

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.562 of 2018

1.V.Mineudevi

2.V.Jaswant, minor aged 7 years

3.V.Yuvathi, minor aged 5 years

Petitioners 2 and 3 are represented
by their mother, natural guardian
the 1st appellant herein.

4.V.Kuruamma @ Anjala

5.V.Kuppaiah ...Appellants/Petitioners

Vs.

1.D.Sriramulu

2.The Manager

The United India Insurance Co.Ltd.,
No.134, Greams Road, Silingi Buildings
IV Floor, HUB, Chennai-6. ...Respondents/Respondents

Civil Miscellaneous Appeal filed against the judgment and
decree dated 31.07.2012 passed in M.C.O.P.No.2 of 2009 on the
file of Motor Accidents Claims Tribunal, Principal District
Judge, Thiruvallur.

For appellants : : M/S.K.R.Ponnusamy for
M/s.Anand and Suryas

for Respondents : : Mr.D.Bhaskaran 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
31.07.2012 passed in M.C.O.P.No.2 of 2009 on the file of Motor
Accidents Claims Tribunal, Principal District Judge, Thiruvallur.

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 22.12.2008 at
about 7.00 p.m, while the deceased V.Chandrasekar was riding his

two wheeler bearing Reg.No.TN-20-AK-0928 in Tiruttani to Nagalapuram Road while going near Nemeli River Bridge, a Tractor bearing Reg.No.TN-20-BA-0289 and Trailer bearing Reg.No.TN-20-BA-0304 came in the opposite direction driven in a rash and negligent manner, dashed against the two wheeler in which the deceased was proceeding, causing him fatal injuries, resulting in death on the spot. According to the Petitioners, the accident occurred due to rash and negligent driving by the 1st respondent vehicle driver. The deceased was aged 28 years and he was employed as Constable in BSF, 15th Battalion, Gurgaon District. He was earning Rs.11,000/- per month. The Petitioners, who are the wife, children and parents of the deceased were dependant on his income. Thus, they sought for a sum of Rs.25,00,000/- 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 due to the negligence of the 1st respondent driver. The offending vehicle viz., a Tractor bearing Reg.No.TN-20-BA-0289 and Trailer bearing Reg.No.TN-20-BA-0304 was not insured with the 2nd respondent. The driver of the said vehicle was not having valid licence. The accident occurred only due to the negligence of the deceased. The age, avocation and income of the deceased is denied. Thus the 2nd respondent sought for dismissal of the claim petition in MCOP.No.2 of 2009.

4. Before the Tribunal, the Petitioners examined P.W.1 to P.W.3, produced documents Ex.P.1 to Ex.P.9 to prove their contention. On the side of the respondents, neither oral nor documentary evidence was produced. The Tribunal, on the basis of evidence available on record, found that the negligence of the 1st respondent vehicle driver alone caused the accident and passed award for a sum of Rs.24,35,056/- payable by the respondents to the Petitioner. Being not satisfied with the quantum of the award, the Petitioners 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 Tribunal failed to consider the evidence let in by the Petitioner about the age and income of the deceased properly. The Tribunal ought to have fixed multiplier '17'. The amount deducted towards personal expenses of the deceased is also not proper. Hence, the learned counsel for the Petitioners sought for enhancement of the award amount by entertaining the appeal.

7. Per contra, the learned counsel for the 2nd respondent/Insurance company contends that the accident did not occur due to the negligence of the 1st respondent Tractor-Trailer driver, but due to the negligence on the part of the deceased alone. The amount awarded by the Tribunal itself is excessive. There is no need to enhance the same. Thus, the 2nd respondent/Insurance company sought for dismissal of the appeal.

8. The 1st petitioner/wife of the deceased who deposed as P.W.1 stated about the accident which took place on 22.12.2008. However, she is not an eyewitness to the accident. The person who witnessed the accident deposed as P.W.2. He clearly stated that on 22.12.2008 when he was proceeding in his two wheeler, he saw the deceased going in another two wheeler near Nemili River Bridge in Tiruttani to Nagalapuram Road. At that time, the Tractor bearing Reg.No.TN-20-BA-0289 and Trailer bearing Reg.No.TN-20-BA-0304 came in the opposite direction, dashed against the two wheeler in which the deceased was riding and he died on the spot. The Police also registered Ex.P.1-FIR against the driver of the 1st respondent vehicle only. Further, after completion of investigation, the Police laid charge sheet as evidenced by Ex.P.2-Xerox copy of Charge sheet against the driver of the 1st respondent vehicle driver only. It is therefore, clear from the same that the negligence of the Tractor cum Trailer driver alone caused the accident. Further, no contra evidence was let in by the respondents to disprove the claim of the Petitioners. As such, it is clear that the negligence of the 1st respondent Tractor cum Trailer driver alone caused the accident.

