mr.K.Suryanarayanan
For Respondents : Mr.N.Vijayaraghavan for R2

JUDGMENT

This civil miscellaneous appeal arises out of the Judgment and decree 25.04.2014 made in M.C.O.P.No.1046 of 2011, on the file of the II Additional District Court, Tiruvallur at Poonamallee (Motor Accidents Claims Tribunal).

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

3 The case of the petitioners/claimants is that on 06.12.2011 at about 3.15 p.m. as the deceased was riding his two wheeler bearing Reg.No.TN 07 P 8166 in the GST road towards Tambaram near Ponnusamy Hotel, the first respondent private bus bearing Reg.No.TN 21 R 2929 came from behind at high speed dashed against the two wheeler, in which the deceased was proceeding, causing fatal injuries to her and due to the same she died on the next day in the Hospital. The negligence of the

first respondent vehicle driver alone caused the accident. The deceased was aged 35 years, she was employed as Cashier in a private establishment and earned Rs.14,500/- p.m. The petitioners/claimants, who are the parents of the deceased, are the only legal heirs and they were dependent on the income of the deceased. Thus the petitioners/claimants seeks a sum of Rs.10,00,000/- as compensation from the respondents who are owner and insurer of the offending vehicle.

4 On the other hand, opposing the claim petition by filing counter, the learned counsel for the second respondent/Insurance Company contends that the accident did not occur as alleged by the petitioners/claimants. The deceased, who was riding the two wheeler caused the accident due to her negligence. The learned counsel for the second respondent/Insurance Company denied the age, avocation and income of the deceased as stated in the claim petition. The claim of the petitioners/claimant is exorbitant. Thus the second respondent/Insurance Company seeks for dismissal of the claim petition.

5 To substantiate their claim before the Tribunal, the petitioners examined P.W.1 to P.W.3 and produced documents Ex.P1 to Ex.P10 to prove their claim. On the side of the respondents, neither oral nor documentary evidence was let in.

6 The Tribunal, on appreciation of available materials on record, found that the first respondent/bus driver is responsible for the accident and arrive at Rs.15,75,000/- as compensation, but, awarded a sum of Rs.10,00,000/- lakhs as compensation to the petitioners /claimants, since the petitioners' claim was only to that extent. Being not satisfied with the conclusion of the Tribunal and quantum awarded, the petitioners/claimants have come forward with the present appeal.

7 The learned counsel for the petitioners/claimants contends that the Tribunal on the basis of available material, arrived at Rs.15,75,000/- as compensation, but, restricted the said amount and awarded only a sum of Rs.10,00,000/-as compensation, since the petitioners' claim was only Rs.10,00,000/-, which is not proper. The Tribunal ought to have awarded just compensation as arrived by it. The Tribunal failed to consider the future prospects while assessing the loss of income of the deceased. The Tribunal ought to have applied the multiplier as 16 instead of 13, which was wrongly applied taking into consideration the age of the mother of the deceased instead of taking the age of the deceased. The amount awarded under various heads is on lower side. Thus the petitioners/claimants seek to entertain the appeal and to enhance the award amount. The petitioners/claimants also filed M.P.No.11004 of 2016 in CMANo.SR44161 of 2016 seeking enhancement of the value of the

claim.

8 Per contra, the learned counsel for the second respondent/Insurance Company contended that the Tribunal on appreciation of evidences available on record, has fixed the liability on the respondents and passed an award granting higher amount as compensation to the petitioners/claimants than warranted. The petitioners/claimants are not entitled for any enhanced quantum of award. Thus the learned counsel for the second respondent/Insurance Company seeks dismissal of the appeal.

9 Heard the learned counsel appearing for both sides and also perused the materials available on record.

10 The first petitioner, who deposed as P.W.1 stated that the deceased mets with the accident only due to negligence of the first respondent vehicle driver. An eye witness to the occurrence, who deposed as P.W.2 has clearly stated that the accident occurred due to rash and negligent driving of the first respondent vehicle driver only. Further the police have registered the criminal case against the driver of the first respondent vehicle only as evidenced by Ex.P1 FIR. The contents in the Ex.P1 FIR and the evidence of P.W.2 clearly proved the fact that the negligence on the part of the first respondent vehicle driver caused the accident. On the other hand the respondents did not let in any oral or documentary evidence to contradict the above statements. Further during the cross examination, nothing has been elucidated from P.W.2 to discard his evidence.

