

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.666 of 2018

- 1.Valarmathi
- 2.Minor Arthi
- 3.Minor Sowbarnika
- 4.Minor Aruna
- 5.Minor Vishal

Minor appellants 2 to 5 are
represented by their mother
/1st appellant.

- 6.Mariammal

...Appellants/Petitioners

Vs

- 1.Palanisamy
- 2.Selvakumar
- 3.Reliance General Insurance Company
Limited, Gee Jay Arcade,
1st Floor, 141/71, TV Swamy Road
R.S.Puram, Coimbatore-641 002.

..Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of MV Act, 1988 as amended Act 54/1994 against the judgment and decree dated 18.12.2014 passed in M.C.O.P.No.866 of 2010 on the file of Motor Accidents Claims Tribunal Cum Subordinate Court, Sankari.

For appellants : : Mr.C.Kulanthaivel
for Respondents : : Mr.S.Arunkumar for R3.

J U D G M E N T

This Civil Miscellaneous Appeal is filed by the appellant/Petitioner, challenging the judgment and decree dated 18.12.2014 passed in M.C.O.P.No.866 of 2010 on the file of Motor Accidents Claims Tribunal Cum Subordinate Court, Sankari.

2. For the sake of convenience, the parties are referred to as per their litigative status before the Tribunal. It is a fatal case. The case of the Petitioners is that on 26.09.2010, at about 5.45 hours, as the deceased Mariappan was driving the

car bearing Reg.No.TN-45-M-4088 in Sankari to Omalur Main Road, while coming near Orukkalamalai Adivaram, the Lorry bearing Reg.No.Ka-01-B-6613 driven by 1st respondent, owned by 2nd respondent and insured with the 3rd respondent, came at high speed, dashed against the car resulting in the death of the said Mariappan. The accident occurred due to negligence of the 1st respondent driver only. The petitioners who are the wife, children and mother of the deceased were dependants on the earnings of the deceased Mariappan. The deceased Mariappan was aged 37 years and by working as Lorry driver and as LIC Commission Agent, was earning Rs.30,000/- per month. Thus, the Petitioners suffered loss of love and affection and monetary contribution to the family by the deceased. The Petitioners therefore sought for a sum of Rs.30,00,000/- as compensation from the respondents, who are the driver, owner and insurer of the offending vehicle.

3. On the other hand, opposing the claim of the Petitioners, the 3rd respondent/Insurance Company, by filing counter, contends that the accident did not occur in the manner alleged by the Petitioners. The deceased who was driving the car came at high speed and only due to his negligence, dashed against the 1st respondent driven lorry resulting in the accident. The respondents are no way liable to pay compensation. The deceased driver Mariappan did not possess valid driving licence. As the deceased himself was the tortfeasor, the petitioners are not entitled for compensation. The owner and insurer of the car bearing Reg.No.TN-45-M-4088 alone is liable to pay compensation. The failure to implead them as party to the proceedings is fatal to the claim of the Petitioners. Even though the Petitioner claims that the driver/1st respondent of the offending vehicle bearing Reg.No.Ka-01-B-6613 is responsible for the accident, the entire negligence cannot be fastened on him. The deceased also contributed to the accident. The claim of the petitioners about the age, avocation and income of the deceased is denied. The compensation claimed is exorbitant. Thus, the respondent sought for dismissal of the Claim Petition.

4. Before, the tribunal, the Petitioners examined P.W.1 and P.W.2, produced Ex.P.1 to Ex.P.15 to prove their claim. On the other hand, the respondents did not produce any oral or documentary evidence. On the basis of available evidence on record, the Tribunal found that negligence on the 1st respondent driver alone caused the accident, passed the award of Rs.11,01,250/- payable by the respondents to the Petitioners. Being not satisfied with the award amount, the petitioners/claimants have come forward with the present appeal.

5. The learned counsel for the appellants/petitioners would

submit that the Tribunal failed to appreciate the evidence properly and fixed the notional monthly income of the deceased very low. The owner of the vehicle bearing Reg.No.TN-45-M-4088 driven by the deceased deposed as P.W.2 and his evidence will clearly prove that the deceased worked as heavy vehicle driver and also an agriculturist owning lands. Hence, the deceased would have earned Rs.20,000/- per month, by working as Lorry Driver. The Tribunal failed to consider the evidence of P.W.2 as well as Ex.P.13 driving licence of the deceased and Ex.P.15 Sale Deed and wrongly fixed notional income very low. The Tribunal failed to apply the multiplier properly and deducted higher amount towards personal expenses of the deceased. Thus the petitioners sought for enhancement of the award amount by allowing the appeal.

6. Per contra, the learned counsel for the 3rd respondent/Insurance company contended that the negligence of the deceased alone caused the accident and as such they are not liable to pay any amount. The Tribunal has fixed the notional income on the higher side and also the amount awarded under different heads is very high. Thus, the 3rd respondent contends that there is no need or scope to enhance the award amount passed by the Tribunal. Thus, the 3rd respondent/Insurance Company sought for dismissal of the appeal.

