

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

Civil Miscellaneous Appeal No.2754 of 2017 in

Civil Miscellaneous Petition No.15523 of 2017

The Oriental Insurance Company Limited,
No.216, Prakasam Salai, Broad way,
Chennai - 600 001.Appellant/2nd Respondent

.Vs.

1. R.Kavitha
2. R.Nirmala
3. R.Praveenkumar
4. Minor Yamini
rep. by his mother N.F.
First respondent Kavitha ..Respondents 1 to 4
/Petitioners 1 to 4
- 5.T.Prabhakaran
- 6.A.Pappammal .. Respondents 5 and 6
/Respondents 1 and 3

Prayer :

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act-1988, to set aside the decree and Judgment passed in M.C.O.P No.740/2014 on the 06/10/2016 on the file of Motor Accident Claims Tribunal [Additional District Judge-III] at Poonamallee, Thiruvallur District.

For Appellant : Mr.J.Chandran

For Respondents: Mr.K.Vardha Kamaraj for R1 to R4.
R5 and R6-Set exparte before Tribunal.

J U D G M E N T

The appellant/Insurance company has preferred this memorandum of Civil Miscellaneous to set aside the decree and Judgment passed in M.C.O.P. No.740/2014 on the 06/01/2016 on the file of Motor Accident Claims Tribunal [Additional District Judge-III] at Poonamallee, Thiruvallur District.

2. For the sake of convenience, the parties are referred to herein according to their litigative status before the Tribunal.

3. The case of the petitioners is that on 08.07.2014 at 17:30 hours when the deceased was proceeding in a bi-cycle in C.T.H.Road, Avadi, opposite to Ambedhkar Statue. The first respondent Motorcycle bearing Registration no. TN-12-3648 came at a high speed dashed against the deceased, resulting in greivous head injury and injuries all over the body and subsequently he died in the hospital. The first respondent is the owner and the second respondent is the insurer of the vehicle. At the time of accident the deceased was aged about 49 years, working on contract basis in HVF, earning Rs.15,000/- per month. Hence the petitioners who are the wife and children of the deceased seek a sum of Rs.15,00,000/- as compensation.

4. On the other hand, opposing the Petitioners' claim, the second respondent Insurance company denies the claim of the petitioners about the nature of accident. Further the claim about age, avocation and income of income of the deceased is denied. The respondent stated that negligence on the part of the deceased is the cause for the accident. The claim of the petitioners is exorbitant. Hence the respondent sought for dismissal of the Petition.

5. Before the Tribunal, the petitioner examined PW-1 & 2 and produced documents Ex.P.1 to Ex.P.15 to prove their claim. On the side of the respondents neither oral nor documentary evidence was let in. The Tribunal after analysing the evidence available on record found that the first respondent driver is the cause for the accident and awarded a sum of Rs.10,10,000/- as compensation to the petitioners.

6. Aggrieved over the said findings of the Tribunal, the second respondent Insurance company has come forward with the appeal.

7. The learned counsel for the Appellant/2nd respondent/Insurance company contends that the Tribunal fixed the monthly income on higher side and awarded compensation without any basis. The Tribunal ought to have dismissed the claim petition, considering the unreliable evidence let in by the Petitioner and also ought to have considered the delay in lodging the FIR. Thus, the Appellant/2nd respondent/insurance company seeks to reduce the quantum of award passed by the Tribunal by allowing the appeal.

8. Per Contra, the learned counsel appearing for the petitioner contends that the Tribunal have considered the materials on record properly and awarded a just and fair

compensation. Thus, there is no need to interfere with the same and sought for dismissal of the appeal.

8. Heard both sides and perused the materials available on records.

10. The petitioner states that on 08.07.2014 when the deceased was going in a bicycle in Avadi CTH road from East to west another motor cycle coming in opposite direction came at high speed, dashed against the cycle due to which the deceased got injured and ultimately resulted in his death on 10.07.2014.

