

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.1248 of 2013

and

M.P. No.1 of 2013

United India Insurance Company Ltd,
Anna Salai, Tarapore Towers,
7th Floor, 826, Anna Salai,
Chennai.

...Appellant/3rd Respondent

Versus

1. Jayanthi

2. Janani

3. Thangammal ..Respondents 1 to 3/Petitioners
(Minor 2nd Respondent by its
Guardian mother Jayanthi)

4. P.Mariappan

5. R.Palanisamy ..Respondents 4 & 5/Respondents 1 & 2
(R4, R5 set exparte in Lower Court)

Civil Miscellaneous Appeal filed against the judgment and
decree dated 29.06.2012 made in M.C.O.P.No.277 of 2010 on the
file of the Motor Accident Claims Tribunal (Principal District
Judge) at Namakkal.

For Appellant : Mr.J.Chandran

For Respondents 1 to 3: Mr.A.Thiyagarajan [for R1 to R3]

J U D G M E N T

The appellant/Insurance Company has filed this appeal
against the judgment and decree dated 29.06.2012 made in
M.C.O.P.No. 277 of 2010 on the file of the (Principal District
Judge) at Namakkal.

2. For convenience sake, the parties are referred to
hereunder according to their litigative status before the
Tribunal. The case of the petitioners is that on 12.04.2007,
while the deceased S.Kasimani was riding his motor cycle bearing
Registration No.TN-28-B-0378 from Trichengode to
Musalanikkenpalayam along with Puniagode as pillion rider, in
Trichengode to Vellore road near Manianoor to Otharasu bus
stand, a tempo van bearing Registration No.TN-28-2161 belonging

to the 2nd respondent driven by the 1st respondent came at high speed and dashed against the two wheeler in which the deceased was travelling. Due to the impact, the deceased was thrown away from the bike and suffered serious injuries and subsequently died on the spot itself. It is averred in the Claim Petition that the accident occurred due to rash and negligent driving of the 1st respondent driver only. At the time of the accident, the deceased S.Kasimani was aged 37 years and he was carrying on business as provision shop owner and commission agent, earning Rs.13,000/- per month. Due to sudden death of S.Kasimani, the petitioners who are the wife, daughter and mother of the deceased lost the only breadwinner of the family. Thus, the petitioners seek a sum of Rs.20,00,000/- as compensation from the respondents who are the driver, owner and insurer of the offending vehicle.

4. On the other hand, opposing the claim of the petitioners, the 3rd respondent/Insurance Company contends that the claim of the petitioners about the nature of accident is not correct and the accident occurred only due to the negligence of the deceased two wheeler rider and case has been registered in such a manner to help the dependants of the deceased. The accident occurred only due to the negligence of rider of the two wheeler who failed to notice the tempo van coming in the opposite direction and suddenly turned towards his right side, resulting in the accident. Thus, the 3rd respondent/Insurance Company seeks dismissal of the petition.

5. Before the Tribunal, the petitioners examined P.W.1 to P.W.3 and produced Exs.P1 to P.16. On the side of the respondents neither oral evidence was adduced nor documents were produced. The Tribunal, after considering the materials available on record, found that the 1st respondent driver's negligence alone caused the accident and also held that the respondents are jointly and severally liable to pay compensation and awarded a sum of Rs.10,70,000/- to the petitioners. Aggrieved over the said finding of the Tribunal, the 3rd respondent/Insurance Company has come forward with the appeal seeking to set aside the award passed by the Tribunal.

6. The learned counsel for the Appellant/3rd respondent contended that the deceased was guilty of contributory negligence and the same was not taken into consideration by the Tribunal. The Tribunal, wrongly fixed the monthly income of the deceased at Rs.8,000/- and the same is to be set aside. Thus, the 3rd respondent seeks to entertain the appeal and set aside the award passed by the Tribunal.

7. Per contra, the learned counsel for the petitioners/claimants contended that the Tribunal after considering all the materials placed before it, properly assessed the claim of the petitioners and awarded just and proper compensation to the petitioners and the same needs no interference. Thus, the learned counsel seeks dismissal of the appeal.

8. The petitioners clearly stated that on the occurrence date while the deceased was proceeding in his two wheeler, the 2nd respondent tempo van came at high speed and dashed against the two wheeler in which the deceased S.Kasimani was proceeding, resulting in his death. The police registered F.I.R. against the driver of the van and the same is evidenced by Ex.P.1. The petitioners also produced Observation mahazar of the accident spot as Ex.P.2. The police after investigation laid the Charge Sheet against the driver of the 2nd respondent vehicle only as evidenced by Ex.P.6. There is no contra evidence on the side of the respondents to the same. It is therefore clear from the oral evidence of the Eye-witness to the occurrence who deposed as P.W.2 and document Exs.P.1, P.2 and P.6 that the accident occurred only due to negligence of the 1st respondent/driver of the van belonging to the 2nd respondent.

