

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.1273 of 2012
and M.P.No.1 of 2012

National Insurance Company Ltd.,
City Branch II, United Shopping Complex,
94/34, Dr.Nanjappan Road,
Coimbatore -641 015.

..Appellant/3rd
Respondent

Versus

1.A.K.Girija
2.H.Balaji
3.Selvi H. Priyadarshini (Minor)
[Minor rep by her mother &
Next friend A.K.Girija]
4.R.Vaidegi
5.Rajaram Naidu

.. 1 to 5 Respondents/
petitioners

6.M.T.Santhakumari ..6th Respondent/1st Respondent
7.A.Kothandaraman ..7th Respondent/2nd Respondent
[The 6th & 7th respondents remained
exparte and notice dispensed with]

Civil Miscellaneous Appeal filed under section 173 of Motor
Vehicles Act, 1988, against the judgment and decree dated
28.04.2011 made in M.C.O.P.No.2861 of 2007 on the file of the
Motor Accident Claims Tribunal, Chief Judge, Court of Small
Causes, Chennai.

For Appellants : Mr.M.Krishnamoorthy

For Respondents : Mr.Terry for
M/s.Gokilan & Gokilan [for R1 to R5]

J U D G M E N T

The appellant/Insurance Company has filed this appeal
against the judgment and decree dated 28.04.2011 made in
M.C.O.P.No.2861 of 2007 on the file of the Motor Accident Claims
Tribunal, Chief Judge, Court of Small Causes, Chennai.

2. For the sake of convenience, the parties are referred to

hereunder according to their litigative status before the Tribunal. The case of the petitioners/claimants is that on 22.01.2007 while the deceased Haridoss was standing at Pakkam bus stop in G.S.T Road, Madhuranthagam, at about 8.00 p.m., the 1st respondent car driven by the 2nd respondent bearing Registration No. TN-40-B-1454 came at high speed driven in a rash and negligent manner and dashed against the deceased Haridoss, causing him fatal injuries, resulting in his death on the spot. The deceased was aged 46 years and by working as Junior Drafting Officer in the Government TamilNadu Agricultural Department was earning Rs.15,582/- per month. The petitioners/claimants who are the wife, children and parents of the deceased were depending on his earning. Thus, the petitioners/claimants sought for a sum of Rs.99,29,164/- as compensation from the respondents.

3. On the other hand, opposing the claim of the petitioners/claimants, by filing counter, the 3rd 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 accident did not occur in the manner alleged by the petitioners/claimants. The 3rd respondent also denies the claim of the vehicle being insured with them and the driver of the vehicle possessed valid license. The amount claimed by the petitioners/claimants is exorbitant. Thus, the 3rd respondent/Insurance Company sought for dismissal of the petition.

4. Before the Tribunal, the petitioners/claimants examined P.Ws.1 to 3 and produced documents Exs.P.1 to P.27 to prove their claim. On the side of the respondents neither oral nor documentary evidence was let in. The Tribunal, after analysing the available evidence on record, found that the negligence of the 1st respondent vehicle driver alone caused the accident passed an award for a sum of Rs.24,00,000/- payable by the respondents to the petitioners/claimants. Aggrieved over the said finding of the Tribunal, the 3rd respondent/Insurance Company has come forward with the present appeal.

5. Heard both sides and perused the available materials on record.

6. The learned counsel for the 3rd respondent/Insurance Company contends that the Tribunal failed to appreciate the evidence on record properly and passed an award granting higher amount as compensation. The Tribunal failed to deduct the contribution to the income tax and also deducted only 1/3rd of the income towards personal expenses instead of 1/4th and the Tribunal wrongly applied the multiplier '13'. The amount awarded

under different heads is highly excessive. Thus, the petitioners/claimants sought for setting aside the award passed by the Tribunal by entertaining the appeal.

7. Per contra, the learned counsel for the petitioners/claimants contends that the deceased was employed in the Government Department earning fixed monthly salary income and as such, the Tribunal has correctly arrived at total loss of income suffered by the petitioners/claimants. As the driver of the 1st respondent vehicle alone caused the accident, due to his negligence, the respondents are liable to pay compensation. Thus, the petitioners/claimants sought for dismissal of the appeal.

