IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.1646 of 2009
and M.P.Nos.1 and 2 of 2015

1.K.Lalitha Maheswari
2.Minor R.M.Rawanth Suriya
rep. By next friend/natural guardian
mother K.Lalitha Maheswari.
3.Vallinayaki ...Appellants/Claimants

Vs

1.J.Meena

2.The New India Assurance Co.Ltd.,
No.3, Main Road, Dindigul

3.R.Senthil ..Respondents/Respondents

Civil Miscellaneous Appeal filed under Article 173 of Motor Accident Act, 1988 against the judgment and decree dated 08.09.2008 made in M.C.O.P.No.450 of 2006 on the file of Motor Accident Claims Tribunal, Additional District and Sessions Judge, Fast Track Court-III, Dharapuram, Erode District.

For appellants : : Mr.N.S.Sivakumar
for Respondents : : Mr.N.Vijayaraghavan for R2.

J U D G M E N T

This Civil Miscellaneous Appeal is filed by the appellants/claimants, challenging the judgment and decree dated 08.09.2008 made in M.C.O.P.No.450 of 2006 on the file of Motor Accident Claims Tribunal, Fast Track Court-III, Dharapuram.

2. For the sake of convenience, the parties are referred to as per their litigative status before the Tribunal. The case of the Petitioners is that on 15.04.2003, at about 1.10 a.m., when the deceased Vijay Mohan was travelling with others as a passenger in a Jeep bearing Reg.No.TN-01-J-0727 from Udumalpet to Kumuli, near the place called A Pirivu, Vathlagundu Main Road, the van bearing Reg.No.TN-57-D-4431, came in the opposite

direction at high speed, dashed against the jeep in which the deceased was travelling, causing him fatal injuries, resulting in his death subsequently. At that time, the deceased was aged 36 years and was employed as a General Manager in a Private Establishment for a salary of Rs.11,000/- per month. The Petitioners who are the wife, son and mother of the deceased states that they were dependants on the income of the deceased and due to sudden demise, they lost the only bread winner of the family. Hence, the Petitioners seek a sum of Rs.10,00,000/- as compensation from the respondents, who are the owner and insurer of the offending vehicle.

3. On the other hand, opposing the claim of the Petitioners, by filing counter, the 2nd respondent -Insurance Company contends that the accident did not occur in the manner alleged by the Petitioners. The driver of the jeep in which the deceased was travelling was not having valid driving licence and only due to rash and negligent driving of the said jeep driver, the accident occurred. The claim of the Petitioners regarding the avocation, income and age of the deceased is denied. As the accident occurred only due to the negligence of the driver of the jeep in which the deceased was travelling, the respondents are not liable to pay any compensation. The amount claimed by the Petitioners is exorbitant. Thus, the respondents sought for dismissal of the Petition.

4. Before the Tribunal, the Petitioners examined P.Ws.1 to 3 produced Exhibits P.1 to P.11 documents to prove their claim. On the respondents side, R.W.1 was examined by the 2nd respondent, but no documents was produced. The 1st respondent remained exparte. The Tribunal, on the basis of available records placed before it, found that the 1st respondent driver alone was negligent in causing the accident and awarded a sum of Rs.5,00,000/- to the Petitioners. Being not satisfied with the quantum of the award, the Petitioners have come forward with the present appeal.

5. The learned counsel for the Appellants/Petitioners/claimants contended that the Tribunal ought to have fixed the monthly income of the deceased at Rs.11,000/- per month on the basis of Ex.P.11 Salary Certificate, but erred in fixing the monthly income of the deceased at Rs.3,500/-. The Tribunal failed to take note of the face that the deceased was MBA graduate and was working in Managerial capacity, as such fixing his monthly income at Rs.3500/- is very low. The amount granted by the Tribunal under different heads is very meagre. Thus, the Petitioners seek to enhance the quantum of the award by entertaining the appeal. Further, the Petitioner/claimant filed M.P.No.1 of 2015 seeking to receive additional evidence in the above appeal.

6. Per contra, the learned counsel for the 2nd respondent-Insurance company contends that the award passed by the Tribunal itself is on the higher side and no ground is made out to enhance the quantum of the award. As the accident occurred between two moving vehicles, the Tribunal ought to have fixed contributory negligence on the part of the driver of the jeep, in which the deceased was travelling. Thus, the respondent sought for dismissal of the appeal.

7. Heard both sides and perused the records carefully.

8. The Petitioners claim that on the fateful day, due to the rash and negligent driving of the 1st respondent driver, the accident occurred. The person, who travelled along with the deceased in the same jeep deposed as P.W.2 and clearly stated that the accident occurred only due to the negligent driving by the 1st respondent vehicle driver. The Police also registered the case against the 1st respondent vehicle driver as evidenced by Ex.P.1-FIR. Further, on completion of investigation by the Police, Ex.P.5-charge sheet was filed against the said driver only and it is evident from Ex.P.6-copy of the criminal case judgment that the 1st respondent vehicle driver pleaded guilty and was convicted for the same. Therefore, it is clear that the accident occurred only due to the rash and negligent driving of the 1st respondent vehicle driver. As such, the respondents who are the owner and insurer of the said vehicle are liable to pay the compensation.

