IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.2833 of 2014

1.J.Parkavi
2.Rajashree (Minor)
3.Sethammal
4.R.Sethuraj
5.Jeevaraj (Minor)
(2nd and 5th minor petitioners
rep. By their mother and 1st petitioner)
..Appellants/Petitioners

-Vs-

1.P.Sadasivam

2.Royal Sundaram Alliance

General Insurance Co.Ltd.,

No.6, Lattice Bridge Road

Adyar, Chennai-600 020 ..Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, against the award and decree dated 27.03.2014 made in M.C.O.P. 4818/2011 passed by the Motor Accidents Claims Tribunal (III Judge, Small Causes Court, Chennai).

For appellant :: Ms.P.T.Saleem Fathima
For Respondent(s) :: R1-Remained Exparte before the Tribunal
R2-Mr.S.Manohar.

J U D G M E N T



The Appellants are the Petitioners/claimants. They filed this appeal, challenging the award and decree dated 27.03.2014 passed by the Motor Accidents Claims Tribunal (III Judge, Small Causes 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 26.09.2011 at about 22.30 hours, as the deceased was

riding his motor cycle bearing Reg.No.TN-20-AX-2876 in Ambattur Estate Road and as he was turning towards east near Collector Nagar Signal, the lorry bearing Reg.No.TN-22-AT-7869 proceeding from west to east came at high speed, dashed against the motor cycle of the deceased causing him fatal injuries resulting in his death on the same day. The accident occurred due to negligence of the 1st respondent vehicle driver only. The deceased was aged 27 years and by working as a Painting contractor was earning Rs.25,000/- per month. The Petitioners are the wife, children and parents of the deceased. They were depending on the earnings of the deceased. Due to sudden demise of the bread winner of the family, the Petitioners are suffering from loss of income as well as loss of love and affection. Thus the petitioners sought for a sum of Rs.15,00,000/- as compensation from the respondents.

3. On the other hand, opposing the claim of the Petitioners, by filing counter, the 2nd respondent/Insurance company denies and disputes the place, date and time of the accident as alleged by the Petitioners. The claim of the Petitioners about the age, avocation and income of the deceased is also disputed. The vehicle bearing Reg.No.TN-22-AT-7869 was not involved in the accident. The said vehicle has been falsely implicated. The 2nd respondent further states that the said vehicle was not insured with them. The driver of the vehicle was not possessing valid driving licence. The 2nd respondent sought for 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.5 to prove their claim. On the side of the respondents, neither oral nor documentary evidence was let in. The Tribunal, after analyzing the evidence on record found negligence of the 1st respondent vehicle rider alone caused the accident, passed an award for a sum of Rs.13,93,000/- payable by the respondents to the Petitioners.

5. Being not satisfied with the quantum of the award, the Petitioners/appellants have come forward with the present appeal seeking enhancement of the award amount by entertaining the appeal.

6. Heard both sides and perused the records carefully.

7. The learned counsel for the Petitioners/claimants contends that the Tribunal failed to consider the evidence of P.W.1 in respect of the age, avocation and income of the deceased properly. The Tribunal failed to provide any amount for future prospects. The Tribunal wrongly deducted 1/3rd of the income towards personal expenses of the deceased. The amounts

provided under different heads is very nominal. Thus, the claimants sought for enhancement of the award amount.

8. Per contra, the learned counsel for the 2nd respondent/Insurance company contends that the accident does not occur due to negligence of the 1st respondent vehicle driver and the claim of the claimants/Petitioners is highly excessive. The Tribunal but provided high compensation. There is no need to enhance the award passed by the Tribunal. On the other hand, the award passed by the Tribunal being highly excessive, is liable to set aside. Thus, the 2nd respondent sought for dismissal of the appeal.

9. It is only quantum appeal. Both sides did not seriously contest the appeal on the negligence aspect. The 1st petitioner who is the wife of the deceased deposed as P.W.1 and stated about the occurrence. However, she is not the eyewitness to the accident. To prove the manner of accident, the eyewitness to the accident deposed as P.W.2. He clearly stated that on 26.09.2011, at about 10.30 p.m., while he was standing in front of Plantina Apartment in Ambattur Estate Road, he saw a motor bike proceeding from south to north and turning towards eastern side. At that time, a lorry bearing Reg.No.TN-22-AT-7869 came from east to west in high speed, dashed against the motor cycle causing serious injuries to the deceased. P.W.2 categorically stated that the accident occurred only due to negligence and rash driving of the 1st respondent vehicle driver. The police also registered FIR against the driver of the 1st respondent only. After investigation, charge sheet was also filed against the same person as evidenced by Ex.P.2. The contents of Ex.P.1-FIR, Ex.P.2-Charge sheet and version of P.W.2 clearly proves that the accident occurred only due to negligence of the 1st respondent vehicle driver. There is no contra evidence let in by the respondents. As such, the claim of the Petitioners that negligence of the 1st respondent vehicle driver alone caused the accident is clearly established and the conclusion of the Tribunal holding that the 1st respondent vehicle driver's negligence alone caused the accident is absolutely correct and the same needs no interference. The tribunal further held that the respondents who are the owner and insurer of the vehicle are liable to pay compensation.

