IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.2729 of 2014

1.M.Chinnamani
2.M.Gomathi
2nd appellant declared as major and her mother and next friend M.Chinnamani (1st appellant) discharged from the guardianship vide court order dated 06.07.2018 made in CMP.No.10692 and 10693 of 2018 in CMA.No.2729/2014.
3.M.Hemalatha (Minor)
4.M.Punniyamoorthy (Minor)
Minors rep. By mother and next friend 1st appelalnt.

..Appellants/Petitioners

Vs

1.C.Muruganantham(R1 set exparte on the Tribunal)
2.Oriental Insurance Co.Ltd.,
Motor Third Party Claims_HUB
No.216, Prakasam Salai, Broadway
Chennai-600 118. ..

..Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, against the order and decree dated 17.09.2013 made in M.C.O.P.No.4062 of 2012 on the file of Motor Accident Claims Tribunal, Special Subordianate Court II, Chennai.

For appellants : : Mr.M.Swamikannu

For Respondents : : Mr.S.Manohar for R2.
R1- Set exparte before Tribunal.

J U D G M E N T

The Appellants are the Petitioners and fled the above appeal challenging the Judgment and decree dated 17.09.2013 made in M.C.O.P.No.4062 of 2012 on the file of Motor Accident Claims Tribunal, Special Subordiante Court, Chennai.

2. For convenience sake, the parties are referred to hereunder according to their litigative status before the Tribunal. It is a fatal case. The case of the Petitioners is that on 30.06.2012 at about 5.30 hours, while the deceased D.Mohan was riding his two wheeler bearing Reg.No.TN-48-2707 in Trichy-Madurai National Highway and as he approached Vadiyan Kulam Road, Kodumbalur, the 1st respondent lorry bearing Reg.No.TN-67-L-6908 came from behind at very high speed, dashed against him causing him fatal injuries resulting in his death at Government Head Quarters Hospital, Trichy, on 03.07.2012. The accident occurred only due to negligence of the 1st respondent vehicle driver. The said lorry was insured with the 2nd respondent. The deceased was aged 34 years and was earning Rs.20,000/- per month by carrying on Cycle Mart business. The Petitioners who are the wife, minor children were depending on the earnings of the deceased. Due to sudden death, the Petitioners have lost the bread winner of the family. Thus, the Petitioners seeks a sum of Rs.25,00,000/- as compensation from the respondents who are the owner and insurer of the vehicle.

3. On the other hand, opposing the claim of the Petitioners, by filing counter, the 2nd respondent/Insurance company contends that the accident occurred only due to negligence of the deceased. While the 1st respondent lorry was proceeding at normal speed, the deceased riding the two wheeler in the same direction, suddenly tried to cross the road, and dashed against the lorry inviting the accident. The claim of the Petitioners about age, avocation and income of the deceased is denied. The amount claimed by the Petitioners is excessive. Thus, the 2nd respondent seeks dismissal of the Petition.

4. Before the Tribunal, the Petitioners examined P.W.1 and P.W.2, produced documents Ex.P.1 to Ex.P.3 to prove their claim. The respondent neither examined any witness nor produced any documents. After analysing the evidence on record, the Tribunal found negligence of the 1st respondent vehicle driver alone caused the accident, passed an award for a sum of Rs.11,00,000/- payable by the first and second respondents jointly and severally to the Petitioners.

5. Being not satisfied with the quantum of the award, the appellants/Petitioners/claimants have come forward with the present appeal.

6. Heard both sides and perused the records carefully.

7. The learned counsel for the appellants/petitioners contends that inspite of categorical evidence to prove that the deceased was earning Rs.20,000/- per month, the Tribunal wrongly fixed the income at Rs.5000/- per month. The Tribunal ought to have fixed the monthly income at Rs.15,000/-. The Tribunal ought to have provided for 50% of the income as future prospects. The Tribunal ought to have provided for loss of expectation of life and also towards damages caused to the two wheeler. The amount provided under other heads is very nominal. Thus, the Petitioners seeks enhancement of the award amount by entertaining the appeal.

8. Per contra, the learned counsel for the 2nd respondent/Insurance company contends that the award passed by the Tribunal itself is on the higher side and there is no need to enhance the same. Thus, the 2nd respondent seeks dismissal of the appeal.

