

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.654 of 2017

1.A.Epsy
2.R.Anandan
3.A.Sheeba

...Appellants/Petitioners

vs

1.S.Sarasu

2.Shriram General Insurance Co.Ltd,
No.66, Thirumalai Pillai Road
Opp to Vani Mahal, T.Nagar
Chennai 600 017

...Respondents/Respondents

Civil Miscellaneous Appeal filed against the judgment and decree dated 10.06.2015 made in M.C.O.P.No.180 of 2014 on the file of Motor Accident Claims Tribunal, Additional District Judge, III, at Poonamallee.

For appellants : : Ms.Ramya V.Rao
for Respondents : : Mr.K.Poomalai for R2

J U D G M E N T

This Civil Miscellaneous Appeal is filed by the appellants/claimants, challenging the judgment and decree dated 10.06.2015 made in M.C.O.P.No.180 of 2014 on the file of Motor Accident Claims Tribunal, Additional District Judge, III, at Poonamallee.

2. For the sake of convenience, the parties are referred to as per their litigative status before the Tribunal. The case of the Petitioners is that on 17.10.2013, at about 11 p.m., as the deceased was driving his two wheeler bearing Reg.No.TN-22-CT-2928 from Perungaluthur to Kolapakkam, on the left side of the Nedungundram road, opposite to Harinarayana Stores, the 1st respondent vehicle bearing Reg.No.TN-57-U-6393 came at high speed, dashed against the two wheeler in which the deceased was proceeding, resulting in his instant death. The Petitioners who are the parents and sister of the deceased contend that the accident occurred only due to the negligence of the 1st respondent lorry driver. Further they claim that the deceased

was aged 23 years and was earning Rs.10,000/- per month from his employment in the Private concern at Chennai. Due to the sudden death of the deceased, the Petitioners lost the source of income and seeks a sum of Rs.25,00,000/- as compensation from the respondents, who are the owner and insurer of the offending vehicle.

3. On the other hand, opposing the petition, by filing counter, the 2nd respondent-Insurance Company contends that the accident did not occur as alleged by the Petitioners. The claim of the Petitioners about the age, avocation and income of the deceased is not true. The driver of the 1st respondent vehicle is not responsible for the accident. The validity of the driving licence possessed by the 1st respondent is disputed. The deceased also contributed to the accident due to his negligent driving. As such, the 2nd respondent disputes the claim of the Petitioners and seeks for dismissal of the petition.

4. Before the Tribunal, the Petitioners examined P.W.1 to P.W.3 produced documents Ex.P.1 to Ex.P.11 to prove their claim. On the side of the 2nd respondent, neither oral nor documentary evidence was let in. The Tribunal, on the basis of available evidence on record found that the negligence of the 1st respondent Lorry driver alone is the cause for the accident and awarded a sum of Rs.7,33,580/- as compensation. Being not satisfied with the quantum of the award, the Petitioners have come forward with the present appeal.

5. The learned counsel for the Petitioners contends that the Tribunal erred in fixing the notional income of the deceased at Rs.5762/- instead of Rs.10,000/- per month as stated in the Petition. The Tribunal ought to have added 100% of the income towards Future Prospects. The deceased was aged 23 years old and was having very good future prospects and the Tribunal ought to have awarded higher amount towards Future Prospects. The amount awarded by the Tribunal under other heads is also very low. Hence, the Petitioners seek enhancement of the award amount.

6. Per contra, the learned counsel for the 2nd respondent-Insurance Company contends that the age, avocation and income of the deceased was not proved and the award passed by the tribunal itself is on the higher side. The deceased contributed to the accident by his negligent driving. As such, the claim of the petitioners is not sustainable. Hence, the 2nd respondent seeks dismissal of the appeal.

7. The Petitioners state that on 17.10.2013, at around 11 p.m., due to the negligent driving of the 1st respondent Lorry driver, the accident took place. The Police registered the case

against the driver of the said Lorry driver only as evidenced by Ex.P.1-FIR. The driving licence of the deceased is produced as Ex.P.6. Hence, the deceased was having valid driving licence to drive the vehicle. The eyewitness to the occurrence who deposed as P.W.2 stated that while he was returning home at 11 p.m., on 17.10.2017, he saw the deceased proceeding in his Two wheeler on the left side of the Nedungundram road and at that time, the first respondent lorry came from behind in high speed, dashed against the two wheeler resulting in the death of rider of Two wheeler. There is no contra evidence either oral or documentary on the side of the 2nd respondent to disprove the version of accident given by P.W.2. As such, the conclusion of the Tribunal that the negligence of the 1st respondent vehicle driver alone is the cause of the accident, is just and proper. The fact that the deceased was having valid driving licence is clearly established by Ex.P.6. The vehicle was insured with the 2nd respondent as per Ex.P.3 copy of Insurance Policy. As the driver of the 1st respondent vehicle alone caused the accident due to negligent driving, the respondents 1 and 2 who are the owner and insurer of the vehicle are liable to pay the compensation.

