

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.978 of 2018

1.S.Poongothai
2.S.Sundaram

..Appellants/Petitioners

Vs

1.R.Kumar
2.R.Narayanan
3.The Oriental Insurance Company Ltd.,
A.A.Complex, 1st floor, No.159, Kumaran Road
Tirupur- 641 601

..Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, against the order and decree dated 14.09.2015 made in M.C.O.P.No.266 of 2013 respectively on the file of Motor Accident Claims Tribunal, IV Additional District Court at Bhavani, Erode District.

For appellants : : Mr.MA.P.Thangavel

For Respondents : : M/s.S.Manohar and M.Bharathi for R3
R1 and R2-Remained Exparte before
Lower Court/Tribunal.

J U D G M E N T

The Appellants herein are the Petitioners and fled the above appeal challenging the order and decree dated 14.09.2015 made in M.C.O.P.No.266 of 2013 respectively on the file of Motor Accident Claims Tribunal, IV additional District Court at Bhavani, Erode District.

2. For convenience sake, the parties are referred to hereunder according to their litigative status before the Tribunal. The case of the Petitioners/claimants is that on 20.02.2013 while the deceased was walking on the extreme left side of Kangayam to Erode Main Road running from south to north, at about 4.30 p.m., while going near Arachalur Chillan Kattu Pudur, the 1st respondent driven vehicle bearing Reg.No.TN-42-E-7419 came at high speed, dashed against the Minor Prabakaran,

causing him fatal injuries, resulting in his death immediately. The accident occurred only due to careless driving of the 1st respondent and the said vehicle belonged to the 2nd respondent and the insurer of the said vehicle is the 3rd respondent. The deceased was aged 11 years studying 5th standard. The Petitioners lost their only son at his young age. Hence, a sum of Rs.10,00,000/- is sought for as compensation from the respondents.

3. On the other hand, opposing the claim of the Petitioners, by filing counter, the 3rd respondent/Insurance company contended that the accident did not occur due to negligence of the 1st respondent, but it was only due to negligence of the deceased-minor Prabakaran, who without noticing the oncoming vehicle, came to the middle of the road and contributed to the accident. The claim of the Petitioners in all other aspects is disputed. The compensation claimed by the Petitioners is highly excessive. Thus the 3rd Respondent sought for dismissal of the Petition.

4. Before the Tribunal, the petitioners examined P.W.1 and P.W.2, produced Exhibits Ex.P.1 to Ex.P.7 to prove their claim. On the side of the respondents. No oral evidence was let in, but Ex.R.1 was produced. After analysing the evidence on record, the Tribunal found that the negligence of the 1st respondent driver alone caused the accident, passed an award for a sum of Rs.3,92,000/- payable by the respondents to the petitioner.

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

6. Heard both sides and perused the records carefully.

7. The learned counsel for the Petitioners/claimants/appellants contended that the Tribunal ought to have fixed the notional monthly income of the deceased at Rs.30,000/- per annum, but fixed the notional income at Rs.15,000/- per annum, which is very meagre. The amount provided for under different heads is very low. The interest has to be provided at 7.5% per annum. Thus, the Petitioners/claimants sought for enhancement of the award amount by entertaining the appeal.

8. Per contra, the learned counsel for the 3rd respondent/Insurance company contends that since the minor boy having contributed to the accident, the Petitioners are not entitled to seek enhancement of award amount. The Tribunal itself has passed an award which is on the higher side. Thus, the 3rd respondent sought for dismissal of the appeal.

9. It is only quantum appeal. Both sides have not disputed the conclusion of the Tribunal on liability issue. The Tribunal on the basis of eyewitness account of the accident given by P.W.2 and the contents of Ex.P.1-FIR registered against the 1st respondent driver and also Ex.P.6-final report filed by the Police after investigation, concluded that negligence of the 1st respondent driver alone caused the accident. The Tribunal also relied upon Ex.P.2-Rough Sketch of the occurrence spot and Ex.P.3-Observation Mahazar to come to the conclusion stated above. In the absence of any contra evidence let in by the respondents, the Tribunal on the basis of P.W.2's oral evidence and the above said documents correctly concluded that negligence of the 1st respondent alone caused the accident and the same does not require any interference.

10. The Petitioners stated that the deceased is their only son and was aged 11 years at the time of the accident. Due to the demise of their only son, they are suffering mentally and also physically. The Petitioner states the notional income of the deceased herein, who was a bright student studying in 5th standard should be taken as 40,000/- per annum. As such, following the Ruling reported in 2004 ACJ 428 (SC) [National Insurance Co.Ltd., Vs. Baljit Kaur], and the Ruling reported in 2017 2 TNMAC 702 [J.Kanagaraj and another Vs. Metropolitan Transport Corporation Ltd., rep. By its Managing Director, Pallavan Salai, Chennai-600 002], the notional monthly income of the deceased who was a student aged 11 years is fixed at Rs.30,000/- per annum. The deceased being aged 11 years and the parents/Petitioners/claimants herein are aged 29 and 39 years respectively, it will be appropriate to adopt multiplier '15'. Thus, the loss of dependency is calculated as follows:-
30,000/- per annum x 15 multiplier = Rs.4,50,000/-.

