

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.01.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.944 of 2017
and
C.M.P.No.4616 of 2017

M/s.New India Assurance Co.Ltd.,
Regd and Head Office,
New India Assurance Building,
No.87, M.G.Road, Fort,
Mumbai - 400 001.

... Appellant/R2

Versus

1. Rajeswari
2. Minor Anush
3. Minor Anusha
4. Kaliammal
5. Thammagounder
6. Kesav

..RR1 to 5/Petitioners
..R6/R1

(Minor petitioners 2 and 3 are
rep by Next Friend 1st Petitioner
Rajeswari)

Civil Miscellaneous Appeal filed under Section 173 of
Motor Vehicles Act against the Judgment and decree passed in
M.C.O.P.No.13 of 2014 on 20.01.2016 on the file of the Motor
Accident Claims Tribunal (Special District Judge) at Krishnagiri
District.

For Appellant :: Mr.J.Chandran

For Respondents :: Mr.M.Selvam for R1 to R5

JUDGMENT

This civil miscellaneous appeal arises out of the Judgment
and decree passed in M.C.O.P.No.13 of 2014 on 20.01.2016 on the
file of the Motor Accident Claims Tribunal (Special District
Judge) at Krishnagiri District.

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

3. The case of the petitioner is that on 23.10.2013 the deceased Chakkravarthi and his relative Suresh were going in a car bearing Regn.No.TN-24-U-7078 in Hosur-Krishnagir road. While the deceased Chakkravarthi was driving the car near Immidinayakkanapalli village, a Multi Axle Goods vehicle bearing Regn.No.TN-20-BS-1535 belonging to the first respondent and insured with the second respondent which was going ahead of the car stopped suddenly without any signal and consequently the car driven by the deceased dashed against the back side of the first respondent's Goods vehicle, resulting in the death of the deceased. The petitioners state the case was registered against the driver of the Multi Axle Goods vehicle bearing Regn.No.TN-20-BS-1535. At the time of accident, the deceased Chakkravarthi was aged 35 years. He was the proprietor of Raj Welding and Grill works earning Rs.10,000/- per month. The petitioners who are dependents of the deceased seek compensation of Rs.20,00,000/- from the respondents who are the owner and insurer of the offending vehicle.

4. On the other hand, the second respondent/insurance company contended that the accident occurred only due to rash and negligent driving of the car by the deceased and as such the respondents cannot be held responsible for the accident. The driver of the goods vehicle was not responsible for the accident and police registered a case only against the driver of the car/deceased. Further, the deceased who was driving the car had no driving licence. Hence, the second respondent is not bound to pay any compensation. The second respondent also disputed the petitioners' claim about the age, avocation and income of the deceased. Hence the second respondent seeks dismissal of the petition.

5. The petitioner examined before the Trial Court P.W.1 and P.W.2 and produced Ex.P.1 to Ex.P.8 documents . On the side of respondents, neither oral nor documentary evidence was produced. On the basis of available materials, the Trial Court ordered a sum of Rs.10,39,000/- with 7.5% interest as compensation to the petitioners and held the respondents jointly and severally liable to pay the said compensation to the petitioners.

6. Aggrieved by the same, the second respondent/ insurance company has come forward with the appeal.

7. Heard both sides counsel and perused the materials available on the records .

8. The learned counsel for the second respondent contends that the quantum arrived at by the Tribunal is on the higher side and the same is to be set aside. The fact that the accident occurred only due to rash and negligent driving of the driver of the car was not considered by the Tribunal. The multiplier " 16

" adopted by the Tribunal as well as the income fixed at Rs.6,000/- per month is not correct. Hence, the second respondent seeks to entertain the appeal and set aside the award passed by the Tribunal.

9. On the other hand, the learned counsel for the petitioner contended that the avocation and age of the deceased were clearly established before the Tribunal by oral and documentary evidence and the same has been correctly appreciated by the Tribunal and the award was passed. Hence, the petitioner seeks dismissal of the appeal.

10. The Tribunal fixed the notional income of the deceased Chakravarthy as Rs.6,000/- per month, since, the dependants of the deceased are 5 members, deducted 1/4th amount of Rs.6,500/- towards personal expenses. Thus the loss of income comes to Rs.4,500/- per month and as per II Schedule, multiplier "16" was adopted. Accordingly, the loss of income was calculated as follows:- $\text{Rs.4,500/-} \times 12 \times 16 = \text{Rs.8,64,000/-}$. The details of the compensation under various heads awarded by the Tribunal is as follows:-

Sl. No.	Head	Amount granted by the Tribunal
1	Loss of dependency of the deceased (Rs.4,500/- x 12 x 16)	Rs.8,64,000/-
2	Transport Expenses	Rs.3,000/-
3	Damaged to clothes and articles	Rs.2,000/-
4	Funeral expenses	Rs.20,000/-
5	Loss of Consortium to the first petitioner	Rs.50,000/-
6	Love and Affection to the petitioners 2 to 5	Rs.1,00,000/-
7	Total	Rs.10,39,000/-

Being aggrieved over the quantum of the award passed by the Tribunal as stated above, the 2nd respondent/Insurance Company has come forward with this appeal contending that the accident occurred only due to the negligence of the deceased Chakkravarthi who was driving the vehicle bearing Reg.No.TN-24-U-7078, hence the negligence should be apportioned between the drivers of both the vehicles.

