

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED:09.02.2018
Coram

The Honourable Mr. Justice S.BASKARAN

Civil Miscellaneous Appeal No.2652 of 2017

1.Chinnaponnu
2.Selvaraj
3.Baskar

.... Appellants/Petitioners

...vs...

1.Mathivanan
2.The Oriental Insurance Company Ltd,
No.9/1, Barges Tank Road,
Mayladuthurai.

... Respondents/Respondents

This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the Fair and Decretal order dated 24.01.2002 made in MCOP.No.11 of 2001 on the file of the Motor Accident Claims Tribunal/Additional District Judge, Chidambaram.

For Appellants : Mr.K.P.Prabhuraj

For Respondents : Mr.M.Krishnamoorthy for R-2.

JUDGMENT

Being not satisfied with the quantum of compensation awarded by the Tribunal dated 24.01.2002 made in MCOP.No.11 of 2001, the present appeal has been filed by the petitioners/claimants to enhance the award amount.

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

3. The case of the petitioners is that on 08.02.1996 at about 10.30 p.m., when the deceased was going in his bicycle towards his village from Neyveli, in Neyveli - Vridhachalam Road, the first respondent's owned a van bearing Registration No.TN-51-1491, which was going towards Vridhachalam came at high speed dashed against the deceased and he suffered head injury and died on the spot itself. At that time, the deceased Mathanasamy was employed in Neyveli Lignite Corporation, earning a monthly salary of Rs.4,650/-. The petitioners who are the

wife and children of the deceased were depending on his earning. The deceased was aged about 45 years at the time of accident and as such he would have contributed to his family at bigger level. Hence, the petitioners seek a sum of Rs.10,00,000/- as compensation.

4. On the other hand, opposing the claim petition, the second respondent Insurance company filed a counter contending that the manner of accident is to be proved by the petitioner. Similarly the age, avocation and monthly income of the deceased is also to be established. The claim of the petitioners is exorbitant. As the driver of the first respondent vehicle is not responsible for the accident, the plea of the petitioners cannot be entertained. Hence, the second respondent seeks dismissal of the petition.

5. Before the Tribunal, the first petitioner examined herself as P.W.1 and witness to the occurrence one Bharathidasan was examined as P.W.2 and produced documents Ex.P1 to Ex.P20 to substantiate their claim. On the side of the respondents, neither oral evidence nor documentary evidence was produced.

6. The Tribunal, after considering the pleadings, oral and documentary evidence, concluded that the accident occurred only due to the rash and negligent driving of the driver of the offending vehicle owned by the first respondent and insured with the second respondent and directed the respondents jointly and severally to pay a sum of Rs.5,10,000/- as compensation. Being not satisfied with the quantum of compensation awarded by the Tribunal, the petitioners/claimants filed this present appeal seeking enhancement of Award amount.

7. I have heard the learned counsel appearing for the appellants and the learned counsel appearing for the second respondent and perused the materials available on record.

8. The learned counsel appearing for the petitioners/claimants contended that the accident occurred only due to the negligence of the first respondent vehicle driver and the deceased was earning a sum of Rs.4,630.48 per month and he also possessed agricultural lands from which he was getting income. The Tribunal failed to fix the total earning of the deceased properly and also erred in adopting multiplier 15 to calculate the compensation. The amount awarded by the Tribunal is very low. Hence, the petitioners seek to enhance the award amount.

9. Per contra, the learned counsel appearing for the second respondent Insurance company contended that the claim of the petitioners is farfetched and without any basis. The Tribunal has wrongly assessed negligence aspect and also the income of

the deceased and the award passed by the Tribunal is on the higher side without any basis. Hence, the second respondent seeks dismissal of this appeal.

10. The petitioners state that on 08.02.1996 at about 10.30 p.m., when the deceased was proceeding to his village in bicycle, the first respondent van dashed against him resulting in his death. The police have registered a case against the driver of the first respondent vehicle as evidenced by Ex.P1 first information report. Further, the driver of the vehicle has admitted his guilt before the criminal court and paid fine amount as evidenced by Ex.P5 copy of the criminal court judgment. The oral evidence of P.W.2, who is witness to the occurrence also clearly established the fact that the negligent driving of the vehicle by the first respondent driver alone caused the accident. In the absence of any contra evidence let in by the respondents, it is apparent on the basis of P.W.2 evidence as well as Ex.P1 first information report and Ex.P5 copy of the judgment that the driver of the first respondent vehicle alone is responsible for the accident.

