IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.03.2018

CORAM

THE HONOURABLE MR. JUSTICE S.BASKARAN

CIVIL MISCELLANEOUS APPEAL NO.564 OF 2018

1.G.Viji
2.Minor Deenan
3.Minor Narmadha
(Minors rep. By their guardian and next friend G.Viji) ...Appellants/Petitioners

..vs..

1.G.Ramesh(R1remained exparte his presence may be dispensed with)
2.The Shriram General Insurance Company Limited, Chennai-600 017. ...Respondents/Respondents

This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the Fair and Decreetal order dated 23.12.2014 made in MCOP.No.466 of 2013 on the file of the Motor Accident Claims Tribunal/II Additional District Judge, Thiruvallur at Poonamallee.

For Appellants : M/s.M.Malar

For Respondents : Mr.S.Dhakshnamoorthy for R-2
R1-Set exparte

JUDGMENT

Being not satisfied with the quantum of compensation awarded by the Tribunal, dated 23.12.2014 made in MCOP.No.466 of 2013 on the file of the Motor Accident Claims Tribunal/II Additional District Judge, Thiruvallur at Poonamallee, the present appeal has been filed by the petitioners/claimants to enhance the award amount.

2. By consent, this civil miscellaneous appeal is disposed at the stage of admission itself.

3. For the sake of convenience, the parties will be

hereinafter referred to in this judgment as arrayed before the Tribunal.

4. The case of the petitioners is that on 22.04.2013 at about 08.45 hours, while the deceased Renuga was travelling as a passenger in the share Auto bearing Registration No.TN-05-S-2464, in Avadi to Kannadapalayam Road, near Bharath Petrol Bunk, the said vehicle driven by its driver in a rash and negligent manner dashed against the Tata Ace vehicle resulting in the deceased suffering grievous head injuries and fracture which caused her death on the way to hospital. The accident occurred only due to the rash and negligent driving of the first respondent auto driver. At the time of accident, the deceased was aged about 28 years and employed as worker in a private company, earning a sum of Rs.12,000/- per month. The petitioners who are the husband and children of the deceased contended that due to sudden demise of Renuga, they have lost the love and affection as well as her contribution to the family. Hence, the petitioners seek a sum of Rs.15,00,000/- as compensation from the respondents who are the owner and insurer of the offending vehicle.

5. On the other hand, opposing the claim petition, the second respondent Insurance company filed counter contending that the accident does not occur in the manner alleged by the petitioners. The petitioners ought to have impleaded the owner and insurer of the Tata Ace vehicle which met with accident against the first respondent share auto. The age, avocation and monthly income of the deceased as stated in the petition is denied. The petitioners have to prove that the driver of the offending vehicle possessed valid driving licence. The claim of the petitioners is exorbitant. Hence, the second respondent Insurance Company sought for dismissal of the petition.

6. Before the Tribunal, the petitioners examined P.W.1 and P.W.2 and produced documents Ex.P1 to Ex.P6 to substantiate their claim. On the side of the respondents, neither oral nor documentary evidence was let in.

7. The Tribunal, on the basis of available evidence on record, found the negligence of the first respondent share auto driver alone resulted in the accident, passed award for a sum of Rs.9,82,000/- as compensation payable by the respondents to the petitioners. Being not satisfied with the quantum of compensation awarded by the Tribunal, the petitioners/claimants have filed this present appeal seeking to enhancement of the Award amount.

8. I have heard the learned counsel appearing for the appellants and the learned counsel appearing for the second

respondent-Insurance Company and perused the materials available on record.

9. The learned counsel appearing for the appellants/petitioners contended that the Tribunal failed to appreciate the evidence properly. Inspite of the petitioners producing evidence to prove the income of the deceased at Rs.12,000/-, the Tribunal wrongly fixed the income of the deceased as Rs.6,500/- per month. The amount awarded by the Tribunal under the different heads is very nominal. Hence, the petitioner sought for enhancement of the award amount by allowing the appeal.

10. Per contra, the learned counsel appearing for the second respondent Insurance company contends that the deceased was not employed and the petitioners have not proved the actual income earned by the deceased. As the accident does not occur due to the negligence of the driver of the first respondent vehicle, the respondents are not liable to pay any compensation. The quantum of award passed by the Tribunal itself is on the higher side. No ground is made out for enhancement of the award amount. As such, the respondents sought for dismissal of the appeal.

