IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.3164 of 2017

1.Shanmuga Sundaram
2.Shanthi ..Appellants/Petitioners

vs

1.Mutharasu

2.Ranganayagi

3.National Insurance Co.Ltd.,
Chittoor Road South Junction
Kochi-16, Ernakulam District
Kerala-682 016. ..Respondents.

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, against the order and decree dated 19.01.2017 made in M.C.O.P.No.1153 of 2013 on the file of Motor Accident Claims Tribunal, I Additional District Court, Tiruppur.

For appellants : : Mr.MA.P.Thangavel
For Respondents : : Mr.S.Vadivel for R3.
R1 and R2 -Set exparte before the Tribunal.

J U D G M E N T

The Appellants, who are the claimants before the Tribunal, has filed this appeal, challenging the order and decree dated 19.01.2017 made in M.C.O.P.No.1153 of 2013 on the file of Motor Accident Claims Tribunal, I Additional District Court, Tiruppur.

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 27.05.2013 at about 03.15 a.m., while the deceased was driving the car bearing Reg.No.TN-22-BA-0906 near M.T.R.Mill, from east to west in Kangeyam to Coimbatore Road while going near Kadaiyur, the car bearing Reg.No.TN-52-V-1496 belonging to the 2nd respondent driven by 1st respondent/driver and insured with the 3rd respondent came at high speed, dashed against the vehicle in which the Petitioner was proceeding, causing him

fatal injuries, resulting in his death immediately. The accident occurred due to negligence of the 1st respondent driver. The deceased was aged 26 years and was carrying on business in the name and style of M/s.RPG Garments, Kangeyam, Tiruppur, earning Rs.25,000/- per month. The Petitioners/claimants who are the Parents of the deceased have lost their only son in the accident. They stated that they were depending on the earnings of the deceased. Thus, the Petitioners sought for a sum of Rs.40,00,000/- as compensation from the respondents.

3. On the other hand, opposing the claim of the Petitioners, by filing counter, the 3rd respondent/Insurance company contends that there was no negligence on the part of 1st respondent-driver. It was only due to negligence of the deceased himself, the accident occurred. The Kangeyam Police registered case in Crime No.210 of 2013 against the deceased and the same will show that there was no negligence on the part of the 1st respondent-driver. The deceased alone was responsible for the accident. As the deceased himself was the tortfeasor, the Petitioners are not entitled to seek compensation. The age, avocation and income of the deceased as stated by the Petitioners is denied. Their claim is exorbitant. The 3rd 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.14 to prove their claim. The respondent examined R.W.1 and R.W.2 and produced Ex.R.1 to contradict the claim of the Petitioners.

5. The Court below after analysing the evidence on record, held that negligence of the 1st respondent driver alone caused the accident, passed an award for a sum of Rs.11,56,000/- payable by the respondents 1 to 3 to the Petitioners.

6. Being not satisfied with the quantum of the award, the Petitioners/claimants have come forward with the present appeal.

7. The learned counsel for the appellants/Petitioners/claimants contends that the deceased was a B.E.Graduate and by doing Garment Business, was earning Rs.25,000/- per month. The Petitioners produced Income Tax Returns of the deceased as Ex.P.12 to Ex.P.14, but the Tribunal, without taking note of the same, fixed the notional income at Rs.7000/- without any basis. The Tribunal ought to have fixed higher monthly income for the deceased. The Tribunal ought to have provided for 100% amount for future prospects. The Tribunal wrongly deducted 50% towards personal expenses instead of deducting 1/3rd of the income only. The amount provided for by the Tribunal under other heads is very nominal. Thus, the Petitioner/claimant sought for enhancement of the award amount by entertaining the appeal.

8. Per contra, the learned counsel for the 3rd respondent/Insurance company contends that the accident having occurred due to negligence of the deceased himself, the Petitioners are not entitled to seek any compensation. The award passed by the Tribunal itself is highly excessive. The document produced by the Petitioners to prove the monthly income of the deceased are not authenticated documents. The Income Tax Returns are not signed by proper authorities. As such, there is no need to enhance the quantum of the award passed by the Tribunal. Thus, the 3rd respondent/Insurance company sought for dismissal of the appeal.

9. It is only quantum appeal. Both sides did not seriously disputed the finding of the Tribunal regarding negligence aspect.

