

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 10.07.2018

Coram

The Honourable Mr. Justice S.BASKARAN

Civil Miscellaneous Appeal No.765 of 2017

1.S.Vasanthi

2.S.Sankar

3.Mohanalakshmi

4.S.Dhanraj

.... Appellants/Petitioners

..vs..

1.Corporation of Chennai,
Rippon Buildings,
Chennai - 600 003.

(1st Respondent remained exparte before the Tribunal)

2.United India Insurance Co. Ltd.,
Motor Third Party Cell,
No.38, Anna Salai,
Chennai-600 002.

.... Respondents/Respondents

This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the order and Decretal order dated 03.11.2004 made in MCOP.No.4367 of 2003 on the file of the Motor Accident Claims Tribunal/VI Small Causes Court, Chennai.

For Appellants : Mr.N.M.Muthurajan

For Respondents : Mr.P.Sankaranarayanan for R2

JUDGMENT

Being not satisfied with the quantum of compensation awarded by the Tribunal, dated 03.11.2004 made in MCOP.No.4367 of 2003 on the file of the Motor Accident Claims Tribunal/VI Small Causes Court, Chennai, the present appeal has been filed by the petitioners/claimants for enhancement of the 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 30.06.2000 at about 11.15 hours, while the deceased was riding his bicycle along with Anna Salai, while going near the Pidari Ilangali Amman Kovil, Saidapet, Chennai, the first respondent's lorry bearing Registration No.TN-04-B-3631, came at high speed, driven in a rash and negligent manner, dashed from behind on the bicycle, in which the deceased was riding causing him fatal injuries resulting in his death on the spot. The accident occurred due to the first respondent lorry driver only. The respondents, who are the owner and insurer of the lorry are liable to pay compensation. The deceased was aged 20 years and by working as mason was earning a sum of Rs.175/- per day. The petitioners who are the parents, sister and brother of the deceased are depending on the earning of the deceased. Due to his sudden death, they are suffering not only from monetary loss but also due to loss of love and affection. As such, the petitioners sought for a sum of Rs.6,00,000/- as compensation from the respondents.

4. On the other hand, opposing the claim petition, the second respondent Insurance company filed counter contending that the negligence of the first respondent lorry driver was not the cause for the accident. It is only the deceased who was going in his bicycle suddenly tried to cross the road without noticing the on coming traffic and dashed against the lorry resulting in his death. The claim of the petitioners about the age, avocation and income of the deceased is not true. The petitioners are to prove that the driver of the first respondent lorry possessed valid driving licence and the lorry was insured with the second respondent Insurance Company. The claim of the petitioners is exorbitant. Thus, the second respondent-Insurance company sought for dismissal of the petition.

5. Before the Tribunal, the petitioners examined P.W.1 and P.W.2, produced documents Ex.P1 to Ex.P8 to substantiate their claim. On the side of the respondents, neither oral nor documentary evidence was let in.

6. The Tribunal, on the careful analysis of evidence, found the negligence of the first respondent's lorry driver alone caused the accident, passed an Award for a sum of Rs.2,72,000/- payable by the respondents to the petitioners. Being not satisfied with the quantum of compensation awarded by the Tribunal, the petitioners/claimants have come forward this present appeal.

7.I have heard the learned counsel appearing for the appellants/claimants and the learned counsel appearing for the second respondent-Insurance Company and perused the materials available on record.

8.The learned counsel appearing for the appellants/claimants contends that the Tribunal failed to consider the evidence on record properly. The Tribunal, without considering the fact that masons were getting not less than Rs.175/- to Rs.200/- per day in the year,2000, fixed the monthly income of the deceased at Rs.2,000/- which is very low. The amount provided for by the Tribunal under different heads is very minimum. Thus, the petitioners/appellants sought for enhancement of the compensation amount by entertaining the appeal.

9.Per contra, the learned counsel appearing for the second respondent-Insurance Company contends that the deceased himself being tort-feasor, there is no scope for providing compensation to the petitioners. The Tribunal itself has passed an award which is on the higher side and there is no need to enhance the same further. Thus, the second respondent-Insurance Company sought for dismissal of this appeal.

