IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.3580 of 2014

M.Danasu ...Appellant/Petitioner

vs

1.United India Insurance Company Ltd.,
24, Whites Road
Chennai-600 014

2.N.Balane ..Respondents/Respondents

Civil Miscellaneous Appeal filed against the judgment and decree dated 03.03.2014 made in M.C.O.P.No.4962 of 2012 on the file of Motor Accident Claims Tribunal, III Court of Small Causes, Chennai.

For appellant : : Mr.J.Zeakumar
For Respondents : :
for R1 : : Mr.S.Arunkumar

J U D G M E N T

This Civil Miscellaneous Appeal is filed by the claimant, challenging the judgment and decree dated 03.03.2014 made in M.C.O.P.No.4962 of 2012 on the file of Motor Accident Claims Tribunal, III Court of Small Causes, Chennai.

2. For the sake of convenience, the parties are referred to as per their litigative status before the Tribunal. The case of the petitioner is that on 05.05.2012 at about 7.30 a.m., when the deceased Thayar was going to the Tea shop in Ezhai Mariamman Koil Street, Muthialpet, Puducherry, a private bus belonging to the 2nd respondent herein and insured with the 1st respondent came at high speed and driven in a rash and negligent manner dashed against the deceased resulting in her death at G.H., Puducherry, on the same day itself. The petitioner, who is the son of the deceased states that prior to the accident, his mother/deceased Thayar was doing Appalam Manufacturing business at Home and was earning Rs.700/- per day. The petitioner also states that the deceased was receiving senior citizen pension of Rs.1200/-. Thus the petitioner claims that the death of his mother caused

loss of income to the family and sought compensation of Rs.15,00,000/- from the respondents.

3. Opposing the petition, the 1st respondent Insurance Company filed their counter disputing the nature of accident and the claim of the petitioner about the avocation and income of the deceased. The 1st respondent also contended that the petitioner has to prove that the driver of the bus was having valid driving licence and other documents. The 1st respondent also disputed the claim of the petitioner that he is dependant on the deceased. However, the 2nd respondent did not come forward to contest the M.C.O.P., before the Tribunal, and remained exparte.

4. Before the Tribunal, the petitioner examined himself as P.W.1 and another witness as P.W.2 and produced documents Ex.P.1 to Ex.P.9 to substantiate his claim. On the side of respondent/Insurance Company, neither any witness nor any document was marked. The Tribunal, on the basis of available materials found that the 2nd respondent vehicle is responsible for the accident and awarded a sum of Rs.1,20,000/- as total compensation for the petitioner. Aggrieved over the said finding of the Tribunal, the petitioner/claimant has come forward with the appeal.

5. The learned counsel for the petitioner/claimant contends that the quantum of award passed by the Tribunal is very low and it is not just compensation. The finding of the Tribunal that the avocation and income of the deceased is not proved is incorrect. The evidence of P.W.2 was not properly appreciated. The amount awarded under different heads by the Tribunal is on the lower side. Hence, the petitioner seeks enhancement of the award amount.

6. Per contra, the learned counsel for the 1st respondent/Insurance Company contended that the petitioner himself is aged 51 years and his mother/deceased is stated to be 65 years and that itself is not correct. Further, the claim of the petitioner that he was depending on the income of the deceased mother is not sustainable and as the petitioner is not dependant on his mother, he is not entitled to seek any compensation. Hence, the 1st respondent opposed the petition claim and seeks for dismissal of the appeal.

7. In the case on hand, the petitioner who deposed as P.W.1 stated that a case was registered in Crime No.251 of 2012 by the Puducherry Police against the driver of the 2nd respondent bus as evidenced by Ex.P.8 and that itself will clearly prove the fact of negligence on the part of the driver as the cause for the accident. The witness to the occurrence who deposed as P.W.2 stated clearly that while he was standing in Ezhai Mariamman

Koil Street, Muthialpet, he saw the deceased going to tea shop on the left side of the road and at about 7.30 a.m., NBS Road Transport bus bearing Reg.No.PY-01-AR-4577 came at high speed and dashed against the deceased. According to P.W.2, the victim fell down and the front wheels of the said bus ran over the left leg and hip of the deceased. Ex.P.9 Accident Register also supported the said version of P.W.2. As the 2nd respondent remained exparte, the evidence of P.W.2 remains undisputed and there is no material available on record to contradict his statement. In such circumstances, on the basis of P.W.2 evidence and Ex.P.8 FIR and Ex.P.9 Accident Register, it is clearly established that the accident occurred due to negligence on the part of the driver of the 2nd respondent vehicle. The said finding of the Tribunal is not challenged by the respondents before this court. Thus the finding of the Tribunal that the cause for the accident is only negligence of the driver of the 2nd respondent vehicle is to be confirmed.

