

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.01.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.463 of 2017

1. K.Dhanam
2. K.Usha

.. Appellants/Petitioners

Versus

1. Lokesh Babu
2. Bajaj Allianz General Insurance Co.Ltd.,
No.25/26, "Prince Towers",
College Road,
Chennai - 600 006. .. Respondents/Respondents

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 30.10.2014 made in M.C.O.P.No.5813 of 2012 on the file the Motor Accident Claims Tribunal, (II Small Causes Court) Chennai.

For Appellants : Mr.K.Varadha Kamaraj
For Respondents: Mr.D.Baskaran for R2

JUDGMENT

This appeal has been filed by the appellants against the decree and judgment dated 30.10.2014 made in M.C.O.P.No.5813 of 2012 on the file of Motor Accident Claims Tribunal, (II Small Causes Court) Chennai.

2. For the sake of convenience, the parties will be referred to in this judgment as arrayed before the Tribunal.

3. The petitioners/Claimants state that on 25.08.2012 at 10.00 p.m while the deceased was riding the motorcycle bearing Registration No.TN-18-Y-5522 from north to south direction at S.N.Chetty Street, near Veeraraghavan Street junction, Kasimedu on his way from Thiruvottiyur Sathangadu to Royapuram, a container lorry bearing Registration No.TN-28-AH-8840 driven by its driver in a rash and negligent manner came at high speed and as the driver of the lorry attempted to overtake an ongoing vehicle, it hit the motor cycle driven by the deceased. In the impact, the deceased fell on the road and the back side wheel of the lorry ran over the deceased, causing his death on the spot. In this context, a case was registered under Ex.P.6 attributing negligence against the driver of the lorry. Ex.P.7 is the copy of Rough Sketch and

Ex.P.8 is the copy of Charge Sheet which clearly establish the negligence of the driver of the lorry. Therefore, according to the claimants/petitioners, the driver of the lorry belonging to first respondent alone is responsible for the accident. Thus, the petitioners/claimants filed the claim petition as against the owner of the offending lorry, the first respondent and the insurer of the lorry, the second respondent herein and claimed that they are responsible to pay compensation to the petitioners.

4. On the other hand, opposing the petition the respondent /insurance company contends that the accident occurred only due to the negligence on the part of the deceased and the first respondent's vehicle has been falsely implicated in the accident. Hence, the respondents/insurance company sought for dismissal of the petition.

5. The petitioners examined P.W.1 to P.W.3 and produced Ex.P.1 to Ex.P.11 before the Tribunal to prove their claim. On the other hand, no oral or documentary evidence was produced by the respondent. On the basis of the available material before it the Tribunal fixed the 1st respondent vehicle driver alone is responsible for the accident and award a sum of Rs.11,71,000/- as compensation to the petitioner payable by the respondent. Being not satisfied with the quantum of the award passed by the Tribunal, the 2nd respondent/insurance company has come forward with the appeal.

6. The learned counsel for the petitioners/Appellants contended that the Tribunal ought to have fixed the pecuniary loss of income on the higher side and ought to have deducted only 1/3rd of the income of the deceased towards his personal expenses, instead of deducting 50% of the income. The Tribunal ought to have fixed the monthly income of the deceased on a higher side rather than Rs.7,000/- fixed by it. The Tribunal has not appreciated the oral and documentary evidence produced by the petitioners in support of the employment and income of the deceased properly. Hence, the petitioners/Appellants seeks to entertain the appeal and enhance the award amount as sought for by them.

7. Per contra, the learned counsel for the 2nd respondent/Insurance Company contended that the Tribunal has considered the materials available on record and passed the award which itself is on higher side and therefore, there is no need to entertain the appeal. Thus, the 2nd respondent seeks dismissal of the present appeal.

8. The petitioners stated that on 25.08.2012, when the deceased was riding his motorcycle bearing Regn.No.TN-18-Y-5522 in S.N.Chetty Street, near Veeraraghavan Street junction, Kasimedu, Chennai, on the way from Thiruvottiyur Sathangadu to Royapuram, the container lorry bearing Regn.No.TN-28-AH-8840 came at high speed and as the lorry tried to overtake the

deceased vehicle, dashed on the left side of the two wheeler and in the impact, the deceased fell down and the rear right wheel of the lorry ran over the deceased resulting in his death on the spot itself. When the petitioners examined eyewitness to the occurrence as P.W.2, he clearly stated that only because of the rash and negligent driving of the 1st respondent lorry driver, the accident occurred. Ex.P.6 FIR is also lodged against the said lorry driver only. After investigation, the Police filed Ex.P.8 Charge Sheet against the driver of the said vehicle. The petitioner also produced Rough Sketch of the accident spot as Ex.P.7 and the same clearly proves the place of the accident and the manner in which the accident could have occurred. It is evident from the oral evidence of P.W.2 eyewitness to the accident and the documents Ex.P.1 to Ex.P.8 that the negligence of the 1st respondent lorry driver alone caused the accident. To disprove the claim of the petitioners, no contra evidence was let in by the respondents. In such circumstances, the conclusion arrived at by the Tribunal that the negligence of the 1st respondent lorry driver alone caused the accident is in order and the same needs no interference.

