IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 04.04.2018

Coram

The Honourable Mr. Justice S.BASKARAN

Civil Miscellaneous Appeal Nos.3021 of 2017 and 174 of 2018

C.M.A.No.3021 of 2017

The United India Insurance Co. Ltd.,
Silingi Buildings, No.134,Greams Road,
Chennai - 600 006. ... Appellant/2nd respondent

..vs..

1.C.Jegajothi
2.R.Selvi
3.A.Jagadeeswari
4.A.Jeyanthi
5.C.Jagadhesan
6.B.Kalaivani ... Respondents/Petitioners
7.P.Shanmugam ... Respondents/1st respdt.

C.M.A.No.174 of 2018

1.C.Jegajothi
2.R.Selvi
3.A.Jagadeeswari
4.A.Jeyanthi
5.C.Jagadhesan
6.B.Kalaivani ... Appellants/Petitioners

Vs.

1.P.Shanmugam

2.The United India Insurance Co. Ltd.,
Silingi Buildings, No.134,Greams Road,
Chennai - 600 006. ... Respondents/Respondents

These Civil Miscellaneous Appeals have filed under Section 173 of Motor Vehicles Act, 1988, against the Fair and Decreetal order dated 21.03.2017 made in MCOP.No.2092 of 2014 on the file of the Motor Accident Claims Tribunal/III Judge, Small Causes Court, Chennai.

Mr.C. Paranthaman: For Appellant in C.M.A.No.3021/2017 and 2nd Respondent in C.M.A.No.174/2018.

Mr.Shanmugaraj : For Appellant in C.M.A.No.174/2018 and Respondents 1 to 6 in C.M.A. 3021/2017

COMMON JUDGMENT

Being aggrieved over the quantum of award passed by the Tribunal, dated 21.03.2017 made in MCOP.No.2092 of 2014 on the file of the Motor Accident Claims Tribunal/III Judge, Small Causes Court, Chennai, the second respondent-Insurance Company filed CMA.No.3021 of 2017 to set aside the award passed by the Tribunal.

Being not satisfied with the quantum of compensation awarded by the Tribunal, dated 21.03.2017 made in MCOP.No.2092 of 2014 on the file of the Motor Accident Claims Tribunal/III Judge, Small Causes Court, Chennai, the present appeal has been filed by the petitioners/claimants 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 06.03.2010 at about 12.00 hours, while the deceased was riding his bicycle along Gangaiamman Koil Street, from East to West, the share auto bearing Registration No.TN-05-S-2261 belonging to the first respondent and insured with the second respondent, came at high speed dashed on the back sided of the bicycle causing fatal injuries to the deceased Chandran. According to the petitioners, the accident occurred only due to the rash and negligent driving by the first respondent owned auto driver. At the time of the accident, the deceased was aged about 50 years and was carrying on business of provisional stores and also PCO booth earning a sum of Rs.14,000/- per month. The petitioners who are the wife and children of the deceased were depending on the income of the deceased. Hence, they seek a sum of Rs.16,00,000/- as compensation from the respondents.

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 petitioners. The second respondent further contends that the deceased died due to the old age and there is no nexus between the injury sustained and death of said Chandran. The share auto bearing Registration No.TN-05-S-2261 does not belong to the first respondent. The real owner and insurer are not impleaded.

There is no rash and negligent driving on the part of the driver of the said share auto. The age, avocation and income of the deceased as claimed by the petitioners is not true. The amount claimed by the petitioners is very exorbitant. Hence, the second respondent sought for dismissal of the petition.

5. Before the Tribunal, the petitioners examined P.W.1 and P.W.2 and produced documents Ex.P1 to Ex.P12 to substantiate their claim. On the side of the respondents, neither oral nor documentary evidence was let in.

6. The Tribunal, on the basis of available evidence on record, found the negligence of the first respondent share auto driver alone resulted in the accident, passed award for a sum of Rs.13,75,000/- as compensation payable by the respondents to the petitioners. Aggrieved over the quantum of award passed by the Tribunal, the second respondent-Insurance Company filed the Appeal in CMA.No.3021 of 2017 and being not satisfied with the quantum of compensation awarded by the Tribunal, the petitioners/claimants filed appeal in CMA.No.174 of 2018 seeking enhancement of Award amount.

