IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.01.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.Nos.1114 of 2013
and 2124 of 2013 and M.P.No.1 of 2013

C.M.A.No.1114 of 2013:-
1.Nithya
2.V.Manikandan ..Appellants/Petitioners

Vs

1.The Tamil Nadu
Coop Milk Producers Federation Ltd.,
Transport Unit, Madhavaram, Chennai-51

2.The National Insurance Co.Ltd;
Vijay Plaza Buildings 2nd floor
C-32, 2nd Avenue, Anna Nagar
Chennai ..Respondents/Respondents

C.M.A.No.2124 of 2013:-
The National Insurance Co.Ltd;
Vijay Plaza Buildings 2nd floor
C-32, 2nd Avenue, Anna Nagar
Chennai. ..Appellant/2nd Respondent

1.Nithya
2.V.Manikandan

Vs

3.The Tamil Nadu
Coop Milk Producers Federation Ltd.,
Transport Unit, Madhavaram,
Milk Colony, Madhavaram
Chennai-51 ..Respondents/Petitioners 1& 2/
1st Respondent

Civil Miscellaneous Appeals filed against the Order and decree dated 30.10.2012 made in M.C.O.P.No.3077 of 2008 on the file of Motor Accidents claims Tribunal (XVI) Additional Judge, Chennai.

For appellant in
CMA.No.1114 of 2013 : : Mr.K.Suryanarayanan
For Respondents : :
for R2 in CMA.1114 of 2013:: Mr.D.Bhaskaran

For appellant
in CMA.2124 of 2013 :: Mr.D.Bhaskaran
For R1 & R2
in CMA 2124/2013 :: Mr.K.Suryanarayanan

COMMON JUDGMENT

The above Civil Miscellaneous Appeals are filed challenging the judgment and decree dated 30.10.2012 made in M.C.O.P.No.3077 of 2008 on the file of Motor Accidents claims Tribunal (XVI) Additional Judge, Chennai.

2. For convenience sake, the parties are referred to hereunder according to their litigative status before the Tribunal. The case of the Petitioners before the Tribunal is that when the deceased Krishnaveni travelled as a pillion rider in a motor cycle bearing Reg.No.TN09-R-0551 at Periyar EVR Salai opposite to Doshi Towers, Kilpauk, Chennai, an Aavin Tanker Lorry bearing Reg.No.TN-22-W-8922 proceeding in the same direction, dashed against the motor cycle, due to which, the deceased fell down and was run over by the Aavin Tanker Lorry resulting in her death at the accident spot itself. The petitioners who are the parents of the deceased contend that deceased/Krishnaveni was doing her 3rd year B.Tech Engineering course and was aged 21 years and the accident occurred due to negligence of the 1st respondent driver and as the vehicle was insured with the 2nd respondent, both the respondents are liable to pay the compensation of Rs.10,00,000/-.

3. On the other hand, opposing the petition, the 2nd respondent/Insurance company contends that three numbers of 4 wheelers and one two wheeler was involved in the accident and the other three vehicles are not impleaded in the proceedings and as such the petition is liable to be dismissed for non-joinder of necessary parties. As the manner of accident is disputed and the owner of other vehicles are not made as party, the 2nd respondent contends that they are not liable to pay any compensation. The claim of the petitioners that the deceased was travelling as a pillion rider and suffered injuries due to the fault of the offending vehicle driver is not correct. As such, the claim of the petitioners is disputed. Hence, the 2nd respondent sought for dismissal of the petition.

4. Before the Tribunal, the Petitioners examined P.W.1 to 3 and produced documents Ex.P.1 to P.10 to substantiate their claim. On the side of the respondent, no oral or documentary

evidence is produced. The Tribunal after considering the available materials on record, found that the driver of the 1st respondent vehicle is responsible for the accident and awarded a sum of Rs.8,34,000/- as compensation to the petitioners. The details of the compensation is as follows:-

Sl. No.	Head	Amount granted by the Tribunal
1.	Loss of dependency 5000 x 12 x 15 – 2/3	Rs.6,00,000/-
2	Loss of future prospects	Rs.1,20,000/-
3	Loss of love and affection	Rs. 1,00,000/-
4	Funeral and transportation expenses	Rs. 14,000/-
	Total	Rs.8,34,000/-

5. Aggrieved over the finding of the Tribunal, both claimants and Insurance Company have come forward with the above appeals.

6. The learned counsel for the petitioners/claimants contended that the Tribunal failed to appreciate the evidence of P.W.1 to P.W.3 properly and erred in fixing the notional income of the deceased at Rs.5000/- per month. According to the petitioners, the notional income should have been fixed at Rs.20,000/- per month. Similarly, the Tribunal should have adopted multiplier 17 instead of 15 as the deceased was aged only 21 years. Further the petitioners contend that the amount awarded under various heads is very less and sought for enhancement.

7. Per contra, the learned counsel for the 2nd respondent/Insurance Company, in their appeal grounds, would contend that the rider of the motor cycle in which the deceased was travelling failed to exercise proper and reasonable care and hence, there is contributory negligence and the same has not been considered properly by the Tribunal. As the deceased was a student, the Tribunal erred in fixing notional income at Rs.5000/-. Further the Tribunal ought to have deducted 50% of the notional income towards her personal expenses as the deceased was a spinster. Further it is contended that the compensation granted under different heads are very excessive and thus sought for reduction of compensation amount.

