IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 16.03.2018

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The Honourable Mr. Justice S.BASKARAN

Civil Miscellaneous Appeal No.2876 of 2017

M.Baskaran ...Appellant(Claimant)

..vs..

1.J.P.Tiwari
2.Reliance General Insurance Company Ltd.,
Legal Department, RAIS Tôwers,II Floor,
No.2054, II Avenue,
Anna Nagar West, Chennai-40. ...Respondents(Respondents)

This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the Fair and Decreetal order dated 10.04.2017 made in MCOP.No.3973 of 2013 on the file of the Motor Accident Claims Tribunal/The Chief Judge, Court of Small Causes, Chennai.

For Appellants : Mr.P.Natarajan

For Respondents : Mr.S.Arunkumar for R-2

JUDGMENT

Being not satisfied with the quantum of compensation awarded by the Tribunal, dated 10.04.2017 made in MCOP.No.3973 of 2013 on the file of the Motor Accident Claims Tribunal/The Chief Judge, Court of Small Causes, Chennai, the present appeal has been filed by the petitioner/claimant to enhance the award amount.

2. For the 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 23.05.2013 at about 11.00 hours, while the deceased was riding his Motor Cycle bearing Registration No.TN-01-AP-2622 from South to North in Tambaram - Madhuravoyal Bye-Pass Road, opposite to HP Petrol Bunk at Tambaram, the first respondent van bearing Registration

No.TN-01-AM-5857 insured with the second respondent, came from behind at high speed dashed on the motor cycle driven by the deceased causing him fatal injuries resulting in his death on the spot itself. The rash and negligent driving by the first respondent vehicle driver alone caused the accident. The petitioner who is the father of the deceased contends that his son was aged about 25 years and by working as Designing Engineer was earning a sum of Rs.10,000/- per month. The petitioner was depending on the income of his son and due to his sudden demise, he is left with no one to take care of him. Thus, the petitioner seeks a sum of Rs.18,00,000/- as compensation from the respondents who are the owner and insurer of the offending vehicle.

4. 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 petitioner. The accident occurred only due to the negligence and the high speed in which the motor cycle was driven by the deceased. The negligence of the deceased contributed to the accident. The age, avocation and income of the deceased is denied. The claim of the petitioner is exorbitant. Thus, the second respondent seeks dismissal of the petition.

5. Before the Tribunal, the first petitioner examined himself as P.W.1 and eye witness to the occurrence one Sabari Nathan was examined as P.W.2 and produced documents Ex.P1 to Ex.P29 to substantiate his claim. On the side of the respondents, neither oral nor documentary evidence was let in.

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, directed the respondents jointly and severally to pay a sum of Rs.8,90,000/- as compensation. Being not satisfied with the quantum of compensation awarded by the Tribunal, the petitioner/claimant filed this present appeal seeking enhancement of Award amount.

7. I have heard the learned counsel appearing for the petitioner/claimant/appellant and the learned counsel appearing for the second respondent-Insurance Company and perused the materials available on record.

8. The learned counsel appearing for the petitioner/claimant contends that the Tribunal failed to consider the oral and documentary evidence let in by the petitioner properly and as such fixed the monthly income of the deceased is very low. The Tribunal ought to have taken the age of the deceased and fixed the multiplier as 18 instead of 9

fixed on the basis of the age of the petitioner. The Tribunal has awarded much lesser amount under different heads. Thus, the petitioner sought for enhancement of the award amount by entertaining the appeal.

9. Per contra, the learned counsel appearing for the second respondent Insurance company contends that the accident occurred only due to the negligent driving of the two wheeler by the deceased and the petitioner is not a dependent on the income of the deceased. The amount claimed by the petitioner is exorbitant without any basis. The Tribunal, based on the available evidence passed the award which itself is on the higher side. Thus, the second respondent contends that no ground is made out by the petitioner to enhance the quantum of compensation and seeks dismissal of the appeal.

