IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 26.02.2018

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The Honourable Mr. Justice S.BASKARAN

Civil Miscellaneous Appeal No.495 of 2014

1.Hilda Nesam
2.Sundara Moorthy
3.Manoj Kumar
(Minor rep by his father and NF Sundaramoorthy the second appellant herein)
... Appellants /(Petitioner)

..vs..

1.Sangeetha

2.Bajaj Alliance General Insurance Co., Ltd.,
New. No.30, Old No.85, 1st Avenue,
Ashok Nagar,
Chennai-83. ... Respondents(Respondent)

This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the Fair and Decreetal order dated 21.06.2013 made in MCOP.No.3480 of 2009 on the file of the Motor Accident Claims Tribunal/(The Chief Judge, Court of Small Causes), Chennai.

For Appellants : Mr.A.Abdul Kani
For Respondents : R1 set exparte
Mr.S.Manohar for R-2

JUDGMENT

Being not satisfied with the quantum of compensation awarded by the Tribunal dated 21.06.2013 made in MCOP.No.3480 of 2009 on the file of the Motor Accident Claims Tribunal/(The Chief Judge, Court of Small Causes), Chennai, the petitioners/claimants filed this present appeal seeking enhancement of award amount.

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

3. The case of the petitioners is that on 14.07.2009 at about 13.30 hours, while the deceased was proceedings in his two wheeler bearing Registration No.TN-09-AX-3017, from Chitlapakkam to Mangadu in Anagaputhur service road, the first respondent lorry bearing Registration No.TN-20-AW-7750, which was insured with the second respondent came at high speed, driven in a rash and negligent manner by its driver dashed against the two wheeler in which the deceased was proceeding and in the impact, he fell down and the said lorry ran over the deceased causing instant death. At the time of the accident, the deceased was aged about 20 years and he was studying in III Year Computer Science Engineering Course and he would have earned Rs.40,000/- per month on completion of his course. The petitioners who are the parents and brother of the deceased contends that the sudden death of their elder son has caused the loss to the family and thus they seek a sum of Rs.30,00,000/- as compensation from the respondents who are the owner and insurer of the offending vehicle.

4. On the other hand, the second respondent Insurance company opposed the claim petition by filing detailed counter, disputed the involvement of the vehicle bearing Registration No.TN-20-AW-7750 in the accident as alleged by the petitioners. It is further contended that the insurance overage of the said vehicle and other conditions has to be proved by the petitioners. The claim of the petitioners about the age, avocation and income of the deceased is disputed. The claim of the petitioners is exorbitant. Thus, the respondent seeks dismissal of the petition.

5. Before the Tribunal, the petitioners examined P.W.1 to P.W.3 and produced documents Ex.P1 to Ex.P22 to substantiate their claim. On the side of the respondent R.W.1 was examined and documents Ex.R1 and Ex.R2 were marked.

6. The Tribunal, on the basis of available materials on record, found the first respondent lorry driver alone caused the accident and directed the respondents to pay a sum of Rs.6,40,000/- as compensation to the petitioners. Being not satisfied with the quantum of compensation awarded by the Tribunal, the petitioners/claimants have come forward with the present appeal seeking enhancement of award amount

7. I have heard the learned counsel appearing for the appellants and the learned counsel appearing for the second respondent and perused the materials available on record.

8. The learned counsel appearing for the petitioners/claimants contends that the deceased was bread winner of the family and the same was not considered properly by the Tribunal. The evidence of P.W.3 regarding the placement of

students including the deceased was not considered by the Tribunal. The co-student of the deceased who deposed as P.W.3 stated that he was earning a sum of Rs.33,000/- per month and produced his salary certificate as Ex.P22. The Tribunal without considering the same arbitrarily fixed the income of the deceased at Rs.7,500/-. The Tribunal has wrongly applied the multiplier as 14 taking the age of the parents of the deceased instead of taking the age of the deceased and applying the multiplier 18. The Tribunal awarded meager amount under different heads. Hence, the petitioners seek to enhance the award amount by entertaining the appeal.

9. Per contra, the learned counsel appearing for the second respondent Insurance Company contends that the deceased being a student, the claim of the petitioner that he will get a sum of Rs.40,000/- per month as salary cannot be accepted inspite of the materials available on record. The contention put forward by the claimant to fix the notional income of the deceased on the higher side and to award compensation at higher level is not warranted. Thus, the second respondent Insurance Company submitted that no ground is made out by the petitioners to enhance the award amount. Hence, the second respondent seeks dismissal of this appeal.

