IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.2762 of 2014

Kanimozhi ...Appellant/Petitioner

vs

1. M/s.Day N Day Service (P) Ltd.,
   No.1, 2nd Main Road, Ramakrishna Nagar
   Chennai-600 018
   (R1 remained exparte before Tribunal
   hence their appearance may be dispensed with)

2. Bajaj Allianz General Insurance Company Limited
   No.25/26, College Road
   Nungambakkam,
   Chenai-34. ..Respondents/Respondent

Civil Miscellaneous Appeal filed against the judgment and decree dated 05.11.2012 made in M.A.C.T.O.P.No.5107 of 2010 on the file of Motor Accident Claims Tribunal, IV Judge, Small Causes Court, Chennai.

For appellant : : Mr.P.Deivendra
for Respondents : : Mr.S.Arun Kumar for R2
R1-Exparte

J U D G M E N T

This Civil Miscellaneous Appeal is filed by the appellant/claimant, challenging the judgment and decree dated 05.11.2012 made in M.C.O.P.No.5107 of 2010 on the file of Motor Accident Claims Tribunal, IV Judge, Small Causes Court, Chennai.

2. For the sake of convenience, the parties are referred to as per their litigative status before the Tribunal. The case of the petitioner is that on 24.06.2009 at about 4.10 p.m., when the deceased Aruljothi was crossing the road at Ninan Street, Gurupuram, Abhiramipuram, Chennai-18, from west to east in front of her house, a Scorpion Van bearing Reg.No.TN-07-BD-2244 driven by its driver in a rash and negligent manner came in the reverse, at high speed, and dashed against the deceased who fell down in the impact and the vehicle ran over her and subsequently died. The petitioner who is the daughter of the deceased states

that at the time of the accident, the deceased was aged 57 years and by working as cooly, earned Rs.5000 per month. The accident occurred due to rash and negligent driving of the car driver. The owner and insurer of the vehicle are responsible to pay the compensation to the petitioner. Hence, the claim petition is filed.

3. On the other hand, opposing the claim of the Petitioner, by filing counter, the 2nd respondent contends that the driver of the van bearing Reg.No.TN-07-BD-2244 is not responsible for the accident and only the negligence of the deceased caused the accident. The claim of the Petitioner about the age, avocation and income of the deceased is disputed. The compensation claimed by the Petitioner is exorbitant. The petitioner has to prove that the driver of the offending vehicle possessed valid driving licence and the vehicle was under insurance coverage at the time of the accident. Thus the 2nd respondent/Insurance Company sought dismissal of the Petition.

4. Before the Tribunal, the Petitioner examined herself as P.W.1 and produced documents Ex.P.1 to Ex.P.9. On the side of the 2nd respondent/Insurance Company, neither oral evidence nor documentary evidence was produced. The tribunal on the basis of the materials available on record, found that the driver of the 1st respondent vehicle is responsible for the accident and awarded a sum of Rs.70,000/- as compensation to the Petitioner. Being not satisfied with the quantum of the award, the Petitioner/appellant has come forward with the appeal.

5. The learned counsel for the appellant/petitioner contends that the Tribunal failed to consider the evidence of P.W.1 that she is the only legal heir of the deceased and she is depending on the income of the deceased who is her mother. Ex.P.9-Legal Heir Certificate, clearly shows that there was no male member in the family of the deceased. The Tribunal awarded very low amount of compensation and the reasoning for the same is not proper. Hence, the Petitioner seeks for enhancement of the quantum of the award amount by allowing this appeal.

6. Per contra, the learned counsel for the 2nd respondent-Insurance Company contends that the Petitioner being the married daughter of the deceased, she cannot claim herself dependant on the deceased. As such, the Tribunal, on proper appreciation of materials before it, arrived at just and proper conclusion. The same needs no interference.

7. The Petitioner who is the daughter of the deceased Aruljothi, in her claim Petition averred that on 24.06.2009, at about 4.10 p.m., while the deceased was crossing the road, from West to east in front of their house situated in Abhiramapuram, Chenni, a van bearing Reg.No.TN-07-BD-2244 came at high speed in

the reverse from North to South and hit the deceased causing fatal injuries to her. P.W.1 deposed that she witnessed the occurrence which took place in front of her house. The evidence of P.W.1 is corroborated by the contents of Ex.P.2-FIR registered against the driver of the offending vehicle. The Police after investigation, filed Ex.P.6 Charge sheet against the driver of the 1st respondent vehicle only. The Petitioner also produced copy of the Rough Sketch of the accident spot as Ex.P.3. It is clear from the above said documents that the case has been registered by the Police against the 1st respondent vehicle driver and after investigation, they laid the charge sheet against the same person. As such, the oral evidence of P.W.1 is corroborated by Ex.P.2, Ex.P.3 and Ex.P.6 documents. On the other hand, the 2nd respondent has not laid any oral or documentary evidence to discredit the evidence let in by the Petitioner. As such, the Tribunal, on the basis of P.W.1 evidence and the above said documents, held that the negligence on the part of the 1st respondent vehicle driver alone caused the accident. This court is of the considered view that the said finding is perfectly in order and hence, the same is confirmed.