9.1. The Petitioners claim that the deceased was aged 28 years and he was employed as Constable in BSF, 15th Battalion and posted at Gurgaon District, Haryana. The Identity card of the deceased is produced as Ex.P.6 and the Post Mortem certificate is Ex.P.4. The Transfer certificate of the deceased is marked as Ex.P.8. It is clear from the above said documents that the age of the deceased was 28 years.

9.2. The wife of the deceased while deposing as P.W.1 stated that her husband was employed as Constable in 15th Battalion, BSF, and his monthly salary was Rs.11,814/-. The 1st Petitioner also produced salary slip of the deceased as Ex.P.9 which is the Last Pay Certificate of the deceased for the month November 2008. The co-employee of the deceased deposed as P.W.3 and on the basis of records, he stated that the monthly salary of the deceased is Rs.11,814/-. Thus, the monthly salary of the deceased is fixed as Rs.11,814/-. As such, for the deceased, who was aged 28 years and a Permanent employee, it will be appropriate to add 50% of the income towards Future Prospects. The number of dependants of the deceased are 5 in number.

Hence, 1/4th deduction has to be made towards personal expenses of the deceased. Following the Ruling of the Apex Court reported in 2009 (2) TN MAC 1 (SC) in Smt.Sarla Verma and Others., Vs. Delhi Transport Corporation and Another, the multiplier to be applied is '17'. Thus, the loss of dependency to the family of the deceased is calculated as follows:-

Monthly salary : 11,814/-

Add: 50% towards Future Prospects (Rs.5907)

11,814 + 5907 = Rs.17,721/-.

Deduction : 1/4th is deducted towards personal expenses of the deceased (4430)

13,290 x 12 x '17' multiplier = Rs.27,11,160/-.

Thus, a sum of Rs.27,11,160/- is awarded under the head "Loss of dependency".

9.3. 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/-

9.4. Loss of Love and affection:- The petitioners claim that due to sudden demise of V.Chandrasekar in the accident, his children, viz., 2nd and 3rd petitioners have lost guidance, love and affection of their father at the young age of 7 and 9 years. As such, they are entitled for compensation towards loss of love and affection. In support of the same, he relied upon Ruling 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 above said Ruling and the fact that the minor petitioners have lost love and affection of their father, it will be appropriate to award Rs.35,000/- each, in total Rs.70,000/- under the head "loss of love and affection" to appellants/petitioners 2 and 3. Accordingly, the modified compensation payable to the appellants/petitioners is as under:-

Sl.N o.	Heads	Amount awarded by the Tribunal	Amount awarded by this Court
1.	Loss of dependency	Rs.24,10,056/-	Rs.27,11,160/-
2.	Loss of consortium	Rs. 10,000/-	Rs. 40,000/-
3.	Loss of love and affection	----	Rs. 70,000/-
4.	Funeral expenses	Rs. 5,000/-	Rs. 15,000/-
5.	Loss of Estate	Rs. 10,000/-	Rs. 15,000/-
	Total	Rs.24,35,056/-	Rs.28,51,160/-

10. In the result,

- (i) The Civil Miscellaneous Appeal is Allowed;
- (ii) The appellants/Petitioners are entitled to award amount of Rs.28,51,160/- 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:-
Petitioners 1 to 3 - 30% each
Petitioners 4 and 5 - 5% each
- (iv) The 2nd respondent/Insurance company is directed to deposit the award amount of Rs.28,51,160/- [Rupees Twenty eight lakhs fifty one thousand one hundred sixty only] within a period of six weeks from the date of receipt of a copy of this order.
- (v) The appellants/petitioners are not entitled to interest for the default period of 458 days. On such deposit, the appellants 1, 4 and 5 are permitted to withdraw the same, by filing necessary application before the Tribunal. Insofar as share of the minor 2nd and 3rd appellants are concerned, the same shall be invested in a Fixed Deposit in a Nationalised Bank till they attain majority. The accrued interest in the minor share shall be withdrawn by the mother/1st appellant once in three months. The appellants are directed to pay the required court fee for the enhanced award amount within a period of one week from the date of receipt of a copy of this order, if not already paid. No costs. Consequently, connected CMP is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1.The Motor Accident Claims Tribunal,
Principal District Judge, Thiruvallur.

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

+1cc to M/S.Anand and Surya, Advocate Sr.29411
+1cc to M/S.D.Bhaskaran, Advocate Sr.29461

C.M.A.No.562 of 2018

rsk[col]
srg 18/06/2018