9. The offending vehicle belongs to the 1st respondent and the same was insured with the 2nd respondent. The said fact is not disputed by the respondents and the same is not contradicted with any acceptable evidence by the respondents. Hence, as the owner and the insurer of the offending vehicle, both the respondents are liable to pay compensation to the petitioners, who are the dependants of the deceased.

10. According to the petitioners, the deceased was aged 28 years and he was working as Cine Gym Body Artist and was also working as heavy vehicle driver and was earning Rs.15,000/- per month. The petitioners stated that the deceased was a member of Cine Gym Body Artist Union and produced Identity Card of the deceased as Ex.P.5. To prove the said claim, the petitioners examined the Committee Member of the Cine Gym Body Union, Vadapalani, as P.W.3. According to him, the deceased worked for 15 days in a month and he was paid Rs.900/- per day. However, P.W.3 has not produced any documentary proof for the income earned by the deceased. The Tribunal, on the basis of the oral evidence of P.W.3, fixed the monthly income of the deceased at Rs.7,000/- per month. As the deceased was aged 28 years, awarded 50% of the said income towards future prospects. Thus, the total monthly income was fixed at Rs.10,500/-. The Tribunal deducted 50% of the amount towards personal expenses of the deceased who was a bachelor and arrived at Rs.5250/- as the monthly contribution of the deceased to his family.

11. The petitioners produced Ex.P.1 Postmortem Certificate and Ex.P.3 Death Certificate. Further, the School Transfer Certificate of the deceased is filed as Ex.P.4, wherein his date of birth is given as 14.05.1984. On the basis

of the same, the age of the deceased is fixed at 28 years and the same was not challenged by the Insurance Company. As such the age of the deceased is fixed at 28 by the Tribunal is correct.

12. According to the petitioners, the Tribunal has erred in fixing the monthly income of the deceased at Rs.7,000/- and the same should have been fixed at higher level. In the absence of any documentary proof in support of the income of the deceased and also considering the attendant circumstances, this court is of the view that the monthly income of the deceased should be fixed at Rs.7,500/- instead of Rs.7,000/-. As stated above, the deceased was aged 28 years and he is not a permanent employee. Hence, it will be appropriate to give 40% of the income as future prospects as the deceased aged 28 years and the correct multiplier to be applied is 17. Further, 1/3rd deduction is to be made towards personal expenses of the deceased. Hence, the loss of pecuniary benefits including future prospects caused due to the death of the deceased is calculated as follows:

Actual income = Rs.7,500/-
 40% addition towards future prospects = Rs.10,500/-
 1/3rd deduction towards personal expenses = Rs.7,000/-
 = Rs.7,000/- x 12 x 17 = Rs.14,28,000/-.

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 and funeral expenses, this Court is inclined to modify the compensation as under:-

Loss of Estate = Rs.15,000/-
 Funeral Expenses = Rs.15,000/-

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	Pecuniary Loss	Rs.10,71,000/-	Rs.14,28,000/-
2	Loss of Love and Affection for 1st petitioner	Rs. 75,000/-	---
3	Funeral expenses	Rs. 25,000/-	Rs. 15,000/-
4	Loss of Estate	...	Rs. 15,000/-
	Total	Rs.11,71,000/-	Rs.14,58,000/-

13. Admittedly, the only legal heir of the deceased is the first petitioner who is the mother of the deceased is entitled to get compensation. The second petitioner is married sister of the deceased and as such she is not entitled for any

14. In view of the above modification, the civil miscellaneous appeal is partly allowed with costs. The second respondent/Insurance Company is directed to deposit the entire enhanced award amount of Rs.14,58,000/- with interest at the rate of 7.5% p.a. 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 first petitioner is permitted to withdraw the entire award amount with accrued interest by filing necessary application before the Tribunal.

Sd/--

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

vv

To

1. The Motor Accident Claims Tribunal,
II Small Causes Court, Chennai
2. The Section Officer, VR Section,
High Court, Madras.

+1cc to Mr.D.Bhaskaran, Advocate Sr.No.3930

+1cc to Mr.K.Varadhakamaraj, Advocate Sr.No.3598

SSD(CO)

sm:6.6.2018

C.M.A.No.463 of 2017

सत्यमेव जयते

WEB COPY