8. The fact that the deceased was doing her 3rd year B.Tech Engg course in RMD Engg Collge and she was aged 21 years at the time of accident is not disputed. The petitioners have produced Ex.P.9 letter from the Principal of R.M.D.Engg College and Ex.P.10 Copy of attendance extract of deceased and Ex.P.7 mark sheet of deceased, which clearly go to show that the deceased was doing her 3rd year course in B.Tech Engg. The learned counsel for the petitioners relied upon a Division Bench

judgment of this court reported in 2016 (2) TN MAC 424 (DB) [S.Saraswathy and others Vs. A.Elumalai 2. Oriental Insurance Co.Ltd.,] and contends that for a student doing Engineering final year course, in that case, the notional monthly income was fixed at Rs.20,000/-. It is further contended that the Tribunal herein erred in fixing notional monthly income of the deceased who was doing her 2nd Engg course at Rs.5000/-. In the said decision, in paragraph 10, it is held as follows:-

> "10. In the present case, it is not in dispute that the deceased died in the accident which happened on 05.08.2011 and at the said point of time, the deceased was in his final year in Engineering. It is further evident from the record that the deceased was an Engineering student studying in Eswari Engineering College and that his parents viz., the claimants were doing business. It is also further evident from the records that the deceased was holding shares in the companies run by his family and was receiving dividends on those shares, which fact is further evident from the income tax returns filed by the deceased. All the above facts clearly establish that the deceased was earning money in the form of dividends even while he was studying. Further, the deceased was an income-tax assessee, which clearly proves that the deceased had an income. In such a situation, the fixation of Notional income at Rs.7,500/- per month for an Engineering student, who was getting income, cannot be justified. Further, in the present day scenario, the average monthly salary of an fresh Engineering Graduate would certainly be in the region of Rs.20,000/-. In such view of the matter, this court fixes the Notional Monthly Income of the deceased at Rs.20,000 per month. "

9. On the other hand, disputing the claim of the petitioners, the learned counsel for the 2nd respondent/Insurance Company contended that for a student, the notional income cannot be fixed as sought for by the petitioners herein and in the present case, notional income fixed by the Tribunal at Rs.5000/- itself is on the higher side. He further submits that in the above cited decision, the Division Bench of this court pointed out that the deceased was holding shares and was receiving dividends on those shares and was earning money in the form of dividends even while he was studying, but in the present case, the facts are not so.

10. However, considering the above said Ruling reported in 2016 (2) TN MAC 424 (DB) and also taking into consideration the fact that the job market for Engineering graduates is on the lower side now, it will be appropriate to fix the notional income of the deceaed at Rs.12,000/- per month.

11. The learned counsel for the petitioners contended that 40% should be added towards future prospects. Further as per the decision of the Apex Court reported in 2009 (2) TN MAC 1 (SC) [SARLA VERMA VS. DELHI TRNASPORT CORPORATION], as the deceased was a spinster, 50% deduction towards her personal expenses should be made. Since, the deceased was aged 21 years at the time of accident, adopting multiplier 18, the loss of income is calculated as under:-

Rs.12,000 + 40% future prospects - 50% deduction x 12 x 18 = Rs.18,14,400.

Further, the petitioners/claimants who are the parents of the deceased suffered due to loss of daughter and as such, they are entitled for a sum of Rs.15,000/- towards loss of estate, Rs.15,000/- under the head "funeral expenses" and Rs.10,000/- under the head "Transport Expenses". Accordingly, the award passed by the Tribunal is modified as under:-

Sl. No.	Head	Amount granted by the Tribunal	Amount granted by this Court
1.	Loss of dependency Rs.12000 + 40% - 50% deduction x 12 x 18	Rs.6,00,000/-	Rs.18,14,400/-
2	Loss of estate	----	Rs.15,000/-
3	Transport expenses	Rs. 14,000/-	Rs.10,000/-
4	Funeral expenses	---	Rs.15,000/-
5	Future prospects	Rs.1,20,000/-	---(included inSl.No.1)
6	Loss of love and affectin	Rs.1,00,000/-	---
	Total	Rs.8,34,000/-	Rs.18,54,400/-

12. In the result, C.M.A.No.1114 of 2013 filed by claimants/petitioners is allowed; C.M.A.No.2124 of 2013 filed by the Insurance company/2nd respondent, is dismissed on the terms as stated infra:-

(1) The award granted by the Tribunal is enhanced to Rs.18,54,400/- from Rs.8,34,000/-;

(2) The interest granted by the Tribunal at 7.5% per annum is confirmed.

(3) The Insurance Company is directed to deposit the entire modified award amount with proportionate interest, less the amount already deposited, within a period of six weeks from the date of receipt of a copy of this order.

(4) The petitioners/claimants are directed to pay the required

court fee as per the modified award amount while receiving the copy of the order of this court.

(5) The Petitioners/claimants are permitted to withdraw the award amount as ordered by this court, with accrued interest, before the Tribunal, by filing necessary application, less the amount if any already withdrawn by them, in terms of the following apportionment:-

1st petitioner - Rs.15,00,000/-
2nd petitioner - Rs.3,54,400/-

(6) Consequently, connected miscellaneous petition is closed.
(7) There will be no orders as to costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

nvsri
To
1.(XVI) Additional Judge,
The Motor Accidents claims Tribunal
Chennai.

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

+1 cc to Mr.K.Surayanarayanan Advocate sr 7079
+1 cc to Mr.D.Bhaskaran Advocate sr 7073

C.M.A.Nos.1114 of 2013
and 2124 of 2013

nmi(co)
aa12/03/2018