

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.2640 of 2017

1.P.V.Indira
2.Dhanalakshmi

...Appellants/Petitioners

Vs

1.M.Subramanian
2.ICICI Lombard General Insurance
Company Limited,
Chennai-600 003

...Respondents

Civil Miscellaneous Appeal filed against the judgment and decree dated 20.04.2016 made in M.C.O.P.No.935 of 2014 on the file of Motor Accident Claims Tribunal, II Additional District Court, Poonamallee.

For appellants : : M/s.M.Malar
for Respondents
for R2 : : Ms.R.Sree Vidhya.

J U D G M E N T

This Civil Miscellaneous Appeal is filed by the appellants/claimants, challenging the judgment and decree dated 20.04.2016 made in M.C.O.P.No.935 of 2014 on the file of Motor Accident Claims Tribunal, II Additional District Court, Poonamallee.

2. For the sake of convenience, the parties are referred to as per their litigative status before the Tribunal. The case of the petitioners is that on 15.09.2014 at 9.15 p.m., when the deceased Ramesh Kumar was proceeding from West to East in his motor cycle, bearing Reg.No.TN-02-AC-7828 and as he approached Ambattur Estate Vavin Junction, a car bearing Reg.No.TN-22-CH-9434 belonging to the 1st respondent and insured with the 2nd respondent came at high speed driven in a rash and negligent manner, dashed against the motor cycle of the deceased causing grievous injuries to him and due to it, inspite of treatment, the said Ramesh Kumar died subsequently. At the time of the accident, the deceased was aged 25 years and he was employed in a Private Company, earning a sum of Rs.13,875/- per month. The

Petitioners are the mother and sister of the deceased, who are dependant on his income. Hence the petitioners sought a sum of Rs.22,00,000/- 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, the 2nd respondent Insurance Company filed counter contending that it was only the failure on the part of the deceased to observe Traffic Rules and in crossing the road, suddenly caused the accident and as the negligence of the deceased also is the reason for the accident, the respondents are not liable to pay any compensation. The 2nd Respondent also disputed the claim of the petitioners about the avocation, income and age of the deceased. It is also averred that the driver of the 1st respondent was not having license and the petitioner has to prove that the offending vehicle was having all necessary clearance to operate in the Road. Thus, the 2nd respondent sought for dismissal of the Petition.

4. Before the Tribunal, the petitioners examined P.W.1 and P.W.2 and produced documents Ex.P.1 to Ex.P.18 to prove their claim. On the side of the respondents, no oral or documentary evidence was let in. The Tribunal, after considering the entire available evidence before it, found that due to the rash and negligent driving of the 1st respondent driver alone, the accident occurred and the 2nd respondent, being the insurer of the said vehicle, is liable to pay the compensation. Further, the Tribunal, by going through the oral and documentary evidence, granted compensation of Rs.16,04,000/- to the petitioners, who are the mother and sister of the deceased. Being not satisfied with the compensation awarded by the Tribunal, the petitioners/claimants have come forward with the present appeal.

5. The learned counsel for the appellants/petitioners submits that the deceased was working as a Project Incharge at Zeus Solution, Athipattu, and earned Rs.12,800/- per month, but the Tribunal fixed the income at Rs.12,750/- per month and also failed to consider the future prospects of the deceased and also erred in deducting 50% of his salary towards his personal expenses, instead of 1/3rd. It is also contended that the amounts granted under conventional heads are trivial. The learned counsel, thus sought for enhanced compensation and prayed to entertain the present appeal.

6. On the other hand, the learned counsel appearing for the 2nd respondent submits that the award passed by the Tribunal, is perfectly in order and needs no interference.

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

8. The eyewitness of the occurrence, P.W.2-Udayakumar stated that while he was standing in front of Cars India Private Limited at Athipattu Main Road, Vavin Junction, he saw a Tavera Car dashing against the motor cycle bearing Reg.No.TN 02 AC 7828 and the accident occurred due to the Tavera Car coming in high speed. The mother of the deceased who deposed as P.W.1 also corroborated the evidence of P.W.2. Further it is evident from Ex.P.1 FIR that the case was registered only against the driver of the 1st respondent vehicle. The Petitioners also produced Ex.P.14 Alteration Report and that also going to show the negligence of the 1st respondent alone caused the accident. On the other hand, the 2nd respondent has not let in contra evidence to disprove the claim of the petitioners. As such on the basis of P.W.2 oral evidence and Ex.P.1 -FIR and Ex.P.14- Alteration Report, it is clear that the negligence of the 1st respondent alone caused the accident. As such, the finding of the Tribunal in that regard is confirmed.