7. I have heard the learned counsel appearing for the appellants/Petitioners 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 appellants/petitioners contended that the Tribunal ought to have fixed the monthly income of the deceased at Rs.14,000/- instead of Rs.12,000/- as fixed by it. The Tribunal failed to provide any amount towards future prospects. The multiplier applied by the Tribunal is not proper and deductions has also been not done in accordance with law. Thus, the petitioners/claimants seeks enhancement of the award amount.

9. On the other hand, the second respondent-Insurance Company contends that the petitioners failed to produce any proof of his avocation and income and as such the Tribunal erred in fixing the notional income at Rs.6,000/- per month. The petitioners 2 to 6 are all married and they are not dependent on the deceased. The age of the deceased is stated as 60 years in Ex.P4 first information report, but the Tribunal without considering the same, fixed the age of the deceased as 53 years on the basis of Ex.P9 Postmortem report. The second respondent-Insurance Company further contends that the average of both the age as mentioned in Ex.P4 FIR and Ex.P9 Postmortem Report is to be taken in account. Thus, the second respondent seeks to entertain the appeal filed by them and reduce the compensation amount awarded by the Tribunal.

10. According to the petitioners, when the deceased was riding his bicycle in Gangaiamman Koil Street, Lakshmipuram, from East to West direction, the share auto bearing Registration No.TN-05-S-2261 came at high speed dashed against the deceased Chandran resulting in his death in the Government Hospital, Chennai on the next day of the accident i.e. on 07.03.2010. The police also registered Ex.P4 First Information Report against the driver of the said share auto driver only. After completion of investigation, the police laid charge sheet Ex.P6 against the same driver. The eye witness to the accident who deposed as P.W.1 clearly stated that the accident occurred only due to the rash and negligent driving by the driver of the first respondent share auto. It is therefore clear from P.W.1 evidence as well as the contents of Ex.P4 First Information Report and Ex.P6 Charge Sheet that the accident occurred only due to the rash and negligent driving by the first respondent vehicle driver only. The said claim of the petitioners is supported by the details furnished in Ex.P5 copy of the Rough Sketch of the accident spot.

11. On the other hand, there is no contra evidence let in by the respondents to disprove the version of accident given by P.W.1. As such, it is clear from the available evidence on record that the accident occurred only due to the rash and negligent driving by the first respondent owned auto driver.

12. Admittedly, the first respondent is the owner of the offending vehicle and the same was insured with the second respondent as evidenced by Ex.P7 copy of the Insurance Policy. Thus, the respondents who are the owner and insurer of the offending vehicle are liable to pay compensation.

13. Even though, the petitioners/claimants contended that the cause of death of the deceased Chandran is not the injuries suffered by him in the accident, no material is produced to substantiate the said contention of the respondents. Admittedly, it is evident from Ex.P9 Postmortem report that the deceased Chandran died subsequently due to the side effects of head injuries sustained by him. As such, it is clear from Ex.P8 death report and Ex.P9 Postmortem report that the said Chandran died because of injuries suffered by him in the accident. The conclusion arrived at by the Tribunal in that regard is well founded and the same needs no interference.

14. The petitioners claimed that they are the legal heirs of the deceased and the same is corroborated by Ex.P10 Legal heir certificate. As such the petitioners are entitled to seek compensation.

15. The petitioners stated in the claim petition that the deceased was aged about 50 years at the time of the accident. In Ex.P4 first information report, the age of the deceased is stated to be 60 years. However, in Ex.P9 Postmortem Certificate as well as Ex.P8 death report, the age of the deceased is stated to be 53 years. Pointing it out, the learned counsel appearing for the second respondent-Insurance Company contended that the average of the said two claims, namely, Ex.P4 first information report and Ex.P8 death certificate should be taken into account. However, disputing the same, the learned counsel appearing for the petitioners/claimants stated that the averment in the first information report need not be considered and the age mentioned in the postmortem certificate alone is to be relied upon, as the complainant who lodged the complaint with the police for registering Ex.P4 first information report is not examined before the Tribunal. As such, it will be appropriate to fix the age of the deceased on the basis of postmortem certificate. Thus, the Tribunal is justified in fixing the age of the deceased at 53 years as per Ex.P9 Postmortem Certificate. The petitioners claims that the deceased was carrying on business as Proprietor of provisional store and was also running PCO telephone booth earning a sum of Rs.14,000/- per month. However, there is no proof filed by the petitioners regarding the income earned by the deceased. The Tribunal following the judgment reported in 2015 (1) TN MAC 161(SC), fixed the monthly income at Rs.10,000/-.