11. The petitioners produced Ex.P.1-Copy of FIR in Cr.No.724 of 2013 on the file of Krishnagiri Police and therefore, it is evident from the same, that the accident occurred due to the negligence of the driver of the offending vehicle viz., goods vehicle bearing Reg.No.TN-20-BS-1535. It is also apparent from the evidence of P.W.1 and P.W.2 and the documents produced by

the petitioners that the vehicle bearing Reg.No.TN-20-BS-1535 is involved in the accident. The petitioners further stated that the petition is filed under Section 163 A of the Motor Vehicles Act and as such, the Tribunal is not bound to decide the issue as to whose negligence caused the accident, but the Tribunal has to find out whether the 1st respondent vehicle was involved in the accident or not. Relying upon the Ruling reported in 2013 ACJ 2304 [Branch Manager, United India Insurance Co.Ltd., Vs.Lalitabai and others] and 2015 ACJ 2539 [Rfyana Ishaque Kazi and Others Vs. Pushpa R.Sheve and another] it is contended that even if the accident occurred due to the negligence of the person who died in the accident, as the claim is made under Section 163 of the Motor Vehicles Act, the petition is maintainable and only the respondents are liable to pay compensation.

12. On verification of records, it is clear that the vehicle owned by the 1st respondent is involved in the accident. Admittedly, the vehicle was owned by the 1st respondent and insured with the 2nd respondent. As stated earlier, it is clear that the accident was caused only by the negligence of the 1st respondent vehicle driver and as the owner and insurer of the offending vehicle, the respondents are liable to pay compensation.

13. The petitioners in M.C.O.P.No13 of 2014 stated that the deceased Chakkravarthi was aged 35 years and he was carrying on business on his own in the name of " Raj Welding and Grill Works" and was earning a sum of Rs.10,000/- per month. The petitioners also stated that the deceased Chakkravarthi was aged 35 years. It is evident from Ex.P.7 Post Mortem Report that the deceased was aged 35. Hence the age of the deceased Chakkravarthi is fixed at 35. The petitioners have not produced any oral or documentary evidence regarding the income of the deceased Chakkravarthi. In such circumstances, eventhough the Tribunal fixed Rs.4,500/- as monthly income of the deceased, this court, in the absence of any substantial evidence in proof of the income of the deceased Chakkravarthi, is of the view that as the deceased Chakkravarthi was under self employment and running Raj Welding and Grill Works, defenitely, his annual income contributed to his family would not be less that Rs.40,000/-. As such, the annual income of the deceased is taken as Rs.40,000/-. As the family members of the deceased are 5 in number, out of the above said annual income, it is appropriate to deduct 1/4th towards personal expenses of the deceased. The age of the deceased as stated above it taken as 35 and therefore, the correct multiplier to be applied is 16. Thus, the loss of pecuniary benefits to the family of the deceased is calculated as under:-

Annual income of the deceased : Rs.40,000/-
Rs.40,000/- - 1/4th (Rs.10,000) = Rs.30,000/-

Rs.30,000/- x 16 = Rs.4,80,000/-

Thus, this court is inclined to grant Rs.4,80,000/- under the head "Loss of dependency of the deceased".

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

Loss of Consortium = Rs.40,000/-

Funeral Expenses = Rs.15,000/-

Rs.15,000/- is granted towards Transport expenses. Thus, the total loss of dependency of the petitioners is arrived at Rs.5,50,000/-. Accordingly, the compensation granted by the Tribunal is modified as follows:-

Sl. No.	Head	Amount granted by the Tribunal	Amount granted by this Court
1	Loss of dependency of the deceased	Rs.8,64,000/-	Rs.4,80,000/-
2	Transport Expenses	Rs. 3,000/-	Rs.15,000/-
3	Damaged to clothes and articles	Rs. 2,000/-	..
4	Funeral expenses	Rs.20,000/-	Rs.15,000/-
5	Loss of Consortium to the first petitioner	Rs.50,000/-	Rs.40,000/-
6	Love and Affection	Rs.1,00,000/-	...
	Total	Rs.10,39,000/-	Rs.5,50,000/-

14. In view of the above modification, the civil miscellaneous appeal is partly allowed. No costs. The amount of Rs.10,39,000/- awarded by the Tribunal dated 20.01.2016 in M.C.O.P.No.13 of 2014 on the file of the Motor Accident Claims Tribunal (Special District Judge) at Krishnagiri District is reduced to Rs.5,50,000/-. The second respondent/insurance company/appellant is directed to deposit the entire award amount of Rs.5,50,000/- (Rupees Five lakhs fifty thousand only) with interest at the rate of 7.5% p.a. from the date of filing the claim petition till the date of depositing the entire award amount within a period of six weeks from the date of receipt of a copy of this order, less the amount, if any already deposited. On such deposit, the first petitioner/ first claimant is entitled to Rs.2,50,000/- of the award amount and the second and third petitioners/ second and third claimants are entitled to Rs.1,00,000/- each from the award amount. The fourth and fifth petitioners/ fourth and fifth claimants are entitled to Rs.50,000/- each from the award amount. The

petitioners 1, 4 and 5 are permitted to withdraw their respective share with accrued interest by filing necessary application before the Tribunal. The Minor second and third petitioners share amount shall be deposited in any one of the Nationalized Bank till they attain majority. The first petitioner is permitted to withdraw the accrued interest once in three months. Since this award amount is reduced by this court, the appellant/Insurance company is permitted to withdraw the excess amount if any lying in the deposit. Consequently, connected miscellaneous petition is closed.

-s/d-

Assistant Registrar (CCC)

True Copy

Sub-Assistant Registrar

To

1. The Special District Judge,
Motor Accident Claims Tribunal
Krishnagiri District.
2. The Section Officer,
VR Section,
High Court, Madras.

+1 CC to Mr.J. Chandran, Advocate sr 5908

+1 CC to Mr.M. Selvam, Advocate sr 5740.

सत्यमेव जयते

C.M.A.No.944 of 2017

SP(13/04/2018)

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