10. Before the Tribunal, the Petitioners examined eyewitness to the occurrence as P.W.2. He clearly stated about the manner in which the accident occurred. On the other hand, the 3rd respondent/Insurance company examined the Private Investigator as R.W.1 and he produced copy of charge sheet and other related documents as Ex.R.1. It is clear from Ex.P.1-FIR that the complaint was lodged by 1st respondent driver Mutharasu on 27.05.2013 before Kangeyam Police alleging the negligence of the deceased Santhosh only caused the accident. As the driver of the car viz., the deceased Santhosh was injured, the complaint was lodged by the 1st respondent who was the driver of the other vehicle involved in the accident. The 1st respondent who deposed as R.W.2 stated that on 27.05.2013 at about 3.15 a.m., as he was proceeding from Kangeyam to Coimbatore, the car which was coming in the opposite direction dashed against the Lorry near MTR Mill at Kadaiyur around 3.15 a.m. The Tribunal, considering the evidence available on record held that there was no parking area at the point of accident and the accident occurred not as claimed by the 1st respondent/driver. Even though final report was filed, as rightly held by the Tribunal, negligence aspect is to be determined independently on the basis of available material before the Tribunal. In the case on hand, P.W.2 is the independent witness, whereas, R.W.2 is the interested witness as he was one of the drivers of the vehicle involved in the accident. There is no independent witness examined on the side of the respondent. It is also clear from the Rough Sketch of the occurrence spot that the breadth of the road is nearly 34 feet. In such circumstances, the contention of the respondents that the car driven by the deceased came to extreme right and dashed against the 1st respondent lorry does not appear to be probable. As stated earlier, the FIR and charge sheet are filed on the basis of complaint lodged by the 1st respondent herein. As stated earlier, the 1st respondent being an interested person,

the Tribunal, has correctly refused to accept his evidence while concluding that P.W.2 eyewitness evidence is very probable and acceptable. As such, the conclusion of the Tribunal that the negligence of the 1st respondent caused the accident is just and proper and the same needs no interference.

11. The Petitioners stated that on 27.05.2013, the car driven by the deceased Santhosh met with an accident involving the 2nd respondent owned lorry, whereby, the said Sathosh died due to shock and haemorrhage caused by RTA crush injury to his vital organs. It is clear from Ex.P.4 Post Mortem Certificate that the said Santhosh died only due to injury suffered in the accident. As such, the 1st, 2nd and 3rd respondents who are the driver, owner and insurer of the vehicle are liable to pay the compensation.

12. The 1st Petitioner who deposed as P.W.1 stated that the deceased was aged 26 years and by carrying on textile business was earning Rs.25,000/- per month. The Petitioners produced the driving licence of the deceased as Ex.P.3. The copy of the Post Mortem certificate is marked as Ex.P.4 and death certificate as Ex.P.7. It is clear from the above said documents that the deceased was aged 26 years on the date of the accident.

13. As per the averments in the Petition, the deceased was earning Rs.25,000/- per month. The 1st petitioner who deposed as P.W.1 produced Income Tax Returns of the deceased for the assessment year 2011-12 to 2013-14 as Ex.P.12, Ex.P.13 and Ex.P.14 respectively.

14. It is stated by the Petitioners that as per Ex.P.12, the gross salary of the deceased for the assessment year 2011-12 is Rs.2,80,193/-; as per Ex.P.13, the gross salary for the assessment year 2012-13 is Rs.3,38,432/- and as per Ex.P.14, gross salary for the assessment year 2013-14 is Rs.3,77,680/-.

15. Taking into account the above said income details, the Petitioners' claim that the monthly income of the deceased should be fixed as Rs.27,675/-.

16. On the other hand, refuting the same, the learned counsel for the 3rd respondent/Insurance company contends that no document was produced by the Petitioners to show that the deceased was carrying on business as RPG Garments. The Registration form or any other document relating to the said concern is not produced. It is also contended that Ex.P.12 to Ex.P.14 does not contain the signature of the deceased and no auditor was examined to prove the same. The Tribunal considered the rival contentions and fixed the monthly income of the deceased at Rs.7000/- per month.

17. The learned counsel for the Petitioners/claimants/appellants relying upon the Ruling of the Apex Court reported in 2015 (1) TN MAC 785 (SC) [Shashikala and others Vs. Gangalakshmamma and another] contended that as the accident having occurred on 27.05.2013, the income tax returns filed and marked as Ex.P.13 for the assessment year 2012-13 has to be taken into consideration and the monthly salary of the deceased is to be fixed at Rs.27,675/-, instead of Rs.7000/- fixed by the Tribunal.