11. The first petitioner who deposed as P.W.1 stated that his wife met with accident on 22.04.2013 and due to the injuries suffered in the accident, she died on the same day. The eye witness to the occurrence who deposed as P.W.2 clearly stated that while he was going for his work at about 9.00 a.m, on 22.04.2013, near Bharath Petrol Bunk, in Avadi Kannadapalayam Road, a share auto bearing Registration No.TN-05-S-2464, in its attempt to over take another vehicle, which was going ahead of it, dashed against the van coming in the opposite direction resulting in serious head injuries to the deceased Renuga who died subsequently in the hospital. It is also pointed that the Police registered Ex.P1 First Information Report against the driver of the share auto only. There is no contra evidence let in by the respondents to disprove the version of accident given by P.W.2. As such on the basis of P.W.2 eye witness account as well as the contends of Ex.P1 First information report, it is apparent the negligence on the part of the first respondent share auto driver only caused the accident.

12. The petitioners contends that the vehicle was owned by the first respondent and insured with the second respondent. The copy of the Insurance policy is produced as Ex.P3 and the driving licence of the share auto driver is marked as Ex.P4. It is therefore clear that the vehicle involved in the accident belongs to the first respondent and the same was insured with the second respondent as per Ex.P3 Insurance Police. As the

accident occurred only due to the negligence of the first respondent vehicle driver, the respondents who are the owner and insurer of the vehicle are bound to pay compensation.

13. The first petitioner who deposed as P.W.1 clearly stated that the deceased Renuga was his wife and she was employed in a private company earning a sum of Rs.12,000/- per month. However, the petitioners failed to produce any salary certificate or any other documents to prove the said claim. The petitioners also failed to examine any of the managerial staff of the said company to prove the monthly income of the deceased. In such circumstances, the Tribunal fixed the notional income of the deceased at Rs.6,500/-. This according to the petitioners is very low as the accident occurred during,2013. The said contention of the petitioners appears to be just and proper. In that background, it will be appropriate to fix the notional income of the deceased at Rs.7,500/- per month. The petitioners has not produced any documents to prove the age of the deceased. It is clear from Ex.P5 Postmortem Certificate that the deceased was aged about 28 years. Considering the same, the aged of the deceased is fixed at 28 years and for that age group, the correct multiplier is to be applied is 18. Considering the age of the deceased, 40% of the income is added towards future prospects. As there are three dependents, 1/3rd of the amount is deducted towards personal expenses. As such, the loss of dependency is calculated is as follows:-

(1) Rs.7,500/= added 40% of the income at Rs.3000/- = Rs.10,500/-.
(2) Rs.10,500/- deducted 1/3rd amount of Rs.3,500/- = Rs.7,000/- as loss of income.
(3) Rs.7,000/- x 12 = Rs.84,000/- x 17 = Rs.14,28,000/- as total loss of income.

14. 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. 15,000.00
Loss of Estate	=	Rs. 15,000.00

15. Accordingly, the compensation warded by the Tribunal is modified as follows:-

Sl No	Heads	Amount awarded by the Tribunal	Awarded by this Court
1.	Pecuniary Loss of income	9,36,000.00	14,28,000.00
2.	Transportation	5,000.00	-
3.	Loss of love and affection	20,000.00	-
4.	Funeral Expenses	10,000.00	15,000.00
5.	Loss of consortium	10,000.00	15,000.00
6.	Damage to cloths	1,000.00	-
7.	Loss of consortium	-	40,000.00
	Total	9,82,000.00	14,98,000.00

Accordingly, the compensation warded by the Tribunal is modified and the same is enhanced to Rs.14,98,000/-.

16. In the result, the Civil Miscellaneous Appeal is partly allowed. No costs.. The amount of Rs.9,82,000/- awarded by the Tribunal dated 23.12.2014 made in MCOP.No.466 of 2013 on the file of the Motor Accident Claims Tribunal/II Additional District Judge, Thiruvallur at Poonamallee, is enhanced to Rs.14,98,000/-. The Second respondent/Insurance Company is directed to deposit the entire enhanced award amount of Rs.14,98,000/- with interest at the rate of 7.5% p.a. from the date of filing the claim petition and date of deposit the entire award 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 appellants/petitioners are not entitled to interest for the default of period of 789 days in filing the appeal.On such deposit, the appellants/petitioners are entitled to equal share of the award amount. The first appellant/first petitioner is permitted to withdraw his share with accrued interest by filing necessary application before the Tribunal. The 2 and 3 appellants/2 and 3 petitioners are minors, their share amount shall be deposited in any one of the nationalized bank till they attained majority. The first appellant/first petitioner is permitted to withdraw the accrued interest once in three months.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

rrg

To

The Motor Accidents Claims Tribunal
The II Additional District Judge,
Thiruvallur at Poonamalee.

Copy to
The Section Officer,
VR Section,High Court,
Madras-104. (2 Copies)

+1cc to Mr.S.Dhakshnamoorthy, Advocate, S.R.No.22772
+1cc to M/s.M.Malar, Advocate, S.R.No.22809

C.M.A.No.564 of 2018

RJ(CO)
CS/06/09/18