8. The petitioner states that the offending vehicle owned by the 2nd respondent was insured with the 1st respondent and to prove the same, produced Ex.P.6 copy of the insurance policy. Further, the petitioner also produced Ex.P.4 Registration Certificate copy and Ex.P.5 copy of fitness certificate of the bus. Therefore, it is clear that on the date of the accident, the offending vehicle was insured with the 1st respondent and it had all the required clearance to operate as a passenger bus. In such circumstances, the respondents who are the insurer and owner of the above said bus are liable to pay compensation.

9. According to the petition averments, the deceased is stated to be 65 years old. However, in Ex.P.3 Ration Card, the age of the deceased is given as 70 years. In the absence of any other materials, on the basis of Ex.P.3, the age of the deceased-Thayar was fixed at 70 years by the Tribunal. Even though P.W.1 stated that her mother was carrying on appalam manufacturing work at home and was earning Rs.700/- per day, there is no documentary proof. It is evident from Ex.P.2 Identity card that the deceased was getting widow pension from the Government of Puducherry. The Tribunal fixed the income of the deceased at Rs.15,000/- per annum, which according to the petitioner is not proper.

10. Taking into consideration the fact that the deceased was given widow pension and she is stated to have been doing appalam manufacturing work, it will be appropriate to fix the notional monthly income of her at Rs.4500/-. Out of the same, 1/3rd of the income is to be deducted towards her personal expenses. As the age of the deceased is fixed as 70 years, the multiplier to be applied is 5. Thus, the pecuniary loss caused due to the death of the deceased Thayar is as follows:-
4500 – 1/3rd deduction x 12 x 5

Rs.1,80,000/-
Towards funeral expenses, a sum of Rs.15,000/- is awarded; towards loss of estate, a sum of Rs.15,000/- is awarded and towards transport expenses Rs.10,000/- is awarded by this court. Total amount Rs.2,20,000/- with interest at the rate of 7.5% per annum.

11. Accordingly, the compensation awarded by the Tribunal stands modified as follows:

Sl. No.	Head	Amount granted by the Tribunal	Amount awarded by this Court
1	Loss of income	Rs. 75,000	Rs. 1,80,000/-
2	Funeral expenses	Rs. 25,000/-	Rs. 15,000/-
3	Loss of love and affection	Rs. 20,000/-	---
4	Transport Expenses	Rs. 10,000/-	Rs. 10,000/-
5	Loss of estate	---	Rs. 15,000/-
8	Total	Rs. 1,20,000/-	Rs. 2,20,000/-

11. In the result, the Civil Miscellaneous Appeal is Partly Allowed. No costs as follows:-

(i) The award of the Tribunal is enhanced to Rs.2,20,000/- from Rs.1,20,000/-
(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 modified award amount, the 1st respondent/Insurance Company is directed to deposit the award amount with proportionate interest and costs, 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 order.
(iv) On such deposit, the appellant/claimant is permitted to withdraw the amount awarded as above by filing proper application before the Tribunal, less the amount if any already withdrawn, with accrued interest. The Tribunal shall pass appropriate directions for the disbursal of the amount as stated supra on the filing of such application.

Sd/-
Asst.Registrar (CS VIII)

/true copy/

Sub Asst. Registrar

To

1.The Motor Accidents Claims Tribunal,
III Court of Small Causes, Chennai.

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

+ 1 cc to Mr.J.Zeakumar Advocate,SR.7391

+ 1 cc to Mr.S.Arunkumar Advocate,SR.7664

C.M.A.No.3580 of 2014

nr 12/04/2018