9. The Petitioners claimed that they are dependant on the income of the deceased who was aged 26 years on the date of the accident. The Petitioners produced the driving license and transfer certificate of the deceased as Ex.P.6 and Ex.P.12 respectively. It is evident from the same that date of birth of the deceased was 25.08.1988 and the age of the deceased is 26 years.

10. The mother of the deceased who deposed as P.W.1 stated that her son was earning Rs.13,875/-by working in a Private Company at Athipattu. She also stated that her son obtained P.G.Degree in first class and produced Ex.P.11 to Ex.P.13 certificates issued by the Madurai University. The petitioner also examined P.W.3 Anathakumar (not included in List of Petitioner Witnesses) and according to him, the deceased working in their concern as Engineer and his salary was Rs.12,800/- per month. P.W.2 also produced the appointment order of the petitioner which is marked as Ex.P.9, Attendance Register, which is marked as Ex.P.16, Salary Proof as Ex.P.17 and Ex.P.18. By taking into consideration Ex.P.18, issued on 30.05.2014, the Tribunal held that as per the last Pay Slip for the month of August 2014, the monthly income of the deceased Ramesh Kumar should be fixed at Rs.12,191/-. It is stated that the deceased was given promotion as Application Engineer and his monthly income was Rs.12,750/- and on the basis of the above said evidence, it is appropriate to fix the monthly income of the deceased as Rs.12,750/- per month.

11. Admittedly, the deceased was unmarried and he was aged 26 years at the time of his death. The Correct Multiplier to be applied for that age group is 17. The Tribunal has deducted 50% of the monthly income since the deceased was a Bachelor. The

learned counsel for the petitioners/claimants contended that as the deceased was having widowed mother and unmarried sister as dependants, it is appropriate to deduct 1/3rd towards personal expenses and deduction of 50% is not proper. However, in view of the Apex Court Ruling reported in 2017(2) TN MAC 609 (SC) [National Insurance Co.Ltd., Vs. Pranay Sethi and others] and the fact that the deceased was a Bachelor, it is just and proper to deduct 50% of his income and further, addition of 40% is made towards future prospects. Thus, the calculation of Loss of income to the petitioners is calculated as under:-

12750 + 40% - 50% deduction x 12 x 17 = 18,20,700/-.

12750 + 40% Future Prospects (5100) = Rs.17850

17850 - 50% deduction = Rs.8925

Rs.8925 x 12 x 17 = Rs.18,20,700/-

Thus a sum of Rs.18,20,700/- is awarded as Loss of income to the dependants by this court. Further by following the above cited Apex Court Judgment in the case of Pranay Sethi (cited supra), this court is also inclined to award the following sums under conventional heads, by setting aside the award granted by the Tribunal, under other heads.

Loss of Estate = Rs.15,000/-

Funeral Expenses = Rs.15,000/-

Transportation = Rs.10,000/-

Damage to articles = Rs.2,000/-

Add:Pecuniary loss to dependants = Rs.18,20,700/-

Total = Rs.18,62,700/-

12. Accordingly, the compensation awarded by the Tribunal stands enhanced to Rs.18,62,700/- by this court. In the result, the Civil Miscellaneous Appeal is Partly Allowed with costs as follows:-

- (i) The award of the Tribunal is enhanced to Rs.18,62,700/- from Rs.16,04,000/-;
- (ii) The award amount will carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit;
- (iii) In view of the above modified enhanced award amount, the 2nd respondent/Insurance Company is directed to deposit the award amount with proportionate interest and costs, less the amount, if any already deposited, within a period of six weeks from the date of receipt of a copy of this order;

(iv) On such deposit, the appellants 1 and 2 /claimants are permitted to withdraw the amount awarded as above in the ratio of 60% : 40%, by filing proper application before the Tribunal, less the amount if any already withdrawn, with accrued interest. The Tribunal shall pass appropriate directions for the disbursal of the amount as stated supra on the filing of such application;

(v) In view of the enhanced compensation, the appellants/petitioners shall pay the necessary court fee before obtaining the copy of the Judgment. It is also made clear that since the appeal has been filed with the delay of 283 days, interest is waived off, for the default period.

s/d-

Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

nvsri

To

1.The Motor Accidents Claims Tribunal,
II Additional District Court, Poonamallee.

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

+1 CC to M/s. M. Malar, Advocate sr 8917.

C.M.A.No.2640 of 2017

RK(CO)
SP(14/08/2018)

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