

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 23.03.2018

Coram

The Honourable Mr. Justice S.BASKARAN

Civil Miscellaneous Appeal No.1301 of 2012

1.S.Punitha
2.S.S.Gowri
3.K.S.Shankar
4.Rasammal

... Appellants/Claimants

..vs..

1.S.Periyathambi
2.Kandayi
3.The Oriental Insurance Co. Ltd.,
Branch Office at No.39, Raja Street,
Gobichettipalayam.

... Respondents/Respondents

This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the order and Decree dated 22.04.2009 made in MCOP.No.347 of 2007 on the file of the Motor Accident Claims Tribunal/Subordinate Judge, Bhavani.

For Appellants : ***Mr.T.M.Karthikeyan**

For Respondents : Mr.S.Manohar for R-3

JUDGMENT

Being not satisfied with the quantum of compensation awarded by the Tribunal, dated 22.04.2009 made in MCOP.No.347 of 2007 on the file of the Motor Accident Claims Tribunal/Subordinate Judge, Bhavani, the petitioners/claimants has come forward with this present appeal to enhance the award amount.

2. For the sake of convenience, the parties will be hereinafter referred to in this judgment as arrayed before the Tribunal.

3. The case of the petitioners is that on 02.12.2006, at about 11.00 hours, while the deceased was proceeding in his two wheeler bearing Registration No.TN-36-K-1234, along with his wife, in Edappady to Kannangkadu Road, near Vellarivelli Privu, the Lorry bearing Registration No.TN-33-Z-6773 belonging to the

second respondent and insured with the third respondent, came in the opposite direction at high speed dashed against the two wheeler which the deceased was riding, resulting in grievous injuries to the deceased as well as his wife who is the first petitioner. Subsequently, the husband of the first petitioner died on 18.12.2006. The accident occurred only due to the rash and negligent driving by the driver of the lorry owned by the second respondent. At the time of the accident, the deceased was aged 45 years and as employee of TNEB, was getting a salary of Rs.11,431/-. The petitioners who are the wife, children and mother of the deceased were dependents on the earning of the deceased. Hence, the petitioners sought for a sum of Rs.20,00,000/- as compensation from the respondents who are the owner and insurer of the offending vehicle.

4. On the other hand, opposing the claim petition, the 3rd respondent-Insurance Company filed counter contending that the accident does not occur in the manner alleged by the petitioners. The negligence of the second respondent lorry driver is not the cause for the accident. It is only due to rash and negligent driving by the deceased, the occurrence took place. As the deceased himself is tort-feaser, no amount is payable by the respondents. The claim of the petitioners is exorbitant. The claim of the petitioner that the deceased was earning a sum of Rs.11,431/- per month is not correct and his net salary was only Rs.5,322/-. Thus, the 3rd respondent-Insurance Company sought for dismissal of the petition.

5. Before the Tribunal, the petitioners examined P.W.1 and produced documents Ex.P1 to Ex.P16 to substantiate their claim. On the side of the respondents, neither oral nor the documentary evidence was let in.

6. The Tribunal, on the basis of available evidence on record, found the negligence of the second respondent lorry driver alone caused the accident and awarded a sum of Rs.16,13,200/- as compensation to the petitioners. Being not satisfied with the quantum of compensation awarded by the Tribunal, the petitioners/claimants have come forward with the present appeal.

7. I have heard the learned counsel appearing for the appellants/petitioners/claimants and the learned counsel appearing for the third respondent-Insurance Company and perused the materials available on record.

8. The learned counsel appearing for the appellants/Petitioners/ Claimants contends that the Tribunal failed to provide any amount for future prospects of the

deceased. The Tribunal also failed to award proper compensation inspite of evidence produced by the petitioners about the age and income of the deceased. The multiplier adopted by the Tribunal is not correct. The amount awarded by the Tribunal is on the lower side. Hence, the petitioners seek to enhancement of the award passed by the Tribunal.

9. Per contra, the learned counsel appearing for the 3rd respondent-Insurance Company contends that the Tribunal wrongly fixed the negligence on the part of the second respondent lorry driver, while the accident took place only due to the negligence of the deceased. The award passed by the Tribunal is on the higher side. The petitioners/claimants has not established the actual monthly income of the deceased. Thus, the third respondent-Insurance Company sought for dismissal of this appeal.

10. The first petitioner, who is the wife of the deceased deposed as P.W.1 and stated that on the fateful day on 02.12.2006, she was travelling as a pillion rider in the two wheeler bearing Registration No.TN-36-K-1234, which her husband, the deceased was riding in Eddapady - Kannangkadu Road, around 11.00 a.m., near Vellarivelli Privu, the Lorry bearing Registration No.TN-33-Z-6773 came at high speed in the opposite direction dashed against the two wheeler resulting in grievous injuries to the first petitioner as well as her husband, the deceased Subramaniam. According to P.W.1, the occurrence took place only due to the negligence of the second respondent driver. The eye witness account of P.W.1 is not contradicted in any manner by the respondents, as neither the driver of the second respondent lorry nor any other person is examined by the respondents to disprove the version given by P.W.1. Further, the Police have registered the case against the second respondent lorry diver only as per Ex.P1 First Information Report and after completion of investigation laid Ex.P4 Charge Sheet also against the driver of the second respondent lorry only. The petitioner also produced Rough Sketch of the occurrence spot as Ex.P2 and the Observation Mahazar prepared by the police as Ex.P3. It is clear from the Rough Sketch that the occurrence took place on the left side of the road. It is also clear from Ex.P5 Motor Vehicle Inspector's report that there was no mechanical defect in the offending vehicle. Further, the petitioner also produced the driving licence of the deceased as Ex.P16. Thus, the deceased was authorized to drive the two wheeler and he met with accident only on the left side of the road. In such circumstances, considering the oral evidence of P.W.1 and also the contents of Ex.P1 First Information Report, Ex.P4 Final Report, it is clear that the accident occurred only due to the negligence of the second respondent lorry driver and as such the conclusion arrived at by the Tribunal is just and proper.