11. Admittedly, the first respondent vehicle is insured with the second respondent Insurance company, as evidenced by Ex.P8 Policy copy. As such the respondents as owner and insurer of the offending vehicle are liable to pay compensation.

12. The deceased was stated to be 45 years old at the time of the accident and was employed in Neyveli Lignite Corporation, getting a sum of Rs.4,630/- as salary per month. The driving licence of the deceased is produced as Ex.P20 and his school certificate as Ex.P19. Copy of the postmortem certificate is produced as Ex.P3. On the basis of the said documents and the oral evidence of P.W.1, the age of the deceased is fixed at 45. The deceased was working in Neyveli Lignite Corporation and to prove the same his appointment order is produced as Ex.P10. Likewise, his joining report is produced as Ex.P12. His pay slip is produced as Ex.P16 and Ex.P17. The petitioners also produced the bonus notice received by the deceased as Ex.P13. It is evident from Ex.P17 pay slip that the deceased was getting a sum of Rs.4,630/- as monthly salary for the month of January, 1995 as a permanent employee of Neyveli Lignite Corporation. Hence, his monthly salary is fixed as Rs.4,630/-. According to the petitioners, the deceased was aged about 45 years and the same is evident from Ex.P19 School Certificate of the deceased. In such circumstances, the correct multiplier to be applied is 14. The deceased being a permanent employee of NLC and aged about 45 years, 30% of income is to be added towards future prospects. As such, the deceased would have earned a sum of Rs.4,630/- p.m., and he is entitled to future prospects at 30%. Thus, the loss of dependency calculated as follows. Rs.4,630/- + 30% (future prospects) of Rs.1,389/- = Rs.6,019/-. There are three petitioners, who claims to be a

dependents on the income of the deceased. Hence, 1/3rd amount is to be deducted towards his personal expenses. As such the loss of income calculated is as follows:- Rs.6,019/- - 1/3rd amount(towards personal income) of Rs.2006/- = Rs.4,013/- x 12 = Rs.48,036/- x 14 = Rs.6,72,504/-. Thus, the loss of income comes to Rs.6,72,504/-.

13. 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
Funeral Expenses	=	Rs. 10,000.00

Accordingly, the compensation awarded by the Tribunal is modified and the same is enhanced to Rs.7,24,184/-.

14. The learned counsel appearing for the second respondent Insurance Company contended that the Tribunal passed an Award dated 02.01.2002 and the petitioners after filing the appeal deliberately delayed number it and the same is numbered only in 2017. In such circumstances, the second respondent contended that the petitioner is not entitled to the interest for the delay period. The said contention of the learned counsel for the respondent appears to be just and acceptable. Hence, the petitioners are entitled to interest for the enhanced amount at 7.5% from the date of numbering of this appeal only i.e. on 29.08.2017.

15. In view of the above modification, the civil miscellaneous appeal is partly allowed. No costs. The second respondent/Insurance Company is directed to deposit the entire enhanced award amount of Rs.7,24,184/- with interest at the rate of 7.5% p.a. from the date of filing the appeal i.e., on 29.08.2017 till the date of deposit of the amount, after deducting the amount that has already been deposited by them within a period of six weeks from the date of receipt of a copy of this order. The petitioners/claimants are entitled to equal share of the award amount. The petitioners/claimants are permitted to withdraw their respective share with accrued interest by filing necessary application before the Tribunal.

rrg

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To
The Additional District Judge,
The Motor Accident Claims Tribunal
Additional District Court,
Chidambaram.

Copy to: The Section Officer,
VR Section, High Court, Madras

+2cc to Mr.R.Srinivas, Advocate Sr.No.10909, 10470
+1cc to Mr.M.Krishnamoorthy, Advocate Sr.No.10141

SVI(CO)
sm:23.3.2018

C.M.A.No.2652 of 2017



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