11. The petitioner produced F.I.R. as Ex.P.1. The contents of FIR corroborates the version of accident given by the Petitioner. It is clear from the evidence of P.W.2 eyewitness and the contents of Ex.P1-FIR that the accident occurred due to negligence of the first respondent two wheeler rider only. No contra evidence was let in by the respondents to disprove the claim of the petitioners. As such, the conclusion of the Tribunal that negligence on the part of the first respondent driver alone caused the accident is correct and it needs no inference.

12. The petitioners stated that the deceased was aged 49 years and at the time of accident he was earning Rs.15,000/- per month from his contract work. It is evident from P.W.3/Death Certificate and P.W.4/Post Mortem report that the deceased was aged about 48 years. In Ex-P.9/Identity card, the date of birth is given as 10.10.1970. Taking into consideration Ex.P.4 / Postmortem report, the age of the deceased is taken as 49 years.

13. The petitioners are the legal heirs of the deceased and the same is evident by PW-5 legal heir certificate. The deceased was stated to be working as a contractor in HVF and earning Rs.15,000/-per month and there is no proof or evidence for the income of the deceased. Hence the notional monthly income of the deceased is fixed at Rs.6,500/-. The deceased being 49 years old, towards his future prospects 25% of the income is to be added. Considering the number of Dependants of the deceased, $6,500 \times 25 / 100 = 1,625/-$ and as such the monthly income of the deceased is $Rs.6,500 + 1,625 = 8,125/-$ $1/3^{rd}$ of the income is to be deducted towards personal expenses of the deceased. Thus, the monthly contribution by the deceased to his family will be $8,125/- \times 2/3 = 5,416/-$. $1/3^{rd}$ of the income is to be deducted towards personal expenses of the deceased.

14. The deceased being aged 49 years old, the correct multiplier to be applied is 13 hence the loss of income is calculated as follows. $5,416 \times 12 \times 13 = 8,44,896/-$ Pranay Sethi =

Rs.70,000/-

13.Considering the materials on record, this Court finds that the amount awarded by the Tribunal has to be modified, Hence, for the above reasons the award passed the Tribunal is modified as follows.

S.No	Particulars	Amount granted by the Tribunal	Amount awarded by this Court
1	Loss of dependency	Rs. 5,85,000/-	Rs.8,44,896/-
3	Funeral expenses	Rs. 25,000/-	Rs. 15,000/-
3	Loss of Love and affection to Ist petitioner	Rs. 1,00,000/-	-
4	Loss of Love and affection to petitioners 2 to 4	Rs. 3,00,000/-	-
5	Loss of consortium to 1 st petitioner	-	Rs.40,000/-
5	Loss of estate	-	Rs.15,000/-
	Total	Rs.10,10,000/-	Rs.9,14,896/-

14. In the result,

(i) The Civil Miscellaneous Appeal is Partly Allowed.

(ii) The award of the Tribunal is reduced to Rs.9,14,896/- from Rs.10,10,000/- .

(iii) 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. In view of the above modified award amount, the second respondent/Insurance Company is directed to deposit the award amount, less the amount, if any, already deposited, along with accrued interest within a period of four weeks from the date of receipt of a copy of this order.

(iv) On such deposit, the petitioners/ claimants are permitted to withdraw the amount awarded as above by filing proper application before the Tribunal. The amount apportioned as compensation to the fourth claimant/minor is directed to be deposited in a Nationalised Bank till the minor attains majority, however, the mother/first claimant is permitted to withdraw accrued interest once in three months.

(v) The Tribunal shall pass appropriate directions for the disbursal of the amount as stated supra on the filing of such application.

(vi) There will be no order as to costs in this appeal.
Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

smn/nvsri

To

1. The Motor Accident Claims Tribunal
[Additional District Judge-III] at Poonamallee,
Thiruvallur District.

+1cc to Mr.J.Chandran, Advocate, S.R.No.14376

+1cc to Mr.K.Vardha Kamaraj, Advocate, S.R.No.14288

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GJ(CO)
CS/25/10/2018



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