IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.01.2018
CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.2898 of 2017

1. Shanthi
2. Minor Vakshana
   Rep. By her next friend/guardian
   mother, 1st appellant
3. Kaveri ..Appellants/Petitioner

vs

1. The Correspondent
   Joyful Nursery and Primary School
   Monnaiyan Kottai, Pidamaneri, Dharmapuri

2. United India Insurance Company Ltd.,
   Divisional Office-II, Peramanoor Main Road
   Salem-7

3. I.Sankar @ Ravi ..Respondents/Respondents

Civil Miscellaneous Appeal filed against the order and decree dated 25.02.2016 made in M.C.O.P.No.646 of 2013 on the file of the Motor Accident Claims Tribunal and Special District Judge, Salem.

For appellants : : Mr.SP.Yuaraj
For Respondents : :
for R2 : : Mr.J.Chandran for R2.

J U D G M E N T

The claimants/Petitioners, aggrieved over the finding and quantum of compensation awarded by the Motor Accident Claims Tribunal [Special District Judge], Salem, dated 25.02.2016 made in M.C.O.P.No.646 of 2013, has come forward with this Civil Miscellaneous Appeal.

2. For convenience sake, the parties are referred to hereunder according to their litigative status before the Tribunal. The case of the Petitioners before the Tribunal as per their claim petition is that on 02.09.2012, at 5 p.m., when the deceased Pandian was riding his motor cycle bearing Reg.No.TN 32 L 9607, a Mahendra Van bearing Reg.No.TN 55 5661, driven by its driver in a rash and negligent manner, dashed against the deceased Pandian, causing death to him. According to the

claimants, the accident took place only due to rash and negligent driving of the said Mahendra Van and in that circumstances, a sum of Rs.25,00,000/- was claimed as compensation.

3. On the other hand, refuting the contentions of the petitioners, the 2nd respondent/Insurance Company opposed the petitioners claim by filing a detailed counter. According to the counter averments, on the fateful day on 02.09.2012, the driver of the Mahendra Van with Reg.No.TN 55 5661 was proceeding at normal speed and at that time, the deceased came in the opposite direction in his Motor Cycle with Reg.No.TN 32 L 9607, overtook car coming ahead of him and came in the wrong side and dashed against the Mahendran Van, fell down to succumb to grievous injuries. Thus, the 2nd respondent/Insurance Company, claims that the deceased was solely responsible for the accident and the driver of the Mahendra Van was not responsible for the accident since he was driving his vehicle at normal speed and in a careful manner.

4. To substantiate the claim before the Tribunal, the petitioners examined P.W.1 and P.W.2 and produced Exhibits P.1 to P.4. On the other hand, the 2nd respondent/Corporation neither examined any witness nor produced any documentary evidence.

5. After considering the available oral and documentary evidence, the Tribunal awarded compensation of Rs.9,51,000/- with interest at 7.5% p.a., from the date of petition till the date of deposit. The Tribunal categorically held that the accident occurred only due to rash and negligent driving of the driver of the Mahendra Van and also held that the 2nd respondent/Insurance Company is liable to pay the compensation. The details of the compensation is as follows:-

Sl. No.	Head	Amount granted by the Tribunal
1	Loss of pecuniary benefits to the dependants of the deceased (Rs.48,000/- x 17)	Rs. 8,16,000/-
2	Loss of consortium	Rs. 50,000/-
3	Funeral Expenses	Rs. 25,000/-
4	Loss of love and affection for the 2nd petitioner/minor daughter	Rs. 50,000/-
5	Loss of love and affection for the 3rd petitioner and 3rd respondent	Rs. 10,000/-
	Total	Rs. 9,51,000/-

6. Aggrieved by the said conclusion arrived at by the Tribunal, the Petitioners has filed the present appeal stating that the deceased was working as Silver Merchant and he could have got monthly income of Rs.15,000/- and as such, the Tribunal erred in fixing the monthly at Rs.6,000/- and the same is not proper. Further the petitioners contend that the Tribunal has failed to provide for the future loss of income and under the other heads also, the amount granted by the Tribunal is very low. It is further contended that the Tribunal should not have deducted 1/3rd of the income towards personal expenses as the family consisting of more than 5 persons, it should have deducted at the rate of 1/4th, hence, the petitioners seek to refix the compensation, as sought for by them.

