IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.675 of 2018

1.Lakshmi
2.Hemavathy (Minor)
3.Thiyagarajan (Minor)
4.Raghu Raman
5.Logammal
[Minors are represented by their mother and next friend Lakshmi] ..Appellants/Petitioners

Versus

1.Mani Kumar Reddy

2.The New India Assurance Company,
3rd Party Claims Office,
No.45, Moore Street, Chennai -01. ..Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 22.07.2010 made in M.C.O.P.No.788 of 2006 on the file of the Motor Accident Claims Tribunal, III Small Causes Court Judge, Chennai.

For Appellants : Mr.N.Bhaskharan
For Respondents : Mr.J.Chandran [for R2]

J U D G M E N T

The appellants/petitioners have filed this appeal against the judgment and decree dated 22.07.2010 made in M.C.O.P.No.788 of 2006 on the file of the Motor Accident Claims Tribunal, III Small Causes Court Judge, Chennai.

2. For the sake of convenience, the parties are referred to hereunder according to their litigative status before the Tribunal.

3. The case of the petitioners is that on 03.11.2005 at about 11 hours, while the deceased was riding his motor cycle bearing Registration No.TN-22-AB-5458 towards Kovalam in the East Cost Road opposite to the Gem Company, the 1st respondent van bearing Registration No.TN-39-C-2229 came at high speed, driven in a rash and negligent manner and without any warning,

suddenly turned and dashed against the motor cycle, in which the deceased was proceeding causing him fatal injuries, resulting in his death, subsequently in the hospital. The accident occurred only due to negligence of the 1st respondent vehicle driver. The deceased was aged 38 years and by working as plumber was earning Rs.8,000/- per month. The petitioners who are the wife, children and parents of the deceased were depending on his income. Thus, the petitioners sought for a sum of Rs.8,00,000/- as compensation from the respondents.

4. On the other hand, opposing the claim petition, by filing counter, the 2nd respondent/Insurance Company contends that the accident did not occur in the manner alleged by the petitioners. The vehicle insured with the 2nd respondent/Insurance Company is not involved in the accident. The 2nd respondent/Insurance Company disputes the claim that the offending vehicle was insured with them. The driver of the vehicle did not possess valid license. The accident occurred only due to negligence of the deceased and not due to negligent driving of the 1st respondent driver. The amount claimed by the petitioners is exorbitant. Thus, 2nd respondent/Insurance Company sought for dismissal of the petition.

5. Before the Tribunal, the petitioners examined P.W.1 and P.W.2 and produced documents Ex.P.1 to P.10 to prove their claim. On the side of the respondents neither oral nor documentary evidence was let in. On the basis of available evidence on record, the Tribunal found the negligence on the part of the 1st respondent vehicle driver alone caused the accident and awarded a sum of Rs.6,12,000/- as compensation to the petitioners. Being not satisfied with the quantum of the award, the petitioners have come forward with the present appeal.

6. The learned counsel for the petitioners contends that the Tribunal erred in fixing the monthly income of the deceased as Rs.4,500/-. Even though clear cut evidence was produced to prove that the deceased was earning Rs.175/- per day, the Tribunal failed to take note of the fact that the deceased was employed as plumber in Uthandi Panchayat Union and the same is established by Ex.P.6 - Income certificate issued by the Uthandi Panchayat Board and also Ex.P.8 - Identity card issued by the same Panchayat Union. The Tribunal also failed to provide any amount towards future prospects of the deceased. The amount awarded by the Tribunal under different heads is very nominal. Thus, the petitioners sought for enhancement of the award amount to Rs.8,00,000/- by entertaining the appeal.

7. Per contra, the learned counsel for the 2nd respondent/Insurance Company contends that the claim of the petitioners is very exorbitant and as there is no negligence on

the part of the 1st respondent vehicle driver, there can be no claim against the 2nd respondent insurer. The Tribunal itself has awarded higher compensation than wanted. As such, there is no valid reason to entertain the appeal and to enhance the quantum of the award passed by the Tribunal. Thus, the 2nd respondent/Insurance Company sought for dismissal of the appeal.

8. Heard both sides and perused the available evidence on record.

9. The 1st petitioner, wife of the deceased, who deposed as P.W.1 stated that the accident occurred only due to negligence of the 1st respondent vehicle driver. However, P.W.1 is not the eye-witness to the accident. The other person examined as P.W.2 clearly stated that he witnessed the accident and it was only due to negligence of the 1st respondent van bearing Registration No.TN-39-C-2229, the accident occurred. According to the petitioners' evidence, the said van driver without any warning signal, suddenly turned his vehicle and there by caused the accident. The police also registered the case against the 1st respondent driver as evidenced by Ex.P.1 and after completion of investigation laid the charge sheet against the 1st respondent vehicle driver only as per Ex.P.10. Further the complaint about the accident was lodged only by P.W.2. Thus, the oral evidence of P.W.2 and contents of Ex.P.1 - F.I.R and Ex.P.10 - Charge sheet clearly prove that the negligence of the 1st respondent vehicle driver alone resulted in the accident.

10. On the other hand, the respondents have not let in any oral evidence to disprove the version of the accident given by P.W.2. As such, the conclusion of the Tribunal, that the negligence on the part of the 1st respondent driver alone caused the accident is just and proper.

