

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 02.02.2018

Coram

The Honourable Mr. Justice S.BASKARAN

Civil Miscellaneous Appeal No.2793 of 2014

1.Jayanthi
2.Vijaya
3.Chandrasekar
4.Geetha
5.Anand

... Appellants/Claimant

...vs...

1.S.Vadivelu

2.United India Insurance Co., Ltd.,
No.44-A, Kamaraj Salai,
Chinnasekkadu, Manali,
New Delhi.

... Respondents/Respondents

This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the Fair and Decreetal order dated 10.03.2014 made in MCOP.No.4931 of 2012 on the file of the Motor Accident Claims Tribunal/(IV Judge, Court of Small Causes), Chennai.

For Appellants : Mr.S.Ravikumar

For Respondents: Mr.C.Paranthaman for R-2

JUDGMENT

This civil miscellaneous appeal arises out of the Fair and Decreetal order dated 10.03.2014 made in MCOP.No.4931 of 2012 on the file of the Motor Accident Claims Tribunal/(IV Judge, Court of Small Causes), Chennai.

2. For sake of convenience, the parties will be hereinafter referred to in this judgment as arrayed before the Tribunal.

3. The case of the petitioners is that on 12.09.2012 at about 20.15 hours, when the deceased was crossing the road at 200 feet Road, near Door No.12/3, Thiruvalluvar Nagar Blue Dart,

Kolathur, Chennai, from East to West, the Motor Cycle bearing Registration No.TN-20-AW-0626, owned by the first respondent and insured with the second respondent, came at high speed, driven in a rash and negligent manner and dashed against the deceased, who suffered multiple injuries and died on the way to Hospital. The petitioners who are daughters and sons of the deceased contend that the negligence of the first respondent vehicle driver alone is responsible for the accident. According to the petitioners, the deceased was aged about 60 years at the time of the accident and she was earning a sum of Rs.500/- per day by doing cooli work. Due to her death, the petitioners lost the income to the family from the deceased and also lost the love and affection of the mother. Thus, the petitioners sought for compensation of Rs.8,00,000/- from the respondents.

4. On the other hand, the second respondent Insurance company opposed the claim petition by filing detailed counter alleging that the manner of accident as claimed by the petitioners is denied. It is also contended that the age, avocation and income of the deceased is to be proved by the petitioners only. The second respondent also denied the validity of vehicle records, driving licence of the driver and the insurance coverage at the time of accident. It is further contended that the claim made under various heads are highly excessive. In such circumstances, the second respondent insurance company sought for dismissal of the claim petition.

5. Before the Tribunal, the third petitioner examined himself as P.W.1 and eye witness to the occurrence one Murali was examined as P.W.2 and the first petitioner examined herself as P.W.3 and produced documents Ex.P1 to Ex.P5 to substantiate their claim. On the side of the respondent, neither oral evidence nor documentary evidence was produced.

6. The Tribunal, after considering the pleadings, oral and documentary evidence, concluded that the accident occurred only due to the rash and negligent driving of the driver of the offending vehicle owned by the first respondent and insured with the second respondent and directed the respondents jointly and severally to pay a sum of Rs.1,55,000/- as compensation. The Tribunal has passed the award as follows:-

Pecuniary Loss	Rs.	90,000.00
Loss of love and affection	Rs.	50,000.00
Funeral Expenses	Rs.	15,000.00

Total	Rs.	1,55,000.00

Being not satisfied with the quantum of compensation awarded by the Tribunal, the petitioners/claimants filed this present appeal seeking enhancement of Award amount.

7. Heard both side counsel and

perused the materials available on record.

8. The learned counsel for the appellants/claimants contended that the evidence of P.Ws.1 and 3, in respect of age and monthly income of the deceased was not properly considered by the Tribunal. Likewise, instead of fixing multiplier at 8, the Tribunal wrongly fixed the multiplier at 5 years. The Tribunal ought to have fixed the monthly income of the deceased at Rs.8,500/- instead of Rs.3000/-. It is further contended that the Tribunal erred in deducting 50% of the income towards personal expenses without any basis and ought to have deducted 1/4th towards personal expenses. The amount awarded under the other conventional heads also very low. Thus, the petitioners/appellants seek to entertain the appeal and enhance the award amount.