10. The Petitioners stated that the deceased was aged 27 years and by working as a Painting contractor was earning Rs.25,000/-. It is clear from Ex.P.5 that the Petitioners are the legal heirs of the deceased. The 1st petitioner who deposed

as P.W.1 stated that her husband was aged 27 years. It is clear from Ex.P.3-Post Mortem certificate and Ex.P.4-Death Certificate that the deceased was aged 27 years. In the absence of any other document produced by the Petitioners, relating to the age of the deceased, it will be appropriate to fix the age of the deceased as 27 years based on Ex.P.3. The petitioners stated that the deceased was earning Rs.25,000/- per month. There is no proof produced to substantiate the income and avocation of the deceased. As such the Tribunal fixed Rs.7000/- per month. The petitioners contends that such fixation of monthly income is arbitrary. Considering the claim of the Petitioners that the deceased was working as Painting contractor and the accident occurred during 2011 and keeping in mind that there is high demand for Painting Contractor, it will be appropriate to fix the monthly income of the deceased at Rs.8000/-. As the deceased was aged 27 years, it will be appropriate to award future prospects at the rate of 40%. Considering the fact that there are five legal heirs of the deceased, it will be appropriate to deduct 1/4$^{th}$ of the income towards personal expenses of the deceased. Thus, the contribution of the deceased to his family will be as under:-

Rs.8000 + 40% future prospects - 1/4$^{th}$ deduction towards personal expenses.

Rs.8000 + 3200 = 11,200. 11,200 - 1/4 (2800) = 8400.

8400 x 12 x 17 = 17,13,600/-.

11. Following the Apex court decision reported in 2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and Others], the compensation towards conventional heads, is as under:-

| | |
|---|---|
| Loss of consortium | -40,000/- |
| Funeral expenses | -15,000/- |
| Loss of estate | -15,000/- |
| 17,13,600 + 70,000/- | = 17,83,600/-. |

Considering the fact that the minor petitioners 2 and 5 are suffering due to death of their father and the aged parents of the deceased who are the 3$^{rd}$ and 4$^{th}$ petitioners are suffering due to loss of love and affection of their son at their old age, it would be appropriate to provide compensation towards “loss of love and affection” at the rate of Rs.20,000/- each to Petitioners, 2, 3, 4 and 5. [totally Rs.80,000/-].

12. In view of the foregoing observation, the modified compensation is as under:-

| Sl.No. | Heads | Amount awarded by the Tribunal (Rs.) | Amount awarded by this Court (Rs.) |
|---|---|---|---|
| 1. | Pecuniary loss | Rs.12,37,668/- | Rs.17,13,600/- |
| 2. | Loss of consortium | Rs. 50,000/- | Rs. 40,000/- |
| 3. | Funeral expenses | Rs. 25,000/- | Rs. 15,000/- |
| 4. | Loss of love and affection | Rs. 80,000/- | Rs. 80,000/- |
| 5. | Loss of estate | -- | Rs. 15,000/- |
| | Total | Rs.13,92,668/- rounded off to Rs.13,93,000/- | Rs.18,63,600/- |

13. In the result,

(i) This Civil Miscellaneous Appeal is Partly Allowed;

(ii) The award amount is enhanced to Rs.18,63,600/- from Rs.13,93,000/-;

(iii) The award amount will carry interest at the rate of 7.5% per annum from the date of petition till the date of realisation;

(iv) The 2nd respondent-Insurance company is directed to deposit the entire award amount, along with interest and cost, within a period of six weeks from the date of receipt of a copy of this order, less the amount, if any already deposited.

(v) The Appellants 1 to 5 are entitled to the award amount on the following apportionment:-

Appellants/Claimants 1, 2 and 5 - 30% each

Appellants/Claimants 3 and 4 - 5% each.

The Appellants 1, 3 and 4 are entitled to withdraw their respective shares of the award amount along with accrued interest. As far as claimants 2 and 5/minors' share amount is concerned, the same shall be invested in a fixed deposit in a Nationalised Bank and the same shall be renewed periodically till they attain majority. The interest accrued therein shall be withdrawn by the 1st appellant once in three months. The appellants shall pay the necessary additional court fee for the enhanced award amount, within a period of two weeks from the date of receipt copy of judgment. The Tribunal shall pass necessary orders for disbursal of the award amount. No costs.

-s/d-
Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

nvsri

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

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

+1 CC to Mr.S. Manohar, Advocate sr 41216.
+1 CC to Mr. Saleem Fathima, Advocate sr 41278.

C.M.A.No.2833 of 2014

RSI(CO)
SP(11/10/2018)