IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.720 of 2014

1.Kathun Sariba
2.Mohamed Kasim ..Appellants/Petitioners

Versus

1.G.Babu

2.Royal Sundaram Alliance Insurance Co.Ltd,
Kimberlay towers, Y 222, 1st Floor,
2nd Avenue, Anna Nagar,
Chennai - 40. ..Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the order dated 19.08.2013 made in M.C.O.P.No.1616 of 2011 on the file of the Motor Accident Claims Tribunal, Chief Small Cause Court, Chennai.

For Appellant : Mr.K.Varadha Kamaraj

For Respondents : Mr.G.Vasudevan [for R2]

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J U D G M E N T

The appellants/petitioners have filed this appeal against the order dated 19.08.2013 made in M.C.O.P.No.1616 of 2011 on the file of the Motor Accident Claims Tribunal, Chief Small Cause Court, Chennai.

2. For the sake of convenience, the parties are referred to hereunder according to their litigative status before the Tribunal.

3. The case of the petitioners/claimants is that on 07.10.2010 at about 10.50 a.m., while the deceased was proceeding in his two wheeler bearing Registration No.TN-02-T-8202 in Maduravoyal to Tambaram bypass road, a lorry bearing Registration No.TN-20-A-0788 came at high speed and dashed against the deceased causing him fatal injuries, resulting in his death. As the owner and insurer of the said lorry, the respondents are liable to pay compensation. The negligence of the 1st respondent - vehicle driver alone caused the accident.

The deceased was aged 26 years and by working as a sales representative, was earning Rs.10,425/- per month. The petitioners/claimants who are the parents of the deceased were dependent on his income. Thus, the petitioners/claimants sought for a sum of Rs.20,00,000/- as compensation from the respondents.

4. On the other hand, opposing the claim of the petitioners/claimants by filing counter, the 2nd respondent/Insurance Company contends that the accident did not occur as alleged by the petitioners. The place, date and time of the accident is denied. The cause for the death of the deceased was not due to the injuries suffered by him in the alleged accident. The vehicle bearing Registration No.TN-20-AP-0788 was not insured with the 2nd respondent/Insurance Company and the driver of the vehicle was not having valid license. As such, the 2nd respondent/Insurance Company is not liable to pay any compensation. Thus, the 2nd respondent/Insurance Company sought for dismissal of the petition.

5. Before the Tribunal, the petitioners examined P.W.1 to P.W.3 and produced documents Exs.P.1 to P.20 to prove their claim. On the side of the respondents neither oral nor documentary evidence was let in. The Tribunal, on the basis of available evidence on record, found negligence on the part of the 1st respondent-driver alone caused the accident, passed an Award for a sum of Rs.9,73,824/- payable by the respondents to the petitioners/claimants. Being not satisfied with the quantum of the Award, the petitioners/claimants have come forward with the present appeal.

6. The learned counsel for the petitioners/claimants contends that the Tribunal wrongly fixed the income of the deceased at Rs.6,170/-, while he was earning Rs.10,425/- as evidenced by oral evidence of P.W.3 and Exs.P.13 and P.15 to P.20. The future prospects of the deceased was also not properly considered by the Tribunal. The amount Awarded under different heads is also very low. Thus, the petitioners/claimants sought for enhancement of the Award amount.

7. Per contra, the learned counsel for the 2nd respondent/Insurance Company contended that the Tribunal has correctly assessed the monthly income and Awarded a just and fair compensation which needs. Thus, the 2nd respondent/Insurance Company sought for dismissal of the appeal.

8. The appeal is only a quantum appeal and the negligence aspect as decided by the Tribunal, is not challenged. The Tribunal, on the basis of the evidence of P.W.2 - eye-witness as well as Ex.P.1 - F.I.R, found negligence on the part of 1st respondent - vehicle driver alone had caused the accident.

The respondent has not let any any evidence to contradict the same. Further, the respondents have not filed any appeal challenging the conclusion of the Tribunal. As such, the finding of the Tribunal, fixing the negligence on the 1st respondent driver, has became final.

9. The mother of the deceased who deposed as P.W.1 stated that her son was aged 26 years at the time of accident and he was earning Rs.10,425/- per month, by working as Sales representative. The driving license of the deceased is marked as Ex.P.14, while the Transfer Certificate is marked as Ex.P.12, wherein, the date of birth of the deceased is given as 06.11.1984. Thus, he was aged 26 years when the accident took place on 07.10.2010. The same is corroborated by Ex.P.5 - Post mortem certificate and Ex.P.6 - Death certificate. Thus, the age of the deceased is correctly fixed by the Tribunal as 26 years. Further, the deceased being a Bachelor, 50% of the income is to be deducted towards personal expenses. For the said age of the 26 years, the multiplier to be applied is '17'.

