

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.10.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Civil Miscellaneous Appeal No.2118 of 2018

1.Mythili
2.K.Swedha (Minor)
3.K.Nivedha (Minor)
4.K.Vishal (Minor)
(2 to 4 minors rep. by their mother the 1st petitioner)
5.K.Kailasam
6.Mohanambal ... Appellants/petitioners

Vs

1.C.Lakshmi
2.Royal Sundaram Alliance Insurance Company Ltd.,
No.6, Lattice Bridge Road,
Adyar, Chennai - 20. ... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the decree and judgment dated 01.07.2014 made in M.C.O.P.No.4979 of 2011 on the file of Motor Accidents Claims Tribunal (III Small Causes Court), Chennai.

For Appellants : Mr.K.Varadha Kamaraj

For Respondents: Mr.N.Vijayaraghavan (for R2)

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the judgment and decree dated 01.07.2014 made in M.A.C.T.O.P.NO.4979 of 2011 on the file of Motor Accident Claims Tribunal, II Court of Small Causes, Chennai.

2.The Appellants/Claimants are Petitioners 1 to 6, the 1st Respondent is 1st Respondent and 2nd Respondent is 2nd Respondent in M.A.C.T.O.P.NO.4979 of 2011, on the file of Motor Accident Claims Tribunal, in the Court of Small Causes, Chennai.

According to the 1st Appellant/1st petitioner her husband was riding a Motor Cycle bearing Registration No.TN-21-R-4222 on 24.10.2011 at about 18.00 hours near Kuchikkadu , Mamallapuram to Thirukazhukundram Road, at that time a lorry bearing Registration No.TN-22-AS-4358 driven by its driver and rash and Negligent manner from opposite direction hit the Motor Cycle of petitioner/appellant husband in this impact the appellant husband thrown away from Motor Cycle and died due to grievous injuries. The deceased was 38 years at the time of death the deceased was the Proprietor of Tailor Shop and earning Rs.10,000/- per month. The 1st Respondent is owner of Lorry bearing Registration No.TN-22-AS-4358 and 2nd Respondent is insurer of Lorry Registration No.TN-22-AS-4358. The appellant claim a sum of Rs.14,00,000/- as compensation under section 166 of M.V.Act. The 1st Respondent was remained exparte.

3.The 2nd Respondent/insurance company filed counter statement and denied various allegations made by the appellant and pleaded the accident happened due to rash and negligent driving of the appellant husband and denied the age and income of the deceased.

4.Before the Tribunal, the appellants /petitioners examined as PW1 and eyewitness was examined as PW2 and marked 5 Documents as Exs.P1 to P5. On behalf of 2nd Respondent/Insurance company, no one was examined and no document marked.

5.The tribunal considering the pleadings ,oral and documentary evidence and evidence of PW1 and PW2 ,came to the conclusion that the accident occurred only due to rash and negligent driving of the 1st Respondent Lorry and held the respondents are liable and considering the age and income of the deceased awarded a compensation sum of Rs.12,16,600/- with 7.5% payable by the 2nd Respondent behalf of 1st Respondent. The details of compensation is as follows:-

Award of Heads

a) Loss of Income

(16 X 12 X 6000 X 4/5) : Rs.9,21,600/-

b) Loss of Consortium : Rs. 50,000/-

c) Loss of love & affection for

1st Petitioner : Rs. 25,000/-

d) Loss of love & affection to

Petitioners 5 & 6 : Rs.50,000/-

e) Loss of love & affection to

Petitioners 2 to 4 : Rs.1,50,000/-

f) Funeral Expenses : Rs. 20,000/-

Total Award = Rs. 12,16,600/-
with 7.5% interest

6. Against the said award dated 01.07.2014 made in M.A.C.T.O.P.No.4979 of 2011, the present Civil Miscellaneous Appeal prepared by the appellants.

7. The learned counsel for the appellants contended that the monthly Income Rs.6,000/- fixed by the tribunal is very low since accident in the year 2011 notional income should be fixed at Rs.8,000/- per month and further contended that 40% future prospects not applied as per the Hon'ble Apex Court judgment in National Insurance Company Ltd. Vs. Pranay Sethi. Hence, the award to be enhanced and the appeal to be allowed. The learned counsel for the appellants further contended that though the claim is very low may award more than claim amount under just compensation as per the judgment rendered by the Hon'ble Apex Court in Sarala Varma and others Vs. Delhi Transport Corporation and another, 2009 (2)TNMAC 1 (SC).