11. The petitioners states that the deceased Subramaniam was aged 45 years. The petitioners produced the driving licence of the deceased as Ex.P16. Postmortem certificate as Ex.P8 and the death certificate as Ex.P9. It is clear from the same that the age of the deceased was only 45 years. The petitioners states that the deceased was employed in Tamil Nadu Electricity Board and his monthly income was Rs.11,431/- as per Ex.P11 Salary Certificate. There is no contra evidence to disbelieve the Ex.P11 Salary Certificate. Further, P.W.1 has also clearly stated in her oral evidence about the monthly salary of her husband deceased Subramaniam. Thus, the Tribunal is justified in fixing the monthly income of the deceased at Rs.11,431/-. The deceased being a permanent employee and aged about 45 years, the future prospects has to be calculated as per the Apex Court decision reported in 2017 (2) TN MAG 609 (SC) NATIONAL INSURANCE CO. LTD., Vs. PRANAY SETHI AND OTHERS. Thus, the monthly income of the deceased is calculated as follows. Rs.11,431/- + 30% future prospects Rs.3,429/- = Rs.14,860/-. Since there are 4 dependents, 1/4th amount is to be deducted towards the personal expenses of the deceased. Since the age of the deceased is fixed at 45, the multiplier to be applied is 14. Accordingly, the loss of dependency is calculated is as follows:-

Rs.14,860/-, 1/4th amount of Rs.3,715/- = Rs.11,145/- x 12 = Rs.1,33,740/- x 14 = Rs.18,72,360/-.

12. The first petitioner states that after the occurrence, the deceased was treated in the hospital for 16 days and died only on 18.12.2006. The petitioners also produced Medical Bills as Ex.P12 and Ex.P13. The Tribunal on the basis of the same, granted a sum of Rs.1,93,413/- towards medical bills. Considering the reason stated by the Tribunal for allowing the same, no ground is made out to interfere with the same. Thus, the sum of Rs.1,93,413/- awarded by the Tribunal under the head of medical expenses is confirmed. As stated earlier, the deceased was in hospital for 16 days after the accident and passed away thereafter only. Hence, some amount is to be provided for pain and sufferings undergone by him. The said contentions of the learned counsel appearing for the appellants appears to be just and proper. Thus, a sum of Rs.10,000/- is awarded under the head of pain and sufferings.

13. Following the Apex Court decision reported in 2017 (2) TN MAG 609 (SC) NATIONAL INSURANCE CO. LTD., Vs. PRANAY SETHI AND OTHERS, towards loss of estate, loss of consortium and funeral expenses, this Court is inclined to modify the compensation as under:-

Loss of consortium	=	Rs. 40,000.00
Loss of Estate	=	Rs. 15,000.00
Funeral Expenses	=	Rs. 15,000.00
Transportation	=	Rs. 5,000.00

14. Accordingly, the compensation awarded by the Tribunal is modified as follows:-

S1 No	Heads	Amount awarded by the Tribunal	Awarded by this Court
1.	Pecuniary Loss of income	13,71,780.00	18,72,360.00
2.	Medical Expenses	1,93,413.00	1,93,413.00
3.	Funeral Expenses	5,000.00	15,000.00
4.	Transport charges	3,000.00	5,000.00
5.	Loss of Estate	-	15,000.00
6.	Loss of consortium		40,000.00
7.	Loss of love affection	40,000.00	-
	Total	16,13,193.00	21,40,773.00

Accordingly, the compensation awarded by the Tribunal is modified and the same is enhanced to Rs.21,40,773/-.

15. In the Result, the Civil Miscellaneous Appeal is allowed. No Costs. The amount of Rs.16,13,193/- awarded by the Tribunal, dated 22.04.2009 made in MCOP.No.347 of 2007 on the file of the Motor Accident Claims Tribunal/Subordinate Judge, Bhavani is enhanced to Rs.21,40,773/-. The third respondent-Insurance Company is directed to deposit the entire enhanced award amount of Rs.21,40,773/- with interest at the rate of 7.5% p.a. from the date of filing the claim petition till the date of deposit the entire award amount, after deducting the amount that has already been deposited by them within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the appellants 1 to 3/ petitioners 1 to 3/claimants 1 to 3 are entitled for a sum of Rs.6,02,984/- each and the 4th appellant/4th petitioner/4th claimant is entitled for a sum of Rs.3,31,821/- from the award amount. The appellant/petitioners/ claimants are permitted to withdraw their respective share with accrued interest by filing necessary

application before the Tribunal. The appellants/claimants are directed to pay the required Court fee for the enhanced award amount before getting the copy of Judgment.

Addl.Court fee paid
for a sum of Rs.1,410/- vide
USR.No.27750 enclosed.

rrg

Sd/-
Assistant Registrar(CCC)
Dated:25/06/2018

*Amended as per letter
dated 18/07/2018 given
by the Appellant Counsel
Sd/-
Assistant Registrar(CS-V)
Dated:13/08/2018

//True Copy//

Sub Assistant Registrar

To

The Subordinate Judge,
Motor Accident Claims Tribunal
Bhavani.

To be substituted to the
order already despatched
On 02.07.2018

+1cc to Mr.T.M.Karthikeyan, Advocate Sr.No.22161
+1cc to MR.S.Manohar, Advocate SR.No.22439

KGK(CO)
sm:25.6.2018
srg 13/08/2018

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