11 Under these circumstance, oral evidence of P.W.2 and contents of Ex.P1 FIR, clearly established the claim of the petitioners that the negligence of the first respondent vehicle driver alone caused the accident. As such the respondents who are the owner and insurer of the offending vehicle are bound to compensate the petitioners/claimants for the accident caused due to the negligence of the first respondent vehicle driver.

12 The petitioners/claimants, who are the parents of the deceased Uma states that at the time of accident, their daughter was aged 35 years and she was earning Rs.14,500/- p.m. from her employment in a private concern. The petitioners/claimants produced driving license of the deceased as Ex.P5, death certificate as Ex.P2, postmortem certificate as Ex.P3 and the legal heir certificate as Ex.P4. In the driving license Ex.P5, the date of birth of the deceased is mentioned as 09.03.1976 and on that basis, the age of the deceased is fixed as 36 years at the time of accident. The deceased Uma was sated to be employed in a private establishment. To support this statement, the petitioners have examined the General Manager of Indira Cotton

Mills as P.W.3. He stated that the monthly salary of the deceased Uma for the month of November 2011 was Rs.11,500/-. He also produced attendance register of Indira Cotton Mills as Ex.P7, wherein the name of the deceased is mentioned. According to P.W.3, the deceased attended office till 06.12.2011 and the monthly salary of the deceased for November 2011 was Rs.15,500/-. The Tribunal taking into account, the contradiction in the evidence of P.W.3, fixed the monthly salary of the deceased at Rs.15,500/-.

13 The learned counsel for the second respondent/Insurance Company contended that the Tribunal fixed monthly salary of the deceased on higher side, which is evident from Ex.P6 Salary Slip, wherein the monthly salary of the deceased for November 2011 was stated to be Rs.14,720/-. It is clear from Ex.P7 and Ex.P8 that the gross amount drawn by the deceased was Rs.15,500/- p.m. As such taking into consideration the above said facts, it is just and proper to fix the salary of the deceased as Rs.15,500/- p.m. The Tribunal ought to have awarded future prospects at 50% of the monthly salary of the deceased and as the deceased was a bachelor, 50% has to be deducted towards personal expenses instead of 1/3. Further, 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 and funeral expenses, this Court is inclined to grant the compensation as under:-

14 Accordingly, the compensation of Rs.10,00,000/- awarded by the Tribunal stands enhanced as follows:

Loss of Income is calculated as
15500 + 7750 (50% of the salary) = 23250
23250-11625 (50% personal expenses)x12x16 = 22,32,000

Loss of Income	:	Rs.22,32,000/-
Loss of love and affection	:	Rs. 50,000/-
Loss of estate	:	Rs. 15,000/-
Funeral expenses	:	Rs. 15,000/-
Total	:	Rs.23,12,000/-

15 In view of the above modification, the civil miscellaneous appeal is partly allowed and the award is enhanced as stated above. No costs. The second respondent/ Insurance Company is directed to deposit the entire modified award amount of Rs.23,12,000/- with interest at the rate of 7.5% p.a. after deducting the amount that has already been deposited by them if any within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the petitioners/claimants are permitted to withdraw the entire award amount with proportionate interest and costs, by filing necessary

application before the Tribunal. The petitioners/claimants are entitled to 50% each of the award amount. The petitioners/claimants are directed to pay the deficit court fee for the enhanced award amount, if any, within a period of four weeks from the date of receipt of a copy of this order. The petitioners/claimants shall forego the interest for the delay period of 659 days.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The II Additional District Court,
   Tiruvallur at Poonamallee
   (Motor Accidents Claims Tribunal)

2. Future General India Insurance Co. Ltd.,
   No.192, 18th Floor, Karumuthu Nilayam,
   Anna Salai, Chennai - 2.

+1 cc to Mr.K.Vijayaraghavan Advocate sr 17476
+1 cc to Mr.K.Suryanarayanan Advocate sr 16532

C.M.A.No.2531 of 2017

aa20/04/2018