8. The learned counsel for the 2nd respondent submitted that the tribunal considered all the materials is proper perspective and rightly allowed the claim under all heads and prayed for dismissal of the above Civil Miscellaneous Appeal.

9. Heard the learned counsel for the appellants as well as the 2nd Respondent and perused the materials available on record.

10. I went through entire evidence of appellant and 2nd Respondent Insurance Company, I find that it is not correct and the monthly Income Rs.6,000/- fixed by the tribunal is very low, because accident was took place in the year 2011 and considering 3 minor children, I fix monthly income Rs.8,000/- per month as notional income and I applied 40% future prospects as per the Hon'ble Apex Court judgment in National Insurance Company Ltd. Vs. Pranay Sethi. I find it is not correct that the 1/5th deduction for personal expenses in deceased income when 6 dependants, I ordered to deduct 1/4th income for personal

expenses of the deceased when 6 dependants as per judgment in Sarala Varma and others Vs. Delhi Transport Corporation and another, 2009 (2) TNMAC 1 (SC). I find when the age of the deceased is 38 years multiplier should be 15, the multiplier 16 fixed by tribunal is not correct as per judgment in Sarala Varma and others Vs. Delhi Transport Corporation and another, 2009 (2) TNMAC 1 (SC). Thus worked, the compensation towards loss of dependency would be:

Rs.8000 X 40/100 (3,200) + 8000 =

Rs.11,200 X 12 X 15 X 3/4 = Rs.15,12,000/-

11.I award Rs.40,000/- towards loss of consortium of 1st appellant instead of Rs.50,000/- as per the Hon'ble Apex Court judgment in National Insurance Company Ltd. Vs. Pranay Sethi and delete the award passed Rs.25,000/- for 1st appellant towards love and affection.

12. I award Rs.50,000/- towards loss of love and affection of appellants 5 and 6 awarding Rs.25,000/- each since they lost their affectionate son.

13.I award Rs.1,20,000/- towards loss of love and affection of appellants 2 to 4 awarding Rs.40,000/- each since they lost their affectionate father.

14. I award Rs.15,000/- towards funeral expenses instead of Rs.20,000/- as per the Hon'ble Apex Court judgment in National Insurance Company Ltd. Vs. Pranay Sethi.

15. I award Rs.15,000/- towards loss of estate as per Hon'ble Apex Court verdict in National Insurance Company Ltd. Vs. Pranay Sethi.

16.In view of above discussions, the modified award as follows:-

Heads

a) Loss of Income	: Rs.15,12,000/-
b) Loss of Consortium	: Rs. 40,000/-
c) Loss of love & affection to	
Petitioners 5 & 6	: Rs. 50,000/-

d) Loss of love & affection to

Petitioners 2 to 4 : Rs. 1,20,000/-

e) Funeral Expenses : Rs. 15,000/-

f) Loss of Estate : Rs. 15,000/-

Total Award = Rs. 17,52,000/-
with 7.5% interest

17.The interest awarded by the tribunal at the rate of 7.5% per annum is unaltered. The appellant is directed to pay the court fee for the enhanced amount, if any.

18.With the above detailed findings, this Civil Miscellaneous Appeal is allowed. No costs. The Insurance Company is directed to deposit the award amount as per modified award along with 7.5% interest, less the amount, if any, already deposited from the date of petition till the date of deposit within six weeks from the date of receipt of a copy of this order. On such deposit, the Appellants 1, 5 and 6 are permitted to withdraw their share with proportionate interest as fixed by the Tribunal. The Tribunal is directed to deposit the share of minor appellants 2 to 4, in an interest earning Fixed Deposit in any one of the nationalized bank till they attained majority and the mother namely the 1st appellant will be entitled to withdraw quarterly interest from the Fixed Deposit for the maintenance of the minors.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1.The III Judge,
The Motor Accidents Claims Tribunal
(III Small Causes Court), Chennai.

2.The Section Officer,
V.R.Section,
High Court, Madras. (2 Copies)

+1cc to Mr.K.Varadhakamaraj, Advocate Sr.68420

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srg 19/03/2019