8. The Petitioners stated that the deceased was aged 23 years. In Ex.P.2-Post Mortem Certificate, the age is given as 23. In the absence of any other material to prove his age, as per Ex.P.2-Post Mortem Certificate, the deceased age is fixed as 23 years. For that age, the correct multiplier to be applied is 18. The deceased produced Ex.P.4 salary certificate to show that he was getting Rs.6500/- per month by working in a Private concern. It is clear from the evidence of P.W.3 who was the Manager of the Ramraj Cotton Showroom, that the deceased was employed in their company as Salesman and Ex.P.4 salary certificate shows that his monthly salary was Rs.6500/-. Likewise, it is also clear from Ex.P.4 that after deductions, the net income was Rs.5762/-. The Tribunal after deducting 50% of the amount towards personal expenses, fixed the contribution of the deceased to his family at Rs.2881/- per month. Agitated over the same, the Petitioners/claimants contend that the monthly salary is to be fixed at Rs.11,000/-. In the absence of any material to prove the same, it will be appropriate to fix the monthly income of the deceased at Rs.6500/-. Considering the age of the deceased, the Future Prospects to be added is 40%. The deceased being bachelor, 50% of the income is to be deducted towards his personal expenses. The correct multiplier to be applied is 18. Thus, the loss of dependency is calculated as under:-

$6500 + 40\% \text{ future prospects } (2600) = 9100$

$9100 - 50\% \text{ deduction } (4550) = 4550$

$4550 \times 12 \times 18 = 9,82,800/-$

Thus, a sum of Rs.9,82,800/- is awarded under the head "Loss of dependency". Further, following the decision of Apex Court

reported in 2017 (2) TN MAC 609 (SC) [National Insurance Co.Ltd., Vs. Pranay Sethi and Others], under conventional heads, the following amounts are to be awarded to the Petitioners.

Loss of Estate - 15,000/-
Funeral expenses - 15,000/-

The learned counsel for the Appellants/Petitioners further contended that the Apex Court in the recent decision reported in CDJ 2018 SC 048 [Archit Saini and another Versus The Oriental Insurance Company Ltd., and others, dated 09.02.2018 Civil Appeal Nos.7300-7309 of 2016] awarded amount under the head "loss of love and affection. On a perusal of the above said Ruling, this court is also of the view that there is no bar or impediment to grant compensation under the head Loss of love and affection to parents and sister of the deceased. As such, this court is inclined to award Rs.15,000/- each to the parents and Rs.10,000/- to the sister of the deceased (total amount under the head "loss of love and affection" 40,000/-). This court is also inclined to award a further sum of Rs.7,000/- towards transportation. Consequently, the modified compensation is as under:-

Loss of dependency - 9,82,800/-
Loss of estate - 15,000/-
Funeral expenses - 15,000/-
Loss of love and affection - 40,000/-
Transportation - 7,000/-
Total - 10,59,800
rounded off to Rs.10,60,000/-

In view of the foregoing discussion, the modified enhanced compensation granted by this Court is Rs.10,60,000/-. The Petitioners/Claimants/Appellants herein are entitled to the award amount as per the following apportionment.

1st Petitioner - 40%
2nd Petitioner - 40%
3rd Petitioner - 20%.

9. In the result, the Civil Miscellaneous Appeal is Partly Allowed in the terms as shown below:-

(1) The award granted by the Tribunal is enhanced to Rs.10,60,000/- from Rs.7,33,580/-.

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

(3) The 2nd respondent/Insurance Company is directed to deposit the enhanced award of Rs.10,60,000/- less the amount, if any already deposited, along with the proportionate accrued interest and costs, within a period of six weeks from the date of receipt of a copy of this order.

(4)The Appellants/Petitioners/Claimants are permitted to withdraw the award amount along with accrued interest as per the apportionment ordered above, by following the due procedure before the Tribunal.

(5)The Appellants/Petitioners are directed to pay the required additional court fee for the enhanced award amount, at the time of receiving the order copy. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

nvsri
To

1.The Additional District Judge, III,
The Motor Accident Claims Tribunal,
Poonamallee.

+1cc to Mr.K.Poomalai Advocate Sr.No.19474

+1cc to Mr.A.N.Vishwanatha Rao, Advocate Sr.No.19998

AD(CO)
sm:13.8.2018

C.M.A.No.654 of 2017

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