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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.900 of 2018

- 1.Lalitha
 - 2.Minor Ramesh
 - 3.Minor Satheesh
- Minors 2 and 3 appellants represented
by their mother and guardian 1st appellant.
- 4.Chinnakannu S/o. Kuppan
 - 5.Chinakannu W/o. Chinnakannu
- ..Appellants/Petitioners

VS

- 1.The Managing Director
Tamil Nadu State Transport
Corporation Limited
Villupuram.
 - 2.Premsudha
 - 3.Divisional Manager
The New India Assurance Company Limited
No.42, Big Street,
Tiruvannamalai
- ..Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 15.02.2011 made in MCOP.No.233 of 2008 on the file of the Motor Accident Claims Tribunal, District Judge, Tiruvannamalai.

For appellants : : M/s.M.Malar
for Respondents : : Mr.K.J.Sivakumar for R1
R2 and R3 exparte.

J U D G M E N T

This Civil Miscellaneous Appeal is filed by the appellants/Petitioners, challenging the judgment and decree dated 15.02.2011 made in MCOP.No.233 of 2008 on the file of the Motor Accident Claims Tribunal, District Judge, Tiruvannamalai.



2. For the sake of convenience, the parties are referred to as per their litigative status before the Tribunal. It is a fatal case. The case of the Petitioners is that on 13.12.2007 at about 5.30 a.m., while the deceased Nataraj was travelling as a passenger in the 1st respondent-Transport Corporation bus bearing Reg.No.TN-32-N-2911, while going near Dhanagoundan Pudur Village in Tiruvannamalai -Chengam Salai, due to high speed, the driver of the 1st respondent bus dashed against the stationary lorry bearing Reg.No.TN-31-E-3399 causing fatal injuries to the deceased Nataraj who died on the spot itself. The accident occurred only due to rash and negligent driving of the 1st respondent bus driver. The Petitioners who are the wife, children, mother and father of the deceased were depending on the earnings of the deceased, who was aged 28 years at the time of the accident. According to the Petitioners, the deceased was earning Rs.6000/- per month by working as a cooly and due to his sudden death, the family is suffering from loss of earnings contributed by the deceased. Thus, the Petitioners sought for a sum of Rs.10,00,000/- as compensation from the respondents, who are the owner and insurer of the two vehicles involved in the accident.

3. On the other hand, opposing the claim of the Petitioners, the 1st respondent -Transport Corporation contends that the accident does not occur in the manner alleged by the Petitioner. On 13.12.2007, while their bus was proceeding on its regular trip from Bangalore, at about 5.30 a.m., while going near Dhanagoundan Pudur, the 2nd respondent Lorry bearing Reg.No.TN-31-E-3399 which was going ahead of the bus was suddenly stopped by its driver without any signal or indication and as there was heavy dew fall, the 1st respondent bus driver inspite of applying sudden brake, dashed against the 2nd respondent Lorry which was stopped suddenly without any warning. The accident occurred only due to negligence of the 2nd respondent Lorry driver. The 1st respondent is not liable to pay any compensation. The claim of the Petitioners about the age, avocation and income of the deceased is denied. The amount claimed under different heads is highly excessive. The 1st respondent sought for dismissal of the Petition.

4. Likewise, opposing the claim of the Petitioners, by filing counter, the 3rd respondent insurance company contends that the accident does not occur in the manner alleged by the Petitioner and the 2nd respondent driver is not responsible for the accident. The claim of the Petitioners about the age, avocation and income of the deceased is not true. As the 1st respondent bus driver alone is responsible for the accident, the



3rd respondent insurer contends that they are not liable to pay compensation. Thus, the 3rd respondent sought for dismissal of the Petition.

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5. Before the Tribunal, the Petitioner examined P.W.1 and P.W.2, produced documents Ex.P.1 to Ex.P.4 to prove their contention. On the side of the 1st respondent, R.W.1 was examined, but no document was marked. On the side of the 2nd and 3rd respondents, neither oral nor documentary evidence was let in.

6. On careful analysis of materials available on record, the Tribunal found that the negligence of the 1st respondent bus driver alone caused the accident and passed an award for a sum of Rs.4,90,000/- payable by the 1st respondent to the Petitioners.

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

8. Heard both sides.

9. The learned counsel for the Petitioners/appellants contended that the Tribunal failed to consider the oral and documentary evidence produced by the Petitioners properly and erred in fixing the monthly income of the deceased at Rs.3000/- instead of Rs.6000/-. The Tribunal wrongly deducted 1/3rd of the income towards personal expenses even though there are five dependants on the deceased. As such, the Tribunal ought to have deducted only 1/4th of the income towards personal expenses. The Tribunal failed to provide for future prospects. The amount awarded under different heads is very nominal. Thus, the Petitioners sought for enhancement of the award amount by entertaining the appeal.

10. Per contra, the learned counsel for the 1st respondent-Transport Corporation contends that the accident occurred due to negligence of the 2nd respondent Lorry driver only and as such, the 1st respondent is not liable to pay any compensation. The quantum of the award passed by the Tribunal is highly excessive and there is no material to substantiate the same. The Petitioners have not produced any documents to prove that the



deceased was earning Rs.6000/- per month. As such, the award passed by the Tribunal itself is on the higher side and there is no need to enhance the same. Thus, the 1st respondent sought for dismissal of the appeal.

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11. This is only a quantum appeal. The conclusion of the Tribunal that the negligence of the 1st respondent driver alone caused the accident is not challenged by the 1st respondent. No cross objection or independent appeal is filed by the 1st respondent against the finding of the Tribunal that the negligence of the 1st respondent driver alone caused the accident.