18. Admittedly, the Petitioners have not produced any document to show that the deceased was carrying on the business of RPG Garments. Nothing is stated about the nature of said establishment as to whether it is Proprietory Concern or otherwise. Further the Petitioners have not examined the Auditor or anybody else connected with the preparation of Ex.P.12 to Ex.P.14 -Income Tax Returns. It is also contended by the 3rd respondent/Insurance company that there is no acknowledgement or proof of Ex.P.12 to Ex.P.14 being authenticated documents submitted by the deceased and received by Income Tax Authorities. Further the Petitioner has not produced any Bank Account Pass Book or any other document to prove his monthly income.

19. In such circumstances, keeping in mind the Particulars contained in Income Tax Returns furnished as Ex.P.12 to Ex.P.14 and the fact that the deceased was stated to be carrying on Textile Business under the name and style of M/s.RPG Garments, it will be appropriate to fix the monthly income of the deceased at Rs.15,000/-. As the deceased was self employed and was aged 26 years, it will be appropriate to add 40% of the income towards Future Prospects. Further, taking note of the fact that the deceased was a bachelor, 50% of the income has to be deducted towards personal expenses. In addition to above deduction of 50%, 10% of the income has to be deducted towards income tax. Accordingly, the pecuniary loss to the family of the deceased will be as under:-

Monthly income - 15,000/-
Add 40% towards Future Prospects - 6000/-
Total :- 15,000 + 6000 = 21,000/-
Total income per annum including future prospects for the deceased will be Rs.21,000/- x 12 = Rs.2,52,000.
In the said annual income, 10% deduction is made towards income tax. 10% of Rs.2,52,000/- = 25,200/-
Income contributed by the deceased to his family after income tax deduction :- Rs.2,52,000 - 25,200 = Rs.2,26,800/-.
In the said income of Rs.2,26,800/-, 50% of the amount is to be deducted towards personal expenses of the deceased. Thus his contribution to the family will be :-

2,26,800/- - 50%(1,13,400) = 1,13,400/-

As per Sarla Verma's case, [Sarla Verma Vs. Delhi Transport Corporation, 2009 (2) TN MAC 1 (SC)], the multiplier to be applied is '17' as the deceased was aged 26 years. Thus, the loss of dependency will be :-

Rs.1,13,400/- x 17 = Rs.19,27,800/-.

20. 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:-

Funeral expenses - 15,000/-

Loss of Estate - 15,000/-

21. The learned counsel for the claimants contended that the amounts granted under the head "loss of love and affection" is very nominal and sought for higher amount as compensation. Pointing it out, the learned counsel for the 3rd respondent/Insurance company contends that no amount would be provided for loss of love and affection. However, following the decision of this court reported in 2017(2) TN MAC 824 (DB) [National Insurance Company Ltd., Vs. K.Hammed @ Shaik Ahammed and others], it would be appropriate to award Rs.50,000/- each [totally Rs.1,00,000/-] for the claimants 1 and 2 towards "loss of love and affection". The sum of Rs.10,000/- granted by the Tribunal towards transport charges is confirmed.

The modified award amount is as under:-

Sl.No.	Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)
1.	Pecuniary loss/Loss of dependency	10,71,000	20,67,800
2.	Loss of love and affection	50,000	1,00,000
3.	Funeral expenses	25,000	15,000
4.	Transport charges	10,000	10,000
5.	Loss of estate	--	15,000
	Total	11,56,000	22,07,800

14. In the result, the Civil Miscellaneous Appeal is Allowed.

(i) The award amount is enhanced to Rs.22,07,800/- from Rs.11,56,000/-.

(ii) The appellants/claimants are entitled to equal share in the award amount.

(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 third respondent/Insurance company is directed to deposit the entire award amount along with proportionate interest and cost, within a period of six weeks from the date of receipt of a copy of this order.

(v)The appellants/claimants 1 and 2 are entitled to withdraw the same along with accrued interest, less the amount, if any already withdrawn.

(vi) The Tribunal is directed to pass necessary orders following the appropriate procedure for disbursal of the award amount.

(vii) As per the order of this court passed in CMP.No.18650/2017 in CMA.SR.No.72251 of 2017, dated 09.11.2017, interest is waived off for the delay of 115 days in filing the above appeal.

(viii) As per the order of this court passed in CMP.No.16283 of 2017 in CMA.SR.No.72251 of 2017 dated 24.10.2017, the appellants shall pay necessary court fee for the enhanced award amount, before obtaining copy of the decree in the above CMA.

(ix) No costs.

Sd/--
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

nvsri

To

1.The I Additional District Court,
Motor Accident Claims Tribunal, Tirupput.

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

+1cc to Mr.S.Vadivel, Advocate SR.NO.44716
+1cc to Mr.Ma.P.Thangavel, Advocate SR.NO.45249

KS(CO)
sm:5.10.2018