9. (i) Age & Multiplier:- The main contention of the Appellants/Petitioners is that the quantum of the award granted by the Tribunal is on the lower side. Initially, in the claim petition, the deceased was stated to be 36 years old and was earning Rs.11,000/- by working as General Manager in Greenland Company at Udumalpet. Now, the learned counsel for the appellants/petitioners produced xerox copy of additional document, whereby, under Ex.P.10-Date of Birth Certificate, the date of birth of the deceased is given as 21.05.1971. While allowing M.P.No.1 of 2015, this court deems it fit to take on record the additional evidence. Even though, on the basis of Ex.P.4-Post Mortem Certificate and Ex.P.10-Educational Certificate, the age of the deceased was fixed by the Tribunal as 36 years, on a perusal of the date of birth certificate produced before this court vide additional document, the deceased was aged 32 years at the time of the accident and therefore, the correct multiplier to be applied herein is '16'.

(ii) Income:- The Petitioners produced Ex.P.11-Salary Certificate, stating that the deceased was getting Rs.11,000/- per month and was working as General Manager in the Private concern. The Tribunal disbelieved the same on the ground that as per copy of Partnership deed, the Managing Partner himself was paid Rs.2000/- only and that the deceased, who was the employee of the said concern will not get Rs.11,000/- salary per month. Hence, the tribunal fixed monthly income at Rs.3,500/-. The learned counsel for the Appellants/Petitioners contended that the salary certificate clearly gives the salary of the deceased and no ground is made out to disbelieve the same. In the considered view of this court, in the absence of any supportive material to prove the contents of the material in Ex.P.11-Salary Certificate and taking into consideration the accident occurred during 2003, it will be appropriate to fix the notional income of the deceased at Rs.8000/-.

(iii) Future Prospects:- Considering the additional document produced before this court under Ex.P.10, wherein the date of birth is given as 21.05.1971, the age of the deceased was 32 years at the time of the accident. For such age, it will be appropriate to add 40% towards future prospects.

(iv) Deduction & Computation of Loss of Dependency:- While considering the number of dependants in the family of the deceased, 1/3rd deduction is to be made. The correct multiplier to be applied is '16'. Thus the loss of dependency is calculated as under:-

Monthly income - Rs.8000/-
Add future prospects 40% - Rs.3200/-
8000 + 3200 = 11,200/-
11,200 - 1/3rd deduction (3730) = 7470.
7470 x 12 x 16 = 14,34,240/-.

Thus, a sum of Rs.14,34,240/- is awarded under the head “Loss of dependency”. Further, following the decision of Apex Court reported in 2017 (2) TN MAC 609 (SC) [National Insurance Co.Ltd., Vs. Pranay Sethi and Others], under conventional heads, the following amounts are to be awarded to the Petitioners.

Loss of Estate - 15,000/-
Loss of Consortium - 40,000/-
Funeral expenses - 15,000/-
Add: Loss of dependency - 14,34,240/-
Total award amount - Rs.15,04,240/-

In view of the foregoing discussion, the modified enhanced compensation granted by this Court is as shown below:-

Sl.No.	Heads	Amount awarded by the Tribunal	Amount awarded by this Court
1.	Loss of dependency	Rs.4,48,000/-	Rs.14,34,240/-
2.	Loss of consortium	Rs. 22,000/-	Rs. 40,000/-
3.	Loss of love and affection	Rs. 10,000/-	---
4.	Loss of estate	Rs. 15,000/-	Rs. 15,000/-

Sl.No.	Heads	Amount awarded by the Tribunal	Amount awarded by this Court
5.	Funeral expenses	Rs. 5,000/-	Rs. 15,000/-
	Total	Rs.5,00,000/-	Rs.15,04,240/-

10. In the result, the Civil Miscellaneous Appeal is Partly Allowed in the terms as shown below:-
(1) The awarded granted by the Tribunal is enhanced to Rs.15,04,240/- from Rs.5,00,000/-.
(2) The award amount will carry interest at the rate of 7.5% per annum from the date of petition till the date of deposit.
(3) The 2nd respondent/Insurance Company is directed to deposit the enhanced award of Rs.15,04,240/- less the amount, if any already deposited, along with the proportionate accrued interest and costs, within a period of six weeks from the date of receipt of a copy of this order.
(4)The Appellants 1 and 3/Petitioners 1 and 3 are permitted to withdraw the award amount along with accrued interest by following the due procedure before the Tribunal, as per the following apportionment:- "1st Petitioner – 40%; 2nd Petitioner – 40% and 3rd Petitioner - 20%". As far as the share amount of 2nd petitioner/2nd appellant is concerned, the same shall be deposited in Fixed Deposit in a Nationalised Bank, till he attains majority. The interest accrued on minor share shall be withdrawn by the mother/1st claimant, once in three months.
(5) The Appellants are directed to pay the required court fee for the enhanced award amount, within a period of two weeks from the date of receipt of a copy of the Judgment. No costs. Consequently, connected Miscellaneous Petitions are closed.

13.03.2018

Additional documents marked before this court:-

Ex.P.12- 25.02.1992 – B.Com Degree certificate
of Mohan Raj R. Alias K.R.Vijeya Mohan
(name changed by Gazzette notification)

Ex.P.13-..01.2002 - Salary slip along with enclosures issued by
the Investment Trust of India Limited

Ex.P.14- 05.08.2004- Letter issued by EPF, Reginal Officer,
Settlement of claim to 1st Petitioner.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1.The Additional District Sessions Judge,
Fast Track Court-III,
The Motor Accident Claims Tribunal,
Dharapuram, Erode District.

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

+1cc to Mr.N.S.Sivakumar, Advocate, S.R.No.18865

+1cc to Mr.N.Vijayaraghavan, Advocate, S.R.No.19753

C.M.A.No.1646 of 2009

SV(CO)
GSP(26/11/2018)