8. It is only a quantum appeal. Both sides did not advance any argument on the question of negligence. As such, the conclusion of the Tribunal, on the basis of P.W.2 eye-witness account, the contents of Ex.P.7 - F.I.R that the accident occurred only due to the negligence of the 1st respondent/owner-vehicle driver, who is the 2nd respondent herein is just and proper and the same is confirmed. The 1st respondent/owner of the vehicle and the 3rd respondent as the insurer are liable to pay compensation to the petitioners/claimants.

9. The petitioners/claimants stated that the deceased was aged 46 years and in proof of the same produced his X Std mark sheet as Ex.P.1 and S.S.L.C book as Ex.P.2, wherein, Date of Birth of the deceased is stated as 20.05.1961. It is clear from the same that the deceased was aged 46 years at the time of the accident. As per Ex.P.10 - Legal heir certificate, the petitioners/claimants herein are shown as legal heirs of the deceased. As such, they are entitled to claim compensation. The wife of the deceased who deposed as P.W.1 clearly stated that the deceased was employed as Junior Drafting Officer in the Agricultural Engineering Department of Government of Tamil Nadu earning Rs.15,582/- per month. The document relating to educational qualification of the deceased is produced as Exs.P.1 to P.5. The petitioners/claimants also produced copy of the pay slip of the deceased as Ex.P.11 and copy of the 6th pay commission report as Ex.P.14. The petitioners/claimants also examined P.W.3 who was working as Superintendent in the office, wherein, the deceased was working and he produced the pay drawn particulars of the deceased as Ex.P.23, record sheet as Ex.P.24, letter regarding the loss of promotion opportunity as Ex.P.25 and the seniority list relating to the deceased as Ex.P.26. It is clear from the documentary evidence produced by the petitioners/claimants that the deceased was earning Rs.15,582/- per month as evidenced from Ex.P.11 - Pay slip of the deceased issued for the month of December 2006. As such, the monthly income of the deceased is fixed at Rs.15,582/-. The

petitioners/claimants being aged 49 years, then future prospects 30% of the income is to be added. Thus, the loss of income of the deceased is calculated as follows,

$$[(Rs.15,582 \times 30\%) + Rs.15,582] = Rs.20,256/-$$

Total income per year is arrived at as follows Rs.20,256 x 12 = Rs.2,43,072/- and for the said amount the income tax to be deducted. Accordingly, it is calculated as follows: No income tax for Rs.1,00,000/-, for the balance amount of Rs.1,43,072/- income tax to be deducted at 10%. Thus, the total annual income less income tax is Rs.2,43,072-Rs.14,307=Rs.2,28,765/-. As the number of dependants are 5, 1/4th of the income is to be deducted towards personal expenses and the correct multiplier to be applied is '13'. Thus, the loss of dependency is calculated as follows:-

$$[Rs.2,28,765 - (Rs.2,28,765 \times \frac{1}{4}) \times 13] = Rs.22,30,462/-$$

Thus, a sum of Rs.22,30,462/- is granted as compensation under the head "Loss of Dependency".

10. The Tribunal has awarded amounts under loss of consortium and funeral expenses at Rs.10,000/- each. 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 has to be awarded towards loss of estate, loss of consortium 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 and for loss of consortium Rs.40,000/- is awarded.

11. 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 Dependency	23,70,000.00	22,30,462.00
2	Funeral Expenses	10,000.00	15,000.00
3	Loss of Consortium	10,000.00	40,000.00
4	Loss of Estate	-	15,000.00
5	Love and Affection	10,000.00	-
6	Total	24,00,000.00	23,00,462.00

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

(i) The award of the Tribunal is reduced to Rs.23,00,462/- from Rs.24,00,000/-.

(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 modified award amount, the Appellant/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 apportionment of the modified reduced award amount is as follows:-

Petitioners	1 to 3	-	30% each
Petitioners	4 and 5	-	5% each

(v) On such deposit, the petitioners/claimants 1st, 2nd, 4th and 5th 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 share of the 3rd petitioner/minor is directed to be deposited in any one of the nationalised bank till they attain majority. The 1st petitioner/Mother of the 3rd petitioner is permitted to withdraw the accrued interest once in three months.

Consequently, connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accident Claims Tribunal,
Chief Judge, Court of Small Causes,
Chennai.
2. The Section Officer,
V.R.Section, High Court, Madras. (2 Copies)

+1cc to Mr.M.Krishnamoorthy, Advocate, S.R.No.38454
+1cc to M/s.Gokilan & Gokilan, Advocate, S.R.No.38613

C.M.A.No.1273 of 2012

SVN(CO)
CS/20/08/18