10. The petitioners claim that the deceased met with an accident due to the rash and negligent driving of the lorry by the first respondent driver. The eye witness to the occurrence who deposed as P.W.2 clearly stated that the lorry which belongs to the first respondent came at high speed dashed against the motor cycle, due to which the deceased person fell down and the lorry ran over him resulting in his death at the spot itself. The police registered Ex.P1 First Information report against the driver of the lorry owned by the first respondent. On the side of the respondents, even though R.W.1 was examined, admittedly, he is not an eye witness to the occurrence. Nothing is extracted from the eye witness to the occurrence who deposed as P.W.2 to discredit his evidence. In such circumstances, relying on the evidence of P.W.2 and the averment in Ex.P1 First Information Report, it can safely concluded that the negligence of the first respondent lorry driver alone caused the accident. The fact that the offending lorry belongs to the first respondent and insured with the second respondent is clearly evident from Ex.R1 Insurance Policy. Even though, the second respondent contended that the lorry was not having fitness certificate at the time of the accident, there is no evidence to prove the same. As rightly pointed by the Tribunal that no step was taken by the second respondent to prove the fact of first respondent lorry having no valid fitness certificate at the time of the accident. As such, the respondents who are the owner and insurer of the vehicle are liable to pay compensation since the

accident occurred due to the negligence of the first respondent lorry driver only.

11. The deceased, who is the son of first and second petitioners and brother of third petitioner, is stated to be 20 years old and studying III year Computer Science Engineering Course. The petitioners produced Secondary School Leaving Certificate as Ex.P4, Higher Secondary Course Certificate as Ex.P5, driving licence of the deceased as Ex.P15 respectively. On the basis of that the age of the deceased is fixed as 20 years. It is evident from Ex.P13 Identity Card of the deceased and Ex.P14 Bonafide certificate that the deceased was III year student in Computer Science Engineering Course. As such the age of the deceased is alone to be taken into consideration for applying the multiplier and not the age of the mother of the deceased as done by the Tribunal. Hence, the multiplier to be applied in this case is 18.

12. The petitioners examined P.W.3 Vignesh who stated about the prospects of the deceased. According to P.W.3, he was working as Software Engineer and earning a sum of Rs.32,185/- per month. He produced Ex.P20 appointment order, Ex.P21 Identity card and Ex.P22 Salary Certificate to prove his claim. Pointing it out, the learned counsel appearing for the petitioners contended that the notional income of the deceased should be fixed at Rs.16,500/- instead of Rs.7,500/- as fixed by the Tribunal. Considering the fact that the deceased was III year B.E. Student and the vagaries life, this Court is of the view that it would appropriate to fix the notional income of the deceased as Rs.10,000/- and to add 40% of the same viz., Rs.4,000/- towards future prospects. Thus, Rs.14,000/- is to be taken as monthly income. As the deceased was a bachelor deducting 50% of the amount viz., Rs.7,000/- towards personal expenses, the notional monthly income would be Rs.7,000/-. Accordingly, the loss of income is calculated as follows:-

Rs.7,000/- x 12 = Rs. 84,000/- x 18 = 15,12,000/-. The notional loss of income would be Rs.15,12,000/-.

13. 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, loss of consortium and funeral expenses, this Court is inclined to modify the compensation as under:-

Loss of Estate	=	Rs. 15,000.00
Funeral Expenses	=	Rs.15,000.00
Transportation	=	Rs. 5,000.00

Accordingly, the compensation warded by the Tribunal is modified as follows:-

Sl No	Heads	Amount awarded by the Tribunal	Awarded by this Court
1.	Pecuniary Loss of income	6,30,000.00	15,12,000.00
2.	Loss of Estate	-	15,000.00
5.	Funeral Expenses	-	15,000.00
6.	Transportation	10,000.00	5,000.00
	Total	6,40,000.00	15,47,000.00

14. In the result, the civil miscellaneous appeal is partly allowed with costs. The amount of Rs.6,40,000/- awarded by the Tribunal dated 21.06.2013 made in MCOP.No.3480 of 2009 on the file of the Motor Accident Claims Tribunal/(The Chief Judge, Court of Small Causes), Chennai, is enhanced to Rs.15,47,000/-. The second respondent/Insurance Company is directed to deposit the entire enhanced award amount of Rs.15,47,000/- with interest at the rate of 7.5% p.a. from the date of claim petition till the date of deposit the award amount and 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/first claimant is entitled to 50% of the award amount and the petitioners 2 and 3 are each entitled to 25% of the award amount. The petitioners 1 & 2/claimants 1 & 2 are permitted to withdraw their respective share with accrued interest by filing necessary application before the Tribunal. The third petitioner is minor, his share amount shall be deposited in any one of the Nationalized Bank till he attain majority. The first petitioners is permitted to withdraw the accrued interest once in three months. The petitioner is directed to pay the deficit court fee within a period of two weeks from the date of receipt of a copy of this order.

Sd/-
Assistant Registrar(CS VIII)

//True copy//

Sub Assistant Registrar

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To
1.The Chief Judge, Court of Small Cases,
The Motor Accident Claims Tribunal
Chennai.

2.The Section Officer,
VR Section, High Court, Madras.(2 Copies)

+1cc to Mr.S.Manokar, Advocate SR.No.14473
+1cc to Mr.Kother Adam, Advocate SR.No.14242

GMI(CO)
GN(12/04/2018)