9. The main contention of the appellant is that the Tribunal has wrongly fixed the monthly income of the deceased at Rs.8,000/- and awarded higher compensation. In the case on hand, it is claimed by P.W.1 that her deceased son was carrying on Provisional Store business and also worked as Commission Agent and was earning Rs.1,000/- per day. P.W.1 also stated that in the said commission Agent business, her son was earning Rs.1,00,000/- per year. It is evident from Ex.P.7-Transfer Certificate that at the time of issuance of the certificate, the deceased was doing 3rd year Diploma in Mechanical Engineering. As per Ex.P.15, the deceased was having valid driving license. In the proof affidavit filed by P.W.1, it is stated that the deceased was earning Rs.1,000/- per day from Provision store business and also earned Rs.5,000/- per month by doing Kerosene business and by acting as Commission agent, he was earning Rs.1,00,000/- per year. However, the petitioners have not produced any documents to prove the said income of the deceased. The petitioners produced Exs.P.3 and P.4-Post Mortem certificates, Ex.P.7-Transfer Certificate and the Death certificate of S.Kasimani as Ex.P.13. On the basis of the said documents, age of the deceased is fixed as 39 years. Even though there is no material to show the income of the deceased, considering the fact that the deceased was carrying on multiple business, the Tribunal has assessed the monthly income at Rs.8,000/- per month, and also while considering the age of the deceased as 39 years fixed the multiplier at 16. The Tribunal

further considered the number of dependants of the deceased as three and as such, deducted 1/3rd of the income towards personal expenses and awarded a sum of Rs.10,30,000/-.

10. This Court, while considering the evidence placed by the petitioners before the Tribunal as well as the finding of the Tribunal, is of the view that since there is no evidence to prove the income of the deceased and also while considering the contention of the 2nd respondent/Insurance Company, it is appropriate to fix the notional monthly income of the deceased as Rs.7500/-. Further, it is appropriate to deduct 1/3rd towards personal expenses and applying the correct multiplier of 16, the loss of dependency is calculated as under:-

Notional monthly income = Rs.7,500/-

1/3rd deduction towards personal expenses (2500)

Rs.7500 - 1/3 (2500) = 5000

By applying multiplier of 16,

Rs.5000x12x16=Rs.9,60,000/-.

Thus, a sum of Rs.9,60,000/- is granted as compensation under the head "Loss of dependency".

12. In respect of awarding compensation under conventional heads, as per the Constitution Bench judgment of the Supreme Court reported in 2017 (2) TN MAC 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 Estate = Rs.15,000.00

Loss of consortium = Rs.40,000.00

Funeral Expenses = Rs.15,000.00

Rs.70,000.00

10. Accordingly, the compensation awarded by the Tribunal stands modified as follows:

Sl. No.	Head	Amount granted by the Tribunal	Amount awarded by this Court
1	Loss of Income	10,24,000.00	9,60,000.00
2	Love and Affection	30,000.00	-
3	Funeral Expenses	6,000.00	15,000.00
4	Consortium	10,000.00	40,000.00

Sl. No.	Head	Amount granted by the Tribunal	Amount awarded by this Court
5	Loss of Estate	-	15,000.00
7	Total	10,70,000.00	10,30,000.00

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

- (1) The award of the Tribunal is modified and reduced from Rs.10,70,000/- to Rs.10,30,000/-
- (2) 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.
- (3) The Appellant/Insurance Company is directed to deposit the award amount as ordered by this court within a period of six weeks along with proportionate interest and costs, less the amount, if any already deposited.
- (4) The apportionment of the modified award amount is as under:-
1st respondent, wife 50%.
2nd respondent, minor daughter 40%.
3rd respondent, mother of the deceased 10%.

The share of the minor is directed to be deposited in any one of the nationalised bank till she attains majority. The 1st respondent/Wife and the 3rd respondent/mother are permitted to withdraw the award amount as ordered by this court. The respondents are entitled to withdraw the amount as shown above, less the amount already withdrawn, if any.

- (5) There will be no order as to costs in this appeal.
- (6) Consequently, connected miscellaneous petition is closed.

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Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

1.The Principal District Judge,
Namakkal.

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

+1cc to Mr.A.Thiyagarajan, Advocate Sr.No.12027

+1cc to Mr.J.Chandran, Advocate Sr.No.12741

BR(CO)

sm:25.4.2018

C.M.A.No.1248 of 2013



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