

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.871 of 2018

1.Kala
2.Avanthika (Minor)
3.Abimannan
4.Vairam
5.Hemaprasath (Minor)
Minors 2nd and 5th represented by their mother
and natural guardian, 1st appellant
...Appellants/Claimants

Vs

1.S.Rajendran
2.M/s.United India Insurance Company Limited
B.O.AKM Tower, I Floor
397-1, Junction Road
Salem-636 004
Rep. By its Branch Manager ...Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, against the order and decree dated 22.10.2016 made in M.C.O.P.No.447 of 2013 on the file of Motor Accident Claims Tribunal, Principal District Court, Perambalur.

For appellants : : Mr.S.Kamadevan

For Respondents : : Mr.T.Ravichandran for R2.
R1- Set exparte before Tribunal.

J U D G M E N T

The Appellants are the Petitioners and fled the above appeal challenging the order and decree dated 22.10.2016 made in M.C.O.P.No.447 of 2013 on the file of Principal District Court, Perambalur.

2. For convenience sake, the parties are referred to hereunder according to their litigative status before the Tribunal. It is a fatal case. The case of the Petitioners is that on 23.01.2013 while the deceased Ponnusamy was riding his Motor cycle bearing Reg.No.TN-46-H-2867 in Thittakudi to Ariyalur Road, as he was going near Fishpond, at around 5 p.m., the 1st respondent Lorry bearing Reg.No.TN-30-AY-3499, insured with the 2nd respondent came in the opposite direction at high speed, dashed against the deceased vehicle causing him fatal injuries resulting in his death subsequently in the hospital. The accident occurred due to negligence of the 1st respondent vehicle driver only. The Petitioners, who are the wife, daughter and parents of the deceased were depending on the earnings of the deceased who was aged 29 years and earning Rs.20,000/- per month, by carrying on Hotel Business on his own. Due to his death, the Petitioners lost the bread winner of the family as well as love and affection of the deceased Ponnusamy. Thus the Petitioners seek a sum of Rs.25,00,000/- as compensation from the respondents.

3. On the other hand, opposing the claim of the Petitioners, by filing counter, the 2nd respondent/Insurance company contends that the accident does not occur in the manner alleged by the Petitioners. The deceased drove his vehicle at high speed and dashed against the 1st respondent Tipper Lorry which was coming in the opposite direction. The accident occurred due to negligence of the deceased Ponnusamy only. The failure on the part of the Petitioners to implead the owner and insurer of the two wheeler is fatal to the case. The respondents are not liable to pay any compensation. The deceased himself contributed to the accident. The claim of the Petitioners about the age, avocation and income of the deceased is denied. The amount claimed by the Petitioners is exorbitant. The 2nd respondent seeks dismissal of the Petition.

4. Before the Tribunal, the Petitioners examined P.W.1 and P.W.2, produced documents Ex.P.1 to Ex.P.17 to prove their claim. The 2nd respondent produced neither oral nor documentary evidence.

5. After analysing the available evidence on record, the Tribunal found the negligence of the 1st respondent vehicle driver alone caused the accident, passed an award for a sum of Rs.16,09,000/- payable by the respondents.

6. Being not satisfied with the quantum of the award, the Petitioners/claimants have come forward with the present appeal.

7. Heard both sides and perused the records carefully.

8. The learned counsel for the Petitioners/claimants contends that the Tribunal failed to consider the fact that the deceased was a skilled worker and his monthly income should be fixed not less than Rs.12,000/- per month. The amount awarded under different heads is very nominal. Thus the Petitioners/claimants seeks for enhancement of the award amount passed by the Tribunal.

9. Per contra, the learned counsel for the 2nd respondent/Insurance company contends that the Award passed by the Tribunal itself is on the higher side and there is no need to enhance the same. Thus, the 2nd respondent sought for dismissal of the appeal.

10. This is only quantum appeal. Since there is no appeal by the Insurance company questioning the liability, there is no need to go into the same in the appeal and it has become final. Thus, the conclusion of the Tribunal that negligence of the 1st respondent vehicle driver alone caused the accident and the other respondents as owner and insurer are liable to pay compensation to the Petitioners is confirmed.

11. P.W.1/1st petitioner is the wife of the deceased. She has stated that her deceased husband was aged 29 years at the time of the accident and was running a hotel in the name and style of "Vairam Hotel", earning not less than Rs.20,000/- per month. The Petitioners produced Ex.P.4-Xerox copy of Legal Heirship Certificate to prove that they are entitled to seek compensation and Ex.P.5-family card of the deceased. Ex.P.6, National Trade certificate; Ex.P.7, Industrial school certificate; Ex.P.8 and Ex.P.9, Experience certificates of the deceased; Ex.P.13, Passport of the deceased and Ex.P.14, Training certificate issued by the Grand Ashok Hotel, Bangalore are also produced. To controvert the age and income of the deceased, the 2nd respondent has not produced any oral or documentary evidence. The Tribunal held that the deceased had completed Catering and Hotel Management Course and has worked in various hotels. Therefore, taking into consideration the Educational Qualification and working experience of the deceased in various hotels, the Tribunal held if he had been alive, he would be earning not less than Rs.9,000/- as he is a skilled labour.