7. Heard both. Admittedly, the deceased who is the husband of 1st petitioner and son of the 3rd petitioner was working as Silver Merchant. The Petitioners claim that at the rate of Rs.500/- per day, the deceased would have earned Rs.15,000/= per month. However, the Petitioners have not produced any material to substantiate the said claim. There is nothing on record to show that the deceased was getting employment throughout the month and he was paid Rs.500/- per day. In such circumstances, taking into consideration all the attendant circumstances, it will be appropriate to fix the monthly income of the deceased at Rs.6,500/- instead of Rs.6000/- fixed by the Tribunal.

8. The deceased is stated to have been 29 years and the same is not disputed by the 2nd respondent/Insurance Company. In such circumstances, his age is determined as 29 years. As per the Constitution Bench Judgment, the petitioners are entitled to ask for future prospects and as the deceased was aged 29 years, future prospects should be calculated as 40% of the income would have been earned by him. Accordingly, the loss of income and future prospects is to be calculated on the basis of monthly income of Rs.6,500/-. [Rs.6,500 + 40% = 9100]. After deducting 1/3rd towards personal expenses, the notional monthly income of the deceased is fixed at Rs.9100 - 1/3rd = 6070. Considering the age of the deceased, the correct multiplier to be applied is 17. Hence, towards loss of income and future prospects, it will be appropriate to calculate as under:-

Rs.6070/- x 12 x 17 = Rs.12,38,280/-. Thus a sum of Rs.12,38,280/- is awarded under the head "Loss of Pecuniary Benefits to the dependants of the deceased".

9. The Tribunal has awarded 50,000/- towards Loss of consortium. In view of the decision of the Apex Court reported in 2017 (2) TN MAC 609 (SC) [National Insurance Company Ltd., Vs. Pranay Sethi and others], this court is inclined to award Rs.40,000/- under the head "Loss of consortium". Likewise, for

funeral expenses, the Tribunal has fixed Rs.25,000/- and in view of the above said judgment of the Apex Court, the same is modified to Rs.15,000/-. Following the above said Apex court Ruling, towards "Loss of Estate", a sum of Rs.15,000/- is awarded by this court. Further, in the light of the above said judgment, the compensation amount granted under other heads is set aside. Accordingly, the compensation granted by the Tribunal is modified as follows:-

Sl. No.	Head	Amount granted by the Tribunal	Amount granted by this Court
1	Loss of pecuniary benefits to the dependants of the deceased including future prospects	Rs.8,16,000/-	Rs.12,38,280/-
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 for the 2nd petitioner/minor daughter	Rs. 50,000/-	---
5	Loss of love and affection for the 3rd petitioner and 3rd respondent	Rs. 10,000/-	---
6	Loss of Estate	---	Rs. 15,000/-
	Total	Rs.9,51,000/-	Rs.13,08,280/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed with costs and the award passed by the Tribunal is enhanced as shown above:-

(1) The second respondent/Insurance Company is directed to deposit the enhanced compensation amount with proportionate accrued interest at the rate of 7.5% per annum from the date of petition till the date of deposit, except for the delay period of 440 days as per order dated 11.09.2017 in C.M.P.No.14880 of 2017, within a period of six weeks from the date of receipt of a copy of this order, less the amount already deposited, if any. The claimants are entitled to modified compensation amount as follows:-

(i) The first petitioner/wife is entitled for Rs.5,23,312/-

(ii) The 2nd petitioner/minor daughter is entitled for Rs.5,23,312/-

(iii) The 3rd petitioner/mother of the deceased is entitled for Rs.2,00,000/-.

(iv) The 3rd respondent/father of the deceased is entitled for Rs.61,656/-.

(2) The first petitioner/wife, third petitioner/mother and 3rd respondent/father of the deceased are permitted to withdraw their entire respective share of award amount with accrued interest by filing necessary application. The share amount of the second petitioner/minor daughter shall be deposited in any one of the Nationalized Bank till she attains majority. The first petitioner/wife of the deceased is permitted to withdraw the accrued interest on behalf of the second petitioner once in three months.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

nvsri

To

1. The Motor Accidents Claims Tribunal,
   Special District Judge, Salem.

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

+1cc to Mr.J.Chandran, Advocate, S.R.No.2895
+1cc to Mr.SP.Yuaraj, Advocate, S.R.No.2233

C.M.A.No.2898 of 2017

sai(co)
cs/13/03/18