10. The appeal is filed on the issue of quantum of award only. The Tribunal fixed the negligence on the part of the first respondent driver as the cause for the accident. On the basis of eye witness account given by P.W.2 as well as Ex.P1 First Information Report and Ex.P5 Charge Sheet which were laid against the driver of the first respondent vehicle, it is clear that the first respondent driver alone is caused the accident. On the other hand, the second respondent has not let in any contra evidence to disprove or dis-credit the version given by P.W.2 and the contents of Ex.P1 First Information Report as well as Ex.P5 Charge sheet. In such circumstances, the Tribunal is correct in fixing the negligence on the part of the first respondent driver as a result the cause for the accident. The offending vehicle bearing Registration No.TN-01-AM-5857 belongs to the first respondent and the same is insured with the second respondent. The same is clear from Ex.P22 copy of the Insurance Policy. Further, it is clear from Ex.P23 copy of the driving licence that the first respondent vehicle driver possessed valid licence at the time of the accident. Since the negligence is placed on the first respondent vehicle driver as the owner and insurer of the said vehicle, the respondents herein are liable to pay the compensation to the petitioner.

11. The petitioner stated that his deceased son was aged about 24 years. In Ex.P9 copy of birth certificate of the deceased his date of birth is given as 17.01.1999. In Ex.P3 Postmortem Certificate, the age of the deceased is stated as 25 years. Since the accident took place on 23.05.2013, it is clear that the deceased was aged 24 years. For the said age group, the multiplier to be applied is 18.

12. The petitioner averred in his petition as well as in his oral evidence that his deceased son was B.E. graduate and by working as Designing Engineer in a private company was getting a sum of Rs.10,000/- per month. The petitioner also produced a

copy of the B.E. degree certificate as Ex.P13, B.E. Provisional Certificate as Ex.P14, B.E. Mark Statement as Ex.P15 and Salary Certificate of his son as Ex.P18. He also produced the copy of Pan Card of the deceased as Ex.P20. According to the petitioner, his son was having number of offers from various companies and he produced Ex.P16 and Ex.P17 documents to support his claim. As such the Tribunal, on the basis of P.W.1's evidence and documents produced by him, fixed the monthly salary of the deceased at Rs.10,000/- per month. The same is disputed by the learned counsel appearing for the second respondent Insurance Company contended that there is no other proof for the monthly salary of the deceased and the author of Ex.P18 has not come forward to depose before the Court. It is true that neither appointment order or any other authenticated copy of the salary received by the deceased is available on record. No persons from the company wherein the deceased was employed has been examined. As such, the contention of the second respondent-Insurance Company appears to be just and probable. In such circumstances, taking into consideration the prevailing market condition, it will be appropriate to fix the monthly salary of the deceased at Rs.8,000/- and 40% of the salary is added towards future prospects. R.8,000/- + 40% added as future prospects as 3,200/- and the total amount comes to Rs.11,200/-. The deceased being a bachelor, 50% of the income is to be deducted towards his personal expenses. Accordingly, the loss of income is calculated is as follows:-

Rs.11,200/- - 50%(deducted) towards personal expenses of the deceased = Rs.5,600/-. The loss of income is Rs.5,600/- x 12 = Rs.67,200/- x 18 = Rs.12,09,600/-.

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
Transportation	=	Rs. 10,000.00
Damage to Cloths	=	Rs. 5,000.00

14. 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	8,10,000.00	12,09,600.00
2.	Loss of Estate	-	15,000.00
3.	Funeral Expenses	25,000.00	15,000.00
4.	Transport charges	5,000.00	10,000.00
5.	Damage to cloths	-	5,000.00
6.	Loss of love and affection	50,000.00	-
	Total	8,90,000.00	12,54,600.00

Accordingly, the compensation warded by the Tribunal is modified and the same is enhanced to Rs.12,54,000/-.

15. In the result, the Civil Miscellaneous Appeal is partly allowed. No costs. The amount of Rs.8,90,000/- awarded by the Tribunal, dated 10.04.2017 made in MCOP.No.3973 of 2013 on the file of the Motor Accident Claims Tribunal/The Chief Judge, Court of Small Causes, Chennai, is enhanced to Rs.12,54,600/-. The Second respondent/Insurance Company is directed to deposit the entire enhanced award amount of Rs.12,54,600/- with interest at the rate of 7.5% p.a. from the date of filing the claim petition till the 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. On such deposit, the petitioner/claimant is permitted to withdraw the entire award amount with accrued interest by filing necessary application before the Tribunal.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

The Chief Judge,
Small Causes Court,
Motor Accident Claims Tribunal
Chennai.

+1 cc to Mr.S.Natarajan Advocate sr 19946
+1 cc to Mr.S.Arunkumar Advocate sr 20163

C.M.A.No.2876 of 2017

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