8. The fact that the offending vehicle belongs to the 1st respondent and the same was insured with the 2nd respondent is not disputed. It is clear from Ex.P.8 copy of the Insurance Policy that the said vehicle was insured with the 2nd respondent. Further the driver of the offending vehicle having licence to drive the vehicle is established by Ex.P.7-Copy of the driving licence. The Tribunal in this regard also held that the the 1st respondent/ owner and the 2nd respondent/insurer are liable to pay compensation to the petitioner and as insurer of the 1st respondent's vehicle, the 2nd respondent is liable to pay the same. This court finds that the said finding is also sustainable.

9. The crux of the appeal is only the quantum of the award passed by the Tribunal. The deceased Aruljothi is the mother of the petitioner and according to the petition averments, she was aged 57 years at the time of the accident. It is further stated that she earned Rs.5000/- per month by working as cooly. The Tribunal found that the petitioner is entitled only for a lumpsum of Rs.50,000/- towards loss of income caused by the deceased Aruljothi. The learned counsel for the appellant/petitioner contended that the deceased mother was residing with her daughter, the petitioner herein and contributed income to the maintenance of the Petitioner's family. In such circumstances, it is clear that the deceased has suffered loss of income due to demise of her mother. It is also evident from Ex.P.9 legal heir certificate that the petitioner is the only legal heir of the deceased. The learned counsel for the appellant/Petitioner contended that the deceased was aged 57 years and she was earning Rs.5000/- per month by working as a cooly. The Petitioner has not produced any

document regarding the age of the deceased. However, as per Ex.P.4-Death Certificate and Ex.P.5-Post Mortem, the age of the deceased is stated to be 57 years. In the absence of any other material proof, on the basis of P.W.1 oral evidence and Ex.P.4, Ex.P.5, the age of the deceased is fixed at 57 years.

10. The Petitioner has not produced any documentary evidence regarding the avocation and income of the deceased. In such circumstances, it will be appropriate to fix notional monthly income of the deceased at Rs.4500/- per month. Further following the Ruling of the Apex Court reported in 2017 (2) TN MAC 609 (SC) [National Insurance Co.Ltd., Vs Pranay Sethi and Others], it is necessary to add 10% towards future prospects for the deceased aged 57. Further, 1/3rd of her income has to be deducted towards personal expenses. The correct multiplier to be adopted in this case is 9. Thus, the loss of dependency is calculated as under:-

4500 + 10% future prospects (450) = 4950

4950 - 1/3rd deduction (1650) = 3300

3300 x 12 x 9 = 3,56,400/-.

In the light of the above judgment and calculation, this court is inclined to award Rs.3,56,400/- under the head "loss of dependency". Further, this court is also inclined to award the following amounts as compensation under conventional heads:-

Funeral Expenses	=	Rs.	15,000/-
Loss of Estate	=	Rs.	15,000/-
Transport expenses	=	Rs.	5,000/-
Add: Loss of dependency	=	Rs	3,56,400/-
Total	=	Rs.	3,91,400/-

The award amount granted by the Tribunal under other heads are set aside. Thus, the modified enhanced compensation granted by this Court is Rs.3,91,400/-.

11. In the result, the Civil Miscellaneous Appeal filed by the Appellant/claimant is Partly allowed with costs. The modification of the award is as follows:-

(1) The award granted by the Tribunal is enhanced to Rs.3,91,400/- from Rs.70,000/-;

(2) The interest granted by the Tribunal at 7.5% per annum is confirmed.

(3) The 2nd respondent-Insurance company is directed to deposit the modified enhanced award of Rs.3,91,400/-, along with proportionate accrued interest and costs, from the date of petition till the date of deposit, less the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this order.

(4) The Petitioner/claimant is permitted to withdraw the modified enhanced award amount, with accrued interest, less the amount if any already withdrawn, before the Tribunal, by filing necessary application.

s/d-
Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

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To
1.The Motor Accidents Claims Tribunal,
IV Judge, Small Causes Court, Chennai.

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

+1 CC to M/s. P. Deivendra, Advocate sr 12632.
+1 CC to M/s.S. Arunkumar, advocate sr 12901.

C.M.A.No.2762 of 2014

AD(CO)
SP(12/07/2018)