9. It is only quantum appeal. Both sides have not seriously disputed the finding of the tribunal regarding the negligence aspect. The Insurance company having not preferred any appeal, the conclusion of the Tribunal regarding the negligence has become final. Thus the only issue to be considered is as to whether the Petitioners/Appellants are entitled to seek enhancement of the quantum of the award passed by the Tribunal.

10. The learned counsel for the appellants states that the deceased was aged 34 years at the time of the accident. No specific document regarding the age of the deceased is produced. As such, on the basis of Ex.P.2-Post Mortem Certificate and Ex.P.3-Legal Heirship certificate, wherein the age of the deceased is mentioned as 40 years, his age is fixed accordingly. For the said age group, as per the Ruling of the Apex Court in Sarla Verma Vs. Delhi Transport Corporation [2009 (2) TNMAC 1 (SC)], the appropriate multiplier to be applied is "15".

11. The deceased is stated to be carrying on business as Proprietor of M/s.Tirupathi Cycle Mart, earning Rs.20,000/- per month. However, no proof is produced by the Petitioners to show that such business was carried on by the deceased. There is no proof available regarding the monthly earnings of the deceased. Therefore, the Tribunal fixed the monthly income of the deceased at Rs.5000/-. The same is disputed by the Petitioners/claimants. Considering the age of the deceased at the time of accident and the other attendant circumstances, it will be appropriate to fix the monthly income of the deceased at Rs.6000/-. As the deceased was carrying on his own business, it will be appropriate to provide 40% of the income towards Future

Prospects. Considering the number of dependants of the deceased, 1/4th[d] of the income is to be deducted towards personal expenses. Thus, the monthly earnings/loss of dependency will be calculated as under:-

Monthly salary : Rs.6000/-
Add: 40% towards future prospects (2400)
6000 + 2400 = 8400
Deduction: 1/4th towards personal expenses of the deceased.
8400 - 1/3 (2100) = 6300
6300 x 12 x 15 = 11,34,000/-.

12. Further, under conventional heads, following the Apex Court decision reported in 2017 (2) TN MAC 609 (SC) [National Insurance Co.Ltd., Vs. Pranay Sethi], it will be appropriate to provide Rs.40,000/- towards "loss of consortium", Rs.15,000/- towards "loss of estate" and Rs.15,000/- towards "funeral expenses".

13. In view of the foregoing discussion, the modified award amount is as under:-

Sl. No.	Heads	Amounts awarded by the Tribunal	Amounts awarded by this Court
1.	Loss of dependency	Rs. 6,75,000	Rs.11,34,000/-
2.	Loss of love and affection	Rs. 3,00,000/-	--
3.	Loss of consortium	Rs. 1,00,000/-	Rs. 40,000/-
4.	Funeral expenses	Rs. 25,000/-	Rs. 15,000/-
7.	Loss of estate	---	Rs. 15,000/-
	Total	Rs.11,00,000/-	Rs.12,04,000/-

14. In the result,

(i) This Civil Miscellaneous Appeal is Partly Allowed.

(ii) The award amount is enhanced to Rs.12,04,000/- from Rs.11,00,000/-.

(iii) The 2nd respondent/Insurance company is directed to deposit the entire enhanced compensation amount along with interest and cost, 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) The award amount will carry interest at the rate of 7.5% per annum from the date of petition till the date of deposit.

(v) The Appellants/Claimants are apportioned equal share in the award amount. As far as minor claimants/appellants are concerned, their share shall be invested in a Fixed Deposit in a

Nationalised Bank and the same shall be renewed periodically, till they attain the age of majority. Appellants/Claimants 1 and 2 are entitled to withdraw their share of the award. As far as share of minor claimants 3 and 4 are concerned, the interest accrued therein shall be withdrawn by the 1st claimant/mother, once in three months.

(vi) The Tribunal shall follow appropriate procedure for disbursal of the award amount.

(vii) No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

nvsri

To

1.The Special Subordianate Judge II,
Motor Accident Claims Tribuna,
Chennai.

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

+1cc to Mr.M.Swamikannu, Advocate sr.no.49109
+1cc to Mr.S.Manohar, Advocate sr.no.48989

ev(co)
nr 01/10/2018