12. The Petitioners examined the eyewitness to the occurrence as P.W.2 and he categorically stated about the manner in which the accident occurred. According to P.W.2, the 1st respondent bus dashed on the backside of the stationary lorry bearing Reg.No.TN-31-E-3399 which was parked on the left hand side of the road. Even though the 1st respondent examined the driver of the bus as R.W.1 it is clear from his evidence that not only Ex.P.1-FIR is registered against him but after completion of investigation, the Police have laid final report against the driver of the 1st respondent bus only. As such, it is clear that the Tribunal has correctly analysed the evidence on record and fixed the negligence on the 1st respondent driver. Hence the said finding is final and the same needs no interference.

13.1. The 1st Petitioner who is the wife of the deceased while deposing as P.W.1 clearly stated that the deceased Nataraj was aged 28 years and by working as a cooly was earning Rs.6000/- per month. Except for Ex.P.3 Post Mortem Certificate and Ex.P.4 -Death Certificate of the deceased, there is no other documentary proof regarding the age of the deceased. Thus, on the basis of Ex.P.3 and Ex.P.4 documents, the age of the deceased is fixed at 28 years. The accident occurred during 2007. According to the Petitioners, the deceased was earning Rs.6000/- per month by working as cooly. However, there is no acceptable evidence to prove the same. As such, it will be appropriate to fix the monthly income of the deceased at Rs.4000/- per month. The deceased being aged 28 years, the correct multiplier to be applied is '17' and not '18' as adopted by the Tribunal. Further, considering the age of the deceased and his avocation, it will be appropriate to add 40% of the income towards future prospects. As the number of dependants are



five in number, it will be appropriate to deduct 1/4th of the income towards personal expenses of the deceased. Thus, the computation for loss of dependency to the family of the deceased is as follows:-

Monthly income : 4000

Add 40% future prospects : 1600 ; 4000 + 1600 = 5600

5600 - 1/4th deduction towards personal expenses (1400)

5600 - 1400 = 4200.

4200 x 12 x 17 = 8,56,800/-

13.2. Following the Apex court decision reported in 2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and Others], the compensation towards conventional heads, is as under:-

Loss of consortium -40,000/-

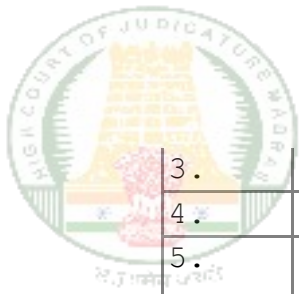
Funeral expenses -15,000/-

Loss of estate -15,000/-

13.3. The learned counsel for the Petitioners contended that the second and third Petitioners being young children and the 4th and 5th Petitioners being aged parents of the deceased, they lost love and affection of their father and son respectively and therefore sought for higher amount as compensation towards loss of love and affection. As such, following the Ruling of the Kerala High Court in the case of 1.Valsamma and others Vs. V.A.Baiju, 2.Rev.F.R.Joseph Vattakalam, and 3. The National Insurance Co.Ltd.,] and the Ruling reported in 2018(1) TN MAC 289 [Branch Office, New India Assurance Co.Ltd., Vs. Meenkashi and others], it will be appropriate to confirm the compensation amount of Rs.40,000/- granted by the Tribunal. Considering the attendant circumstances, this court is of the view that the Tribunal is justified in awarding Rs.500/- towards "Transport Expenses" and Rs.500/- towards

"damage to clothes and articles". The modified award amount is as shown below:-

Sl.No.	Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)
1.	Loss of earnings /loss of dependency	4,32,000	8,56,800
2.	Loss of consortium	15,000	40,000



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3.	Funeral expenses	2,000	15,000
4.	Transport charges	500	500
5.	Damage to clothes and articles	500	500
6.	Loss of estate	---	15,000
7.	Loss of love and affection	40,000	40,000
	Total	4,90,000	9,67,800

14. In the result,

(i) This Civil Miscellaneous Appeal is Allowed;

(ii) The award amount is enhanced to Rs.9,67,800/- from Rs.4,90,000/-.

(iii) The award amount will carry interest at the rate of 7.5% from the date of petition till the date of realisation;

(iv) The 1st respondent/Transport Corporation is directed to deposit the entire award amount along with proportionate interest and cost, as ordered by this court, less the amount, if any already deposited.

(v) The Appellants 1 to 5 are entitled to the award amount on the following apportionment:-

1st Appellant/wife -40%

2nd , 3rd Appellants/minor children - 25% each

4th and 5th Appellants/Parents - 5% each

The Petitioners 1, 4 and 5 are entitled to withdraw their respective shares of the award amount along with accrued interest, less the amount already withdrawn. Insofar as 2nd and 3rd Appellants/minor share is concerned, the same shall be invested in a fixed deposit in Nationalised Bank and the same shall be renewed periodically, until they attain majority and the interest accrued therein shall be withdrawn by the 1st appellant, once in three months. The Tribunal shall pass necessary orders for disbursement of the award amount by following the appropriate procedure.

(vi) As per order dated 23.03.2018 passed in M.P.No.1 of 2014 in CMA.SR.68194 of 2014, the appellants shall forego interest for the delay period of 1183 days. Appropriate Court fee shall be paid, if necessary, before obtaining copy of decree of this CMA.

(vii) No costs.

Sd/-

Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

nvsri



To

1. The Motor Accident Claims Tribunal District Judge,
Tiruvannamalai,

+ 1 cc to M/s. M.Malar, Advocate Sr.36667

C.M.A.No.900 of 2018

RK(CO)
EU(30/11/2018)