IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.2628 of 2017

1.R.Rajabunnissa
2.R.Mohammed Rizwan
3.R.Asmabegum ...Appellants/Petitioners

Vs

1.M.Vinayagam
2.Shriram General Insurance Company Ltd.,
No.66, 2nd Floor, City Center Complex,
Thirumalai Pillai Road, T.Nagar,
Chennai-600 017
..Respondents.

Civil Miscellaneous Appeal filed against the judgment and decree dated 27.01.2016 passed in MACT.O.P.No.7090 of 2013 on the file of Motor Accidents Claims Tribunal, III Small Causes Court, Chennai.

For appellants : : Mr.R.Kalai Arasan

for Respondents : : Mr.S.Dhakshinamoorthy for R2.

J U D G M E N T

This Civil Miscellaneous Appeal is filed by the appellant/Petitioner, challenging the judgment and decree dated 27.01.2016 passed in MACT.O.P.No.7090 of 2013 on the file of Motor Accidents Claims Tribunal, III Small Causes Court, 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 15.09.2013, at about 12.10 hours, while the deceased was riding his two wheeler bearing Reg.No.TN-07-AP-6719 from CIT Nagar to Velacherry, in the North South direction, while proceeding in the Velacherry main road, opposite to Vikas Plaza, the 1st respondent lorry bearing Reg.No.TN-25-P-1246 came at high speed in a rash and negligent manner, dashed against the motor cycle in which the deceased was proceeding, causing him fatal

injuries, resulting in his death on the spot. The further case of the petitioners is that the said accident occurred only due to the negligence on the part of the 1st respondent vehicle driver only. The deceased was aged 56 years and was employed as a Sales Manager in a Private concern, earning a monthly salary of Rs.23,800/-. He was also entitled for annual benefits of Rs.54,000/-. The Petitioners who are the wife and children of the deceased were dependants on the income earned by the deceased. Due to his sudden demise, the petitioners have lost the bread winner of the family and his contribution to the house hold. Thus, the Petitioners sought for a sum of Rs.20,00,000/- as compensation from the respondents, who are the owner and insurer of the offending vehicle.

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 per the Motor Vehicle Inspector's (MVI) Report, both the vehicle did not suffer any damage. The same itself is sufficient to prove that there was no collision between the lorry and the motor cycle. The two wheeler driven by the deceased was not insured. The rider of the two wheeler also contributed to the accident. As the owner and insurer of the two wheeler bearing Reg.No.TN-7-AP-6719 being not impleaded as parties, the same is fatal to the petitioners' case. The age, avocation and income of the deceased as alleged in the petition is denied. The claim of the Petitioners is exorbitant. Thus, the 2nd respondent sought for dismissal of the Petition.

4. Before the Tribunal, the Petitioner examined P.W.1 and P.W.2, produced documents Ex.P.1 to Ex.P.7 to prove their contention. On the other hand, neither oral nor documentary evidence was let in by the respondents. The Tribunal, after analysing the evidence available on record, found the negligence on the part of the Lorry driver alone caused the accident, passed the award of Rs.7,28,000/- payable by the 2nd respondent to the petitioners. Being not satisfied with the quantum of the award, the petitioners/claimants have come forward with the present appeal.

5. Heard both sides and perused the records carefully.

6. The learned counsel for the Appellants/Petitioners contends that the deceased by working as Sales Manager in a Private Concern was earning Rs.23,800/- per month and the same is evidenced by Ex.P.7-Salary Certificate and the same is spoken to by P.W.2, Proprietor of the Private concern, wherein, the deceased was employed. However, the Tribunal wrongly fixed the notional income of the deceased at Rs.6500/- per month and the same is not correct. The Tribunal, ought to have provided for

future prospects. The Tribunal failed to appreciate the evidence on record properly. The amount awarded under different heads is very nominal. Thus, the petitioners/claimants sought for enhancement of the quantum of the award by entertaining the appeal.

7. Per contra, the learned counsel for the 2nd respondent contends that the Tribunal has correctly appreciated the evidence on record and fixed the notional monthly income at Rs.6500/-, after rejecting Ex.P.7 Salary Certificate and the evidence of P.W.2 for the reasons stated by the Tribunal. Hence, the claim of the Petitioners for enhancement is unsustainable and the appeal is to be dismissed.

8. The 1st petitioner stated that on 15.09.2013 while her husband/ deceased was riding his motor cycle in the Velacherry Main Road, he met with an accident due to negligence on the part of the 1st respondent driver. As per P.W.1 evidence, she was travelling along with the deceased as Pillion rider and she has given a clear cogent account of the manner in which the accident occurred. Further the Police also registered a case against the 1st respondent vehicle driver only as per Ex.P.1-FIR. The Petitioner also produced Rough Sketch of the occurrence spot as Ex.P.2. It is clear from the evidence of P.W.1 as well as the contents of Ex.P.1-FIR that the accident occurred due to rash and negligent driving of the 1st respondent Lorry driver only.