7. The 1st petitioner who is the wife of the deceased deposed as P.W.1 and stated about the accident which took place on 26.09.2010. Admittedly P.W.1 is not an eyewitness to the accident. The Police have registered the case against the driver of the 1st respondent Lorry as per Ex.P.1-FIR and after completion of investigation, laid charge sheet as per Ex.P.6 against the 1st respondent only. The Rough Sketch of the occurrence spot is also produced as Ex.P.5. It is therefore clear from the same that the 1st respondent who was driving the lorry bearing Reg.No.KA-01-B-6613 alone caused the accident due to his negligent driving. To contradict the oral and documentary evidence let in by the Petitioners, the respondents have not examined either the 1st respondent driver or any other witness. The Insurance company also failed to produce any investigation report about the accident. As such, the Tribunal is justified in concluding that the negligence of the 1st respondent driver alone caused the accident. The said finding needs no interference.

8. The Petitioners contend that the deceased was aged 37 years and by working as a Lorry Driver as well as agriculturist and LIC Commission Agent, he was earning Rs.30,000/- per month. The copy of the driving licence of the deceased Mariappan is produced as Ex.P.13. In Ex.P.2-Post Mortem Certificate, the age of the deceased is stated as 37 years. Thus the age was fixed

as 37 years by the Tribunal. The said conclusion is just and proper.

9. The owner of the vehicle driven by the deceased Mariappan deposed as P.W.2 and he stated that by working as Lorry Driver, the deceased was getting Rs.25,000/- per month. The Petitioners also produced Ex.P.15-Sale deed to show that the deceased was having agricultural lands. However, there is no proof regarding the LIC Commission Agent business stated to be done by the deceased. As there is no evidence for the income from the land mentioned in Ex.P.15-Sale deed, the Tribunal fixed notional income of the deceased at Rs.4500/- per month, this the claimants contend is not proper and further contended that the deceased being Lorry Driver would have easily earned Rs.10,000/- per month.

10.1. Considering the fact that the deceased possessed Heavy Vehicle Driving Licence and the fact that the accident occurred during 2010, it will be appropriate to fix the notional monthly income of the deceased at Rs.7000/-. The deceased was aged 37 years at the time of the accident. The Tribunal has added 50% of the income as Future Prospects for arriving at loss of dependency. However, following the decision of the Apex Court in 2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and Others], it will be appropriate to add 40% towards Future Prospects. The Petitioners who are six in number being the dependants of the deceased, $\frac{1}{4}^{\text{th}}$ of the income has to be deducted towards personal expenses of the deceased. Following the Ruling of the Apex Court reported in 2009 (2) TN MAC 1 (SC) in Smt.Sarla Verma and Others., Vs. Delhi Transport Corporation and Another, the multiplier to be applied in the case on hand is 15. Thus, loss of dependency to the Appellants/Petitioners is calculated as follows:-

Monthly salary - Rs.7000/-

Add : 40% towards future prospects (2800)

7000 + 2800 = 9800

$\frac{1}{4}^{\text{th}}$ deduction towards personal expenses (2450)

9800 - 2450 = 7350.

7350 x 12 x 15 = Rs.13,23,000/-

Thus, under the head "loss of dependency", Rs.13,23,000/- is allotted to the Petitioners. Further, the sum of Rs.5,000/- granted by the Tribunal towards "Transportation", is found to be just and proper and hence, the same is confirmed.

10.2 Compensation towards Conventional Heads:- Following the decision of the Constitution Bench judgment of the Supreme Court reported in 2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and Others], the following amounts are awarded under conventional heads:- Loss of consortium - Rs.40,000/-

Loss of estate -Rs.15,000/-

Funeral expenses -Rs.15,000/-

Accordingly, the modified compensation payable to the appellants/petitioners is as under:-

Sl.N o.	Heads	Amount awarded by the Tribunal	Amount awarded by this Court
1.	Loss of dependency	Rs.9,11,250	Rs.13,23,000/-
2.	Loss of consortium	Rs. 75,000/-	Rs. 40,000/-
3.	Loss of love and affection	Rs. 1,00,000/-	--- ----
4.	Funeral expenses	Rs. 10,000/-	Rs.15,000/-
5.	Transport expenses	Rs. 5,000/-	Rs. 5,000/-
6.	Loss of estate	----	Rs. 15,000/-
	Total	Rs.11,01,250/-	Rs.13,98,000/-

11. In the result,

(i) The Civil Miscellaneous Appeal is Partly Allowed;

(ii) The appellants/Petitioners are entitled to award amount of Rs.13,98,000/- which carry interest at the rate of 7.5% per annum from the date of petition till the date of realisation;

(iii) The apportionment of the award amount is as under:-

Mother/1st appellant - 30%

Children/Appellants 2 to 5- 15% each

Mother/6th appellant -10%

The 3rd respondent/Insurance company is directed to deposit the award amount of Rs.13,98,000/-Rupees Thirteen Lakhs ninety eight thousand only] within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the appellants 1 and 6 are permitted to withdraw the same, by filing necessary application before the Tribunal. Insofar as shares of the minor appellants are concerned, the same shall be invested in a Fixed Deposit in a Nationalised Bank till they attain majority. The accrued interest in the minors share shall be withdrawn by the mother/1st appellant once in three months. No costs.

Sd/-

Assistant Registrar(CS II)

//True copy//

Sub Assistant Registrar

nvsri

To

1.The Motor Accident Claims Tribunal
Cum Subordinate Court, Sankari.

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

+lcc to Mr.S.Arun Kumar, Advocate SR.No.29154

+lcc to Mr.C.Kulanthaivel, Advocate SR.No.29142

C.M.A.No.666 of 2018

RJI (CO)
GN(11/06/2018)



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