11. Admittedly, the offending vehicle owned by the 1st respondent was insured with the 2nd respondent/Insurance Company. The same is not denied or disputed by the 2nd respondent/Insurance Company. As such, the respondents who are the owner and insurer of the vehicle are liable to pay compensation. According to the petitioners, the deceased was aged 38 years at the time of the accident. However, in Ex.P.2 - Post mortem certificate and Ex.P.3 - Death certificate the age of the deceased is stated to be 45 years. On the basis of said documents, the age of the deceased was fixed as 45 years by the Tribunal and the same needs no interference.

12. The petitioners claimed that the deceased by working as a plumber was earning Rs.8,000/- per month. The petitioners produced the identity card of the deceased as Ex.P.8. The petitioners contended that the deceased worked as a plumber in

Uthandi Panchayat Union and he was earning Rs.174/- per day. In proof of the same, the petitioners produced Ex.P.6 – Certificate allegedly issued by the Uthandi Panchayat President. However, no official from the said Panchayat was examined. Hence, the Tribunal fixed the monthly notional income of the deceased at Rs.4,500/-. The learned counsel for the petitioners contended that plumbers are easily getting more than Rs.200/- per day. The Tribunal, in such circumstances, is not justified in fixing the notional income at Rs.4,500/-.

13. In the absence of any material to prove that he is earning Rs.174/- per day, the conclusion of the Tribunal in fixing the notional monthly income at Rs.4,500/- is justified and proper and the same needs no interference. However, the Tribunal failed to provide for future prospects. Pointing out this, the learned counsel for the petitioners contends it is mandatory to provide for future prospects as per the judgment of the Apex Court. The said contention is proper and the same is to be accepted. As stated above, since the deceased, was a self employed person and aged 45 years, he is to be provided 25% towards future prospects and the correct multiplier to be applied is '14'. Further, as the number of dependents are 5, $1/4^{th}$ of the income is to be deducted towards personal expenses of the deceased. Hence, the loss of income is calculated as follows:-

Rs.4,500 * 25% = Rs.1,125/-
Rs.4500 + Rs.1125 = Rs.5,625/-
By deducting $1/4^{th}$ towards personal expenses,
Rs.5625 * ¼ = Rs.1406/-
Rs.5625 – Rs.1406 = Rs.4,219/-
Correct multiplier to be applied is 14,
Rs.4219 * 12 *14 = Rs.7,08,792/-

Thus, a sum of Rs.7,08,792/- is granted as compensation under the head "Loss of Income". The petitioners have produced Ex.P.7 – Medical bills. Thus, a sum of Rs.15,000/- is awarded under the head "Medical Expenses".

14. In respect of awarding compensation under conventional heads, as per the judgment of the Supreme Court reported in 2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and Others], the compensation has to be awarded towards loss of estate, loss of consortium and funeral expenses and hence, this court is inclined to grant a sum of Rs.15,000/- each towards loss of estate and funeral expenses and for loss of consortium a sum of Rs.40,000/- is awarded.

15. Accordingly, the compensation awarded by the Tribunal stands modifies as follows:-

Sl. No.	Head	Amount granted by the Tribunal (Rs.)	Amount awarded by this Court(Rs.)
1	Loss of Income	5,67,000.00	7,08,792.00
2	Funeral Expenses	5,000.00	15,000.00
3	Loss of Consortium	5,000.00	40,000.00
4	Loss of Estate	-	15,000.00
5	Love and Affection	20,000.00	-
6	Medical Bills	15,000.00	15,000.00
7	Total	6,12,000.00	7,93,792.00

16. In the result, the Civil Miscellaneous Appeal is Allowed as follows:-

(i) The award of the Tribunal is enhanced to Rs.7,93,792/- from Rs.6,12,000/-.

(ii) The award amount will carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

(iii) In view of the above enhanced award amount, the 2nd respondent/Insurance Company is directed to deposit the award amount, less the amount, if any, already deposited, along with accrued interest within a period of six weeks from the date of receipt of a copy of this judgment.

(iv) The apportionment of the modified enhanced award amount is as follows:-

1st, 2nd and 3rd petitioners - 30% each
4th and 5th petitioners - 5% each

(v) On such deposit, the 1st, 4th and 5th petitioners/1st, 4th and 5th claimants are permitted to withdraw the amount awarded as above by filing proper application before the Tribunal. The Tribunal shall pass appropriate directions for the disbursal of the amount as stated supra on the filing of such application.

(vi) The share of the 2nd and 3rd petitioners/minors are directed to be deposited in any one of the nationalised bank till they attain majority. The 1st petitioner/Mother of the 2nd and 3rd petitioners is permitted to withdraw the accrued interest once in three months.

(vii) Appellants/petitioners shall pay necessary court fee before receiving the copy of this judgment for the enhanced compensation amount.

No costs.

Sd/-
Assistant Registrar(co)

//True Copy//

Sub Assistant Registrar

bri

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To
1.The III Judge,
The III Small Causes Court Judge,
Chennai.

+1cc to M/s.M.KotherAdam, Advocate Sr.No.24815
+1cc to M/s.J.Chandran, Advocate SR.No.24890

NRI(CO)
sm:1.6.2018

C.M.A.No.675 of 2018