12. Considering the fact that the deceased was carrying on Hotel Business, the Tribunal is justified in fixing the notional monthly income at Rs.9000/-, but the Tribunal failed to provide for future prospects. As the deceased was aged 29 years, following the Apex Court decision reported in 2017 (2) TN MAC 609 (SC) [National Insurance Co.Ltd., Vs. Pranay Sethi and others], 40% of the income has to be added towards future

prospects. Considering the number of dependants of the deceased viz., five in number, it will be appropriate to deduct 1/4th of the income towards personal expenses. As per the Ruling of the Apex Court in Sarla Verma Vs. Delhi Transport Corporation [2009 (2) TNMAC 1 (SC)], the appropriate multiplier for the deceased Ponnusamy, who was aged 29 years is '17'. Thus, the loss of income for the family of the deceased is as under:-

Monthly income - Rs.9000/-

Add: 40% of the income towards future prospects

9000 + 40% (3600) = Rs.12,600/-

Deduction: 1/4th towards personal expenses.

12,600 - 1/4(3150) = 9450.

9450 x 12 x 17 = Rs.19,27,800/-.

Further, under conventional heads, following the Apex Court decision reported in 2017 (2) TN MAC 609 (SC) [National Insurance Co.Ltd., Vs. Pranay Sethi], it will be appropriate to provide Rs.40,000/- towards "loss of consortium", Rs.15,000/- towards "loss of estate" and Rs.15,000/- towards "funeral expenses".

13. The learned counsel for the Petitioners/claimants contends that as the 1st petitioner who is aged 20 years lost her husband at her young age and the minor children/Petitioners 4 and 5 lost their father and the Petitioners 3 and 4, in their old age, lost love and affection of their son, and as they are deprived of the love, compassion, care and guidance of the deceased through out their life, the amount to be awarded towards loss of love and affection of the father of the minor petitioners is similar to the loss of consortium granted to the wife. As such, the minor Petitioners/claimants 2 and 5 are awarded Rs.50,000/- each and the parents of the deceased viz., 3rd and 4th petitioners/claimants are awarded Rs.25,000/- each. Thus totally a sum of Rs.1,50,000/- is awarded towards "loss of love and affection". The Tribunal awarded Rs.10,000/- towards Transport charges and Rs.2,000/- towards damage to the properties including clothes and belongings. This court is of the considered view that the said sum provided is just and proper and hence, the same is confirmed.

14. In view of the foregoing discussion, the modified award amount is as under:-

Sl. No.	Heads	Amounts awarded by the Tribunal	Amounts awarded by this Court
1.	Pecuniary Loss	Rs. 13,77,000/-	Rs.19,27,800/-
2.	Loss of consortium	Rs. 1,00,000/-	Rs. 40,000/-
3.	Loss of love and affection	Rs. 1,00,000/-	Rs. 1,50,000/-
4.	Funeral expenses	Rs. 20,000/-	Rs. 15,000/-
5.	Transport charges	Rs. 10,000/-	Rs. 10,000/-
6.	Loss of property (clothes and belongings)	Rs. 2,000/-	Rs. 2,000/-
7.	Loss of estate	---	Rs. 15,000/-
	Total	Rs. 16,09,000/-	Rs.21,59,800/-

15. In the result, this Civil Miscellaneous Appeal is allowed. The award amount is enhanced to Rs.21,59,800/- from Rs.16,09,000/-. The appellants/claimants are entitled to Rs.21,59,800/- [Twenty one lakhs fifty nine thousand eight hundred only] as compensation with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The apportionment of the award amount is as under:-

Claimants 1, 2 and 5 - 30% each; Claimants 3 and 4 - 5% each

The 2nd respondent/Insurance company is directed to pay the enhanced award amount, along with proportionate interest and cost, less the amount already deposited, within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the claimants 1, 3 and 4 are entitled to withdraw the same, in the above said proportion, by filing necessary application before the Tribunal. As far as share of minor claimants 2 and 5 are concerned, their share shall be invested in a Fixed Deposit in a Nationalised Bank and the same shall be renewed periodically, till they attain the age of majority. The interest accrued therein shall be withdrawn by the 1st claimant/mother, once in three months. As per the order of this court dated 20.03.2018 passed in CMP.7419/2017 in CMA.SR.32631 of 2017, for the delay period of 36 days, interest is waived off. The appellants/claimants are directed to pay additional court fee for enhanced award amount immediately. No costs.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

nvsri

To

1. Principal District Judge,
Motor Accident Claims Tribunal, Perambalur.

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

+1cc to Mr.S.Kamadevan, Advocate, S.R.No.48863

+1cc to Mr.T.Ravichandran, Advocate, S.R.No.49811

C.M.A.No.871 of 2018

NRI (Co)
CS/30/08/18



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