11. Following the decision of 2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd. VS. Pranay Sethi and others] under conventional heads, the following amounts are awarded:-

Loss of Estate - Rs.15,000/-

Funeral expenses - Rs.15,000/-

Further, towards Transport expenses, the sum of Rs.5000/- and towards Damage to clothes, Rs.2000/- granted by the Tribunal are confirmed.

12. The learned counsel for the Appellants/Petitioners contended that the claimants are entitled to Rs.1,50,000/- granted by the Tribunal under the head "loss of love and affection". In support of the same, the learned counsel for the Appellants relied upon the Ruling of the Kerala High Court in

the case of 1.Valsamma and others Vs. V.A.Baiju, 2. Rev.FR.Joseph Vattakalam, and 3.The National Insurance Co.Ltd., - MACA.Nos.711 and 921 of 2010 and the Ruling of this court reported in 2018(1) TN MAC 289 [Branch Office, New India Assurance Co.Ltd., Vs. Meenkashi and others]. However, refuting the same, the learned counsel for the 3rd respondent/Insurance company contends that the sum of Rs.1,50,000/- granted by the Tribunal, is highly excessive. Considering the same, it will be appropriate to provide for Rs.15,000/- each [totally Rs.30,000/-] under the head "loss of love and affection". The modified award amount is as under:-

Sl.No.	Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)
1.	Pecuniary loss	2,25,000	4,50,000
2.	Funeral expenses	10,000	15,000
3.	Loss of love and affection to Petitioners	1,50,000	30,000
4.	Loss of estate	---	15,000
5.	Transport	5,000	5,000
6.	Damage to clothes	2,000	2,000
	Total	3,92,000	5,17,000

13. In the result,

(i) This Civil Miscellaneous Appeal is Partly Allowed.

(ii) The award amount is enhanced to Rs.5,17,000/- from Rs.3,92,000/-.

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

(iv) The 3rd Respondent/Insurance company is directed to deposit the modified award amount along with proportionate accrued 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.

(v) The appellants/claimants are entitled to equal share in the award amount and they shall withdraw the same along with accrued interest, less the amount already withdrawn. This court, by order dated 22.12.2017 in CMP.No.22398/2017 in CMA.SR.100990/2017, on being satisfied with the reasons stated in the accompanying affidavit filed in support of the Petition, seeking exemption of court fee, for a sum of Rs.5,352.50, in the

above appeal, allowed the Petition. The appellants/claimants are not entitled to interest for the delay of 604 days in filing the above appeal. The Tribunal shall pass necessary orders following the appropriate procedure for disbursal of the award amount. No costs.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

To

1.The IV Additional District Judge,
The Motor Accidents Claims Tribunal,
Bhavani, Erode District.

Copy to:-

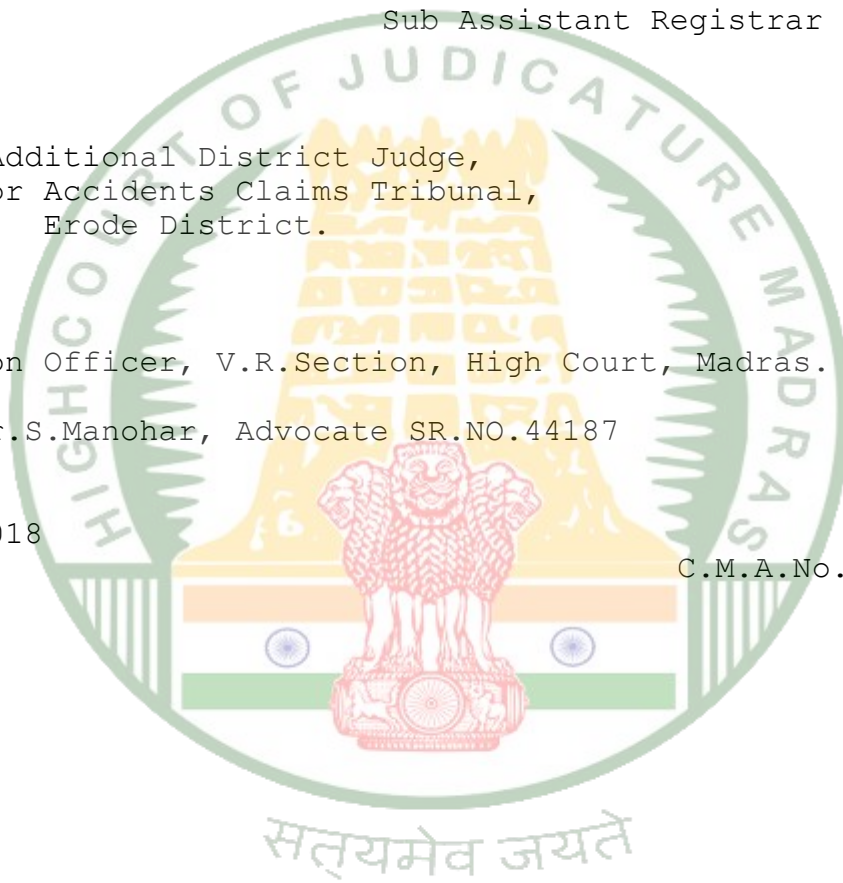
The Section Officer, V.R.Section, High Court, Madras.

+lcc to Mr.S.Manohar, Advocate SR.NO.44187

VGI(CO)

sm:27.9.2018

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