10.It is only quantum appeal. The conclusion of the Tribunal that the negligence of the first respondent lorry driver alone caused the accident is not challenged by either side in this appeal. The Tribunal, on the basis of eye witness account of P.W.2 as well as the contents of Ex.P1 First Information Report and Ex.P8 Charge Sheet filed against the first respondent's lorry driver, concluded that the negligence of the first respondent's lorry driver alone caused the accident. There is no contra evidence let in by the respondents to disprove the petitioners claim. Thus, the conclusion of the Tribunal that the negligence of the first respondent lorry driver alone caused the accident is just and proper.

11.The petitioners claim that the deceased was aged 20 years and by working as mason was earning a sum of Rs.175/- to Rs.200/- per day. The petitioners have not produced any particular document regarding the age of the deceased. In Ex.P4 death certificate and Ex.P5 Postmortem Certificate, the age of the deceased is stated as 20 years. Hence, his age is fixed at 20 years. He was working as mason, the Tribunal has fixed the monthly income of the deceased at Rs.2000/-. Considering the fact that the accident occurred during 2000, it will be appropriate to fix the notional income of the deceased at Rs.2,500/- per month. As the deceased was aged about 20 years, it will be appropriate to add 40% of the income towards future prospects. The deceased being a bachelor, 50% of the amount

deducted towards his personal expenses. As the age of the deceased at 20 years, the correct multiplier applied is 18. Thus, the loss of income is calculated as follows:-

(1) Rs.2,500/- + Add 40% Rs.1000/- = Rs.3,500/- -deducted 50% Rs.1,750/- = Rs.1,750/- as monthly income.

(2) Rs.1,750/ x 12 = Rs.21,000/- x 18 = Rs.3,78,000/-.

Further, the Tribunal provided for a sum of Rs.500/- towards damage to cloths and Rs.500/- towards damage to cycle and the same is just and proper. The Tribunal has not provided any amount towards transportation charges. Hence a sum of Rs.8,000/- is provided for Transportation. The Tribunal provided for a sum of Rs.5,000/- towards funeral expenses and the same is confirmed. The Tribunal awarded a sum of Rs.5,000/- towards loss of estate and the same is hereby confirmed. The amount of Rs.5,000/- awarded by the Tribunal under the head loss of expectation of life is not proper and the same is set aside.

12. Accordingly, the compensation awarded by the Tribunal is modified as follows:-

S1 No	Heads	Amount awarded by the Tribunal	Awarded by this Court
1.	Pecuniary Loss of income	2,56,000.00	3,78,000.00
2.	Loss of Estate	5,000.00	5,000.00
3.	Funeral Expenses	5,000.00	5,000.00
4.	Damage to cloth and cycle	1,000.00	1,000.00
5.	Transportation	-	8,000.00
6.	Loss of Expectation of life	5,000.00	-
	Total	2,72,000.00	3,97,000.00

Accordingly, the amount of Rs.2,72,000/- awarded by the Tribunal is modified and the same is enhanced to Rs.3,97,000/-.

13. In the result, the Civil Miscellaneous Appeal is allowed. No costs. The amount of Rs.2,72,000/- awarded by the Tribunal dated 03.11.2004 made in MCOP.No.4367 of 2003 on the file of the Motor Accident Claims Tribunal/VI Small Causes Court, Chennai, is enhanced to Rs.3,97,000/-. The Second respondent-Insurance Company is directed to deposit the entire enhanced award amount of Rs.3,97,000/- with interest at the rate of 7.5% p.a. from the date of claim petition till the date of

deposit within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the appellants/claimants are entitled to equal share in the award amount. The petitioners/claimants are permitted to withdraw their respective share with accrued interest by filing necessary application before the Tribunal.

rrg

Sd/-
Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

To

1. The VI Judge,
Small Causes Court,
Chennai.
2. The Section Officer
VR Section,
High Court, Madras

+1cc to Mr.N.M.Muthurajan, Advocate SR.NO.45450
+1cc to Mr.A.Karthika Ashok, Advocate SR.NO.44730
+1cc to Mr.P.Sankaranarayanan, Advocate SR.NO..No.44708

SR.NO. (CO)
sm:14.8.2018

C.M.A.No.765 of 2017

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