16. The learned counsel appearing for the petitioners/claimants contended that in the above said ruling, even in the absence of evidence, the court fixed the income of the carpenter at Rs.12,000/- per month and as such the deceased herein being the proprietor of provisional store and also running PCO telephone booth, the income of the deceased should be fixed as Rs.12,000/- per month. The petitioner examined the sales man employed by the deceased in his shop as P.W.2 and he stated that he was getting salary of Rs.15,000/- per month. However, no proof was filed by P.W.2 regarding his employment as well as monthly salary given to him. On the other hand, the learned counsel appearing for the second respondent-Insurance Company contended that the petitioners has not produced any materials to prove the business of the deceased and also his monthly income from the business. In such circumstances, the second respondent sought to reduce the monthly income fixed by the Tribunal from Rs.10,000/- to Rs.6,000/-. However, considering the evidence available on record and also the ruling relied upon by the petitioners/claimants, this Court is inclined to fix the monthly income of the deceased at Rs.11,500/- as the deceased was carrying on business of provisional store and also running a PCO telephone booth. As the deceased was aged 53 years, the multiplier is to be applied would be 11. Considering

the age of the deceased, it will be appropriate to add 10% of the income towards future prospects. Thus, the monthly income of the deceased will be Rs.11,500/- x 10% = Rs.1150/- + Rs.11,500/- = Rs.12,650/-. Since there are six dependents, 1/4th of the amount is to be deducted towards personal expenses of the deceased. As such, the loss of dependency is calculated is as follows:-

(1) Rs.12,650/- deducted 1/4th amount of Rs.3,162/- = Rs.9488/- as loss of income.

(2) Rs.9488/- x 12 = Rs.1,13,856/- x 17 = Rs.12,52,416/- as loss of dependency.

17. 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 award the following amount as compensation:-

Loss of consortium = Rs. 40,000.00
Funeral Expenses = Rs. 15,000.00
Loss of Estate = Rs. 15,000.00
Transportation = Rs. 10,000.00

18. 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	9,90,000.00	12,52,416.00
2.	Transportation	10,000.00	10,000.00
3.	Loss of consortium	1,00,000.00	40,000.00
4.	Funeral Expenses	25,000.00	15,000.00
5.	Loss of estate	-	15,000.00
6.	Loss of love and affection	2,50,000.00	-
	Total	13,75,000.00	13,32,416.00

Accordingly, the compensation warded by the Tribunal is modified and the same is reduced to Rs.13,32,416/- and the same is rounded to Rs.13,32,500/-.

19. In the result, the Civil Miscellaneous Appeals are disposed of. No costs. The amount of Rs.13,75,000/- awarded by the Tribunal dated 21.03.2017 made in MCOP.No.2092 of 2014 on the file of the Motor Accident Claims Tribunal/III Judge, Small Causes Court, Chennai, is hereby reduced to Rs.13,32,500/-. The Second respondent/Insurance Company is directed to deposit the entire award amount of Rs.13,32,500/- with interest at the rate of 7.5% p.a. from the date of filing the claim petition and 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 appellants 1 and 5/petitioners 1 and 5 in CMA.No.174 of 2018 are entitled to 30% each of the award amount and appellants 2 to 4 and 6/petitioners 2 to 4 and 6 are entitled to 10% each of the award amount. The appellants/petitioners in CMA.No.174 of 2018 are permitted to withdraw their respective share with accrued interest by filing necessary application before the Tribunal.

-s/d-
Assistant Registrar(CS-II)

True Copy

Sub-Assistant Registrar

rrg

To

The III Judge,
Small Causes Court,
Chennai

+2 Ccs to Mr. A. Shanmugaraj, Advocate sr 25076,25077.
+1 CC to Mr.C. Paranthaman, Advocate sr 24710.

C.M.A.Nos.3021 of 2017
and 174 of 2018

RSI(CO)
SP(24/05/2018)