

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.982 of 2018

1. Nirmala
2. Dinesh
3. Mythili ..Appellants/Petitioners

Versus

1. Selvam
[R1 set ex-parte before the Tribunal
hence notice for R1 may be dispensed
with]
2. National Insurance Company Ltd.,
1st floor, Nireesh Complex, No.910,
Cuddalore Main Road, PB No,7,
Attur Post, Salem District. ..Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173
of the Motor Vehicles Act, 1988 as amended by Act 54 of 1994
to set aside the order made in M.C.O.P.No.2034 of 2015 on the
file of the Motor Accident Claims Tribunal Cum I Additional
District Judge, Salem dated 24.02.2017.

For Appellants : Mr. C.Kulanthaivel

For Respondents : Mr. N.B.Surekha [for R2]

J U D G M E N T

The Appellants/Claimants filed this appeal to set aside
the order made in M.C.O.P.No.2034 of 2015 on the file of the
Motor Accident Claims Tribunal Cum I Additional District
Judge, Salem dated 24.02.2017.

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
23.08.2015 while the deceased was walking with his cycle on
the left side of the Seelanaickanpatty to Athur Main Road
while going near Namamalai Russya Colony at about 9.00 p.m.,
the first respondent car bearing Registration No.TN-77-A-6066
which was insured with the second respondent came at high
speed driven in a rash and negligent manner dashed on the
deceased causing him fatal injuries, resulting in his death on

the spot. The accident occurred only due to the negligence of the first respondent vehicle driver. The deceased was aged 44 years and by working as a Cook in a Private Mill was earning Rs.9,000/- per month. The petitioners/claimants who are the wife and children of the deceased were depending on his earnings. Due to his sudden death, the petitioners/claimants have lost the breadwinner of the family and suffering for the same. Thus, the petitioners/claimants seek a sum of Rs.25,00,000/- 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 in the manner alleged by the petitioners/claimants. The claim of the petitioners/claimants about the age, avocation and income of the deceased is denied. The third petitioner is a married daughter and the second petitioner is the major son of the deceased and they are not depending on the deceased. The amount claimed by the petitioners/claimants is highly excessive. The driver of the first respondent vehicle did not possess valid driving license. Thus, the 2nd respondent/Insurance Company seeks for dismissal of the petition.

5. Before the Tribunal, the petitioners/claimants examined P.Ws.1 to 3 produced document Exs.P.1 to P.13 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 that the negligence of the first respondent vehicle driver alone caused the accident passed an award for a sum of Rs.5,49,000/- 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. Heard both sides and perused the available materials on record.

7. The conclusion of the Tribunal that the negligence of the 1st respondent car driver alone is the cause for the accident which was based on the eye-witness account the accident given by P.W.2 and contents of Ex.P.1 - F.I.R as well as Ex.P.5 - Final report is not challenged before this Court. The 2nd respondent/Insurance Company has not come forward with any Appeal against the conclusion of the Tribunal in that regard. As such, the finding of the Tribunal that the negligence of the 1st respondent vehicle driver alone caused the accident has become final. Thus, the respondent as owner and insurer of the vehicle are liable to pay compensation.

8. The petitioners/claimants states that the deceased was aged 44 years and by working as a Cook was earning Rs.9,000/-.

deceased, the Tribunal on the basis of Ex.P.2 - Post mortem certificate and Ex.P.6 - Death certificate of the deceased fixed her age as 44 years and the multiplier to be applied for the said age group is '14'. The petitioners/claimants examined P.W.3 - Rukmani who was the co-employee with the deceased to speak about the monthly income of the deceased. However, no proof like salary certificate is produced. The bank account pass book of the petitioners/claimants is produced as Exs.P.8 to P.10. Thus, considering the said circumstances, it will be appropriate to fix the monthly income of the deceased at Rs.6,500/- instead of Rs.4,500/- fixed by the Tribunal. Further, as the deceased was aged 44 years, it will be appropriate to add 25% of the income towards future prospects. Thus her monthly earning will be,

$$[Rs.6500 + (Rs.6500 \times 25\%)] = Rs.8125/-$$

As the number of dependants are 3 in number, 1/3rd of the income is to be deducted towards personal expenses of the deceased. Thus, the loss of dependancy is calculated as follows:-

$$[Rs.8125 - (Rs.8125 \times 1/3) \times 12 \times 14] = Rs.9,10,056/-$$

$$\text{Rounded off to} = Rs.9,10,000/-$$

9. The Tribunal has awarded amounts for funeral expenses and loss of Consortium at Rs.5,000/- and Rs.20,000/-. In view of the judgment of the Supreme Court reported in 2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and Others], the compensation to be awarded for funeral expenses and loss of consortium is modified and a sum of Rs.15,000/- and Rs.40,000/- is granted and towards loss of estate Rs.15,000/- is granted and under the head "Transportation" Rs.10,000/- is granted.

10. The learned counsel for the petitioners/claimants contended that the petitioners/claimants 2 and 3 are the daughter and son of the deceased who have lost the love and affection of their father and as such, they are entitled to get compensation for the same. In support of the same, he relied upon the Ruling of the Kerala High Court reported 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]. Considering the above said contention, this Court is inclined to award Rs.30,000/- each to the petitioners/claimants 2 and 3 and in all Rs.60,000/- is provided for Loss of Love and Affection.

11. Accordingly, the compensation awarded by the Tribunal stands modifies as follows:-

Sl. No.	Head	Amount granted by the Tribunal (in Rs.)	Amount awarded by this Court (in Rs.)
1	Loss of Dependancy	5,04,000.00	9,10,000.00
2	Funeral Expenses	5,000.00	15,000.00

Sl. No.	Head	Amount granted by the Tribunal (in Rs.)	Amount awarded by this Court (in Rs.)
3	Loss of Consortium	20,000.00	40,000.00
4	Loss of Estate	-	15,000.00
5	Love and Affection	20,000.00	60,000.00
6	Transport Charges	-	10,000.00
	Total	5,49,000.00	10,50,000.00

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

(i) The award of the Tribunal is modified and enhanced to Rs.10,50,000/- from Rs.5,49,000/-.

(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 enhanced 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 four weeks from the date of receipt of a copy of this judgment.

(iv) The apportionment of the modified enhanced award amount is as follows:-

1st Petitioner/Claimant - 50%

Petitioners/Claimants 2 and 3 - 25% each

(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) The petitioners/claimants are not entitled to any interest for the condoned delay (default), period, if any.

(vii) Petitioners/Claimants shall pay necessary court fee within two weeks from the date of receipt of the copy of this judgment for the enhanced compensation amount.

No costs.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

bri

To

1.The Motor Accident Claims Tribunal
Cum I Additional District Judge,
Salem.

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

+1cc to M/s.N.B.Sureka, Advocate SR.NO.50149
+1cc to Mr.C.Kulanthaivel, Advocate SR.NO.50194

NMI (CO)
sm:20.9.2018

C.M.A.No.982 of 2018



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