9. On the other hand, to refute the evidence let in by the Petitioners, the respondent has not chosen to examine either the 1st respondent Lorry driver or any other eyewitness to the accident. As such, it is clear that the version of the accident given by P.W.1 is not contradicted. In such circumstances, in view of Ex.P.1-FIR registered against the 1st respondent Lorry Driver and the oral evidence of P.W.1, who witnessed the accident, the Tribunal is correct in fixing the negligence on the part of the 1st respondent lorry driver alone caused the accident.

10. The Petitioners/claimants have come forward with the appeal only on the ground of quantum, as they felt the award passed by the Tribunal is on the lower side. The Petitioners stated that the deceased was aged 56 years and by working as Sales Manager in M/s.Marvel Products, Chennai, was earning Rs.23,800/- per month. It is clear from Ex.P.3 Driving Licence of the deceased that his Date of Birth is 01.01.1956. As such on the date of the accident, which occurred on 15.09.2013, the age of the deceased was 57 years. It is also clear from Ex.P.4 Post Mortem Certificate and Ex.P.5 Death Report copy that the age of the deceased was 57 years.

11. According to P.W.1, the deceased was employed as Sales Manager in M/s.Marvel Products and was earning Rs.23,800/- per month. To prove the same, the Petitioner examined P.W.2 who was working as Manager in the said M/s.Marvel Products. The said staff of the Private concern stated that the deceased was employed in their concern and his salary certificate is Ex.P.7, wherein, the monthly salary of the deceased is stated to be Rs.23,800/-. The Tribunal, however, refused to accept the evidence of P.W.2 and Ex.P.7 salary certificate on the ground that no proof of P.W.2 being the Proprietor and Manager of the said M/s.Marvel Products is produced and further the documents like Attendance Register, Salary Register or Identity Card of the deceased was not produced. On that ground, the Tribunal refused to accept the oral evidence of P.W.2. The Petitioners have not produced any Bank account statement of the deceased or any Income Tax Returns to prove the nature of income of the deceased.

12. The learned counsel for the Petitioners contended that even assuming Ex.P.7 salary certificate was not accepted, being Manager, in the Private concern and the fact that the accident occurred during 2013, the deceased would have easily earned Rs.12,000/- per month. But, the learned counsel for the Insurance company has contended that the same is highly excessive.

13. However, considering the above said circumstances, this court is inclined to fix the monthly income of the deceased at Rs.10,000/-. As the deceased was stated to be 57 years old, multiplier to be applied is 9; towards future prospects 10% of the income has to be added. Further, as the number of dependants are three, 1/3rd of the income has to be deducted towards personal expenses of the deceased. Thus the pecuniary loss suffered by the Petitioners is calculated as under:-

10,000/- + 10% future prospects (1000) = 11,000/-

11,000/- - 1/3rd deduction (3666) = Rs.7334

Thus, the loss of monthly contribution to family of the deceased will be Rs.7334/-.By applying correct multiplier of 9, the loss of dependency to the deceased family is as follows:-

Rs.7334 x 12 x 9 = Rs.7,92,072/-

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 sum of Rs.10,000/- amount awarded by the Tribunal under the head "Transport Expenses" found to be just and proper and hence, the same is confirmed. The Petitioners contended that the 2nd and

3rd Petitioners are suffering from loss of love and affection of their father, as such, they are entitled to compensation towards loss of love and affection. In support of the same, the learned counsel relied upon the Ruling of the Kerala High Court reported in 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 same, this court is of the view that the Petitioners 2 and 3 are in need of some amount towards loss of love and affection. Hence the Appellants 2 & 3/Petitioners 2 & 3 are entitled to Rs.25,000/- each. 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. | Pecuniary loss | Rs.4,68,000/- | Rs.7,92,072/- |
| 2. | Loss of consortium | Rs. 75,000/- | Rs. 40,000/- |
| 3. | Loss of love and affection to Petitioners 2 and 3 | Rs.1,50,000/- | Rs. 50,000/- (Rs.25,000/- each) |
| 4. | Funeral expenses | Rs. 25,000/- | Rs.15,000/- |
| 5. | Transport expenses | Rs. 10,000/- | Rs.10,000/- |
| 6. | Loss of Estate | --- | Rs.15,000/- |
| | Total | Rs.7,28,000/- | Rs.9,22,072/- |

14. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed;

(ii) The appellants/Petitioners are entitled to award amount of Rs.9,22,072/- 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:-

Mother/1st appellant - 40%

Siblings/2nd and 3rd appellants- 30% each.

The 2nd respondent/Insurance company is directed to deposit the award amount of Rs.9,22,072/-Rupees Nine Lakhs twenty two thousand seventy two only] within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the appellants/petitioners are permitted to withdraw the same, by filing necessary application before the Tribunal. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

nvsri

To

1.The Motor Accident Claims Tribunal,
III Court of Small Causes, Chennai.

2.The Section Officer,
V.R.Section, High Court, Madras.(+2 copies)

+2cc to Mr.N.M.Muthurajan, Advocate, S.R.No.28613
+1cc to Mr.S.Dhakshnamoorthy, Advocate, S.R.No.28757

C.M.A.No.2628 of 2017

BR(CO)
SP(09/07/2018)