10. The petitioners/claimants stated that their son had completed MBA and produced his B.Com as well as M.B.A certificates which are marked as Ex.P.8 to Ex.P.11. It is further stated that he was employed as sales representative in IPCA, Chennai. The visiting card of the deceased and the appointment letter of the deceased are marked as Ex.P.15 and Ex.P.17 respectively. The service certificate of the deceased is also marked as Ex.P.18. The senior Area Business Manager of IPCA Company where the deceased was employed was examined as P.W.3 and he had stated that the monthly salary of the deceased was Rs.10,425/-. The salary break up detail was given in Ex.P.19 and it is clear from Ex.P.20-pay slip that the deceased was paid Rs.9,815/- for the month of September 2010. The Tribunal by observing that the amount paid under experience reimbursement as well as the personal allowances are meant to meet expenses incurred during field work, held that the same cannot be treated as salary. However, the learned counsel for the petitioners/claimants contended all the allowances form part of the salary and as such as per Ex.P.20, the salary should be taken at least at Rs.9,815/-. The said contention appears to be correct. Hence, the monthly salary of the deceased is fixed at a rate of Rs.9,815/-. The deceased being aged 26 years, 40% of the income is to be added towards future prospects and 50% deducted towards personal expenses. The correct multiplier to be applied is '17'. Hence, the calculation for the loss of income is as follows:-

[9850 + (Rs.9850 * 40%)] = Rs.13,790/-.
By deducting 50% towards his personal expenses,
Rs.13,790 * 50% = Rs.6,895/-
Rs.6895*12*17 = Rs.14,06,580/-

Thus, a sum of Rs.14,06,580/- is granted as compensation under the head “loss of income”. The compensation under the head for “Transport charges” Rs. 5,000/- is confirmed.

11. It is clear form Exs.P.3 and P.4 bills that the petitioners/claimants has incurred a sum of Rs.2,75,719/- and Rs.3,764.41p. towards hospital and medical expenses. Thus, the Tribunal correctly Awarded a sum of Rs.2,79,484/- towards medical expenses. The same is confirmed.

12. In view of the judgment of the Hon'ble Supreme Court reported in 2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and Others], the compensation has to be Awarded towards loss of estate and funeral expenses and thus, this court is inclined to grant a sum of Rs.15,000/- each towards loss of estate and funeral expenses.

13. Accordingly the Award passed by the Tribunal is modified as follows:-

Sl. No.	Head	Amount granted by the Tribunal (Rs.)	Amount Awarded by this Court(Rs.)
1	Loss of Income	-	14,06,580.00
2	Funeral Expenses	10,000.00	15,000.00
3	Loss of Dependency	6,29,340.00	-
3	Loss of Estate	-	15,000.00
4	Love and Affection	25,000.00	-
5	Medical Expenses	2,79,484.00	2,79,484.00
6	Transport	5,000.00	5,000.00
7	Pain and Suffering	25,000.00	-
8	Total	9,73,824.00	17,21,064.00

14.In the result, the Civil Miscellaneous Appeal is Allowed as follows:-

(i) The Award of the Tribunal is enhanced to Rs.17,21,064/- from Rs.9,73,824/-.

(ii) The Award amount will carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

(iii) In view of the above modified Award amount, the 2nd respondent/Insurance Company is directed to deposit the Award amount, less the amount, if any, already deposited, along with accrued interest within a period of six weeks from the date of receipt of a copy of this judgment.

(iv) The enhanced Award amount is to be apportioned equally among the petitioners/claimants.

(v) On such deposit, the petitioners/claimants are permitted to withdraw the amount awarded as above by filing proper application before the Tribunal. The Tribunal shall pass appropriate directions for the disbursal of the amount as stated supra on the filing of such application.

(vi) Petitioners/Claimants shall pay necessary courtfee before receiving the copy of this decree for the enhanced compensation amount. No costs.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

1. The Chief Small Cause Court,
Chennai.

2. The Section Officer,
V.R.Section, High Court, Madras.

+1cc to Ms.K.Varadha Kamaraj, Advocate, S.R.No.32487
+1cc to Mr.G.Vasudevan, Advocate, S.R.No.32087

C.M.A.No.720 Of 2014

CNR(CO)
BM 28/06/2018