9. Per contra, the learned counsel for the second respondent Insurance Company contends that the Tribunal has properly appreciated the evidence available on record and awarded just and proper compensation to the petitioners. The claim of the petitioners for enhancement is unsustainable as the award passed by the Tribunal is proper and it is just compensation. Thus, the second respondent seeks dismissal of the appeal.

10. The 3rd petitioner, who is the son of the petitioner while deposing as P.W.3 stated about the accident, however he is not an eye witness to the occurrence. The petitioners examined P.W.2 one Murali, who is an eye witness to the occurrence and he categorically stated that the accident occurred only due to the rash and negligent driving of the rider of the motor cycle bearing Registration No.TN-20-AW-0626. The police also registered a case against the rider of the motor cycle and the same is evidenced by Ex.P1 copy of the first information report. It is further corroborated by Ex.P5 copy of charge sheet wherein, the charge filed under Sections 279 and 304-A IPC against the driver of the motor cycle. Thus, the oral evidence as well as the documentary evidence have clearly established the fact that the negligence of the first respondent vehicle driver alone caused the accident. The second respondent has not chosen to examine the driver of the offending vehicle and anybody else to disprove the claim of the petitioners. In such circumstances, in view of the oral evidence of P.W.2 and documents Ex.P1 and Ex.P5, this Court is of the view that the accident occurred only due to the negligence on the part of the driver of the motor cycle. Thus, the finding of the Tribunal to that effect is just and proper and the same needs no interference.

11. The petitioners claims that they are legal heirs of the deceased and the same is established by Ex.P4 legal heir certificate. It is evident from Ex.P2 Postmortem Certificate and Ex.P3 Death certificate, that the age of the deceased is 65 years. In the absence of any other proof regarding the age of the deceased, on the basis of the Ex.P2 and Ex.P3, the Tribunal fixed the age of the deceased as 65 years. The said conclusion is based on the available evidence and the same is proper.

12. The petitioners claims that the deceased was working as cooli and she was earned a sum of Rs.500/- per day. However, considering the age of the deceased and the working conditions of the coolies, this Court is of the view that it would appropriate to fix a sum of Rs.6,500/- as the monthly income of the deceased. There are five petitioners who claims to be dependents on the income of the deceased. Hence, 1/4th amount is to be deducted towards her personal expenses. As the deceased is stated to be aged 60 years, the multiplier applied is 7. As such the pecuniary loss of income is calculated as follows:-

Rs.6,500/- - deduct 1/4th towards personal expenses of Rs.1,625/- = Rs.4,875/- x 12 = Rs.58,500/- x 7 = Rs.4,09,500/-.

13. 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 Estate = Rs.15,000.00
Funeral Expenses = Rs.15,000.00

14. Accordingly, the compensation awarded by the Tribunal is modified as follows:-

Sl No	Heads	Amount awarded by the Tribunal	Awarded by this Court
1.	Pecuniary Loss of income	90,000.00	4,09,500.00
2.	Loss of Estate	-	15,000.00
3.	Loss of love and affection	50,000.00	-
4.	Funeral Expenses	15,000.00	15,000.00
	Total	1,55,000.00	4,39,500.00

15. In view of the above modification, the civil miscellaneous appeal is partly allowed with costs. The second respondent/Insurance Company is directed to deposit the entire enhanced award amount of Rs.4,39,500/- with interest at the rate of 7.5% p.a. 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. On such deposit, the petitioners/claimants are entitled to equal share of the award amount. The petitioners/claimants are permitted to withdraw their respective share with accrued interest by filing necessary application before the Tribunal. The petitioners/claimants are directed to pay the Court fee for the amount awarded by this Court in addition to the amount awarded by the Tribunal within a period of two weeks from the date of receipt of a copy of this order.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

To

1.The IV Judge,
The Motor Accident Claims Tribunal
Court of Small Cases,
Chennai.

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

+ 2 cc to Mr.C.Paranthaman Advocate,SR.7748

+ 1 cc to Mr.S.Ravikumar Advocate,SR.7789

C.M.A.No.2793 of 2014

kji(co)
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