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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.1624 of 2006

1.Raniammal

2.Panneerselvam

3.Thirunavukkarasu

..Appellants/Petitioners

Vs.

1.S.Rajagopalan

2.M/s.National Insurance Co.Ltd.,

Branch Office,

62, TSR Big Street

Kumbakonam-612 001

Tanjore District

..Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, against the order and decree dated 14.11.2005 made in M.C.O.P.No.708 of 2003 on the file of Motor Accident Claims Tribunal, Principal District Court, Namakkal.

For appellants : : Mr.N.Manokaran

For Respondent(s) : : M/s.R.Srividhya for R2
R1-Notice dispensed with.

J U D G M E N T

The Appellants, who are the claimants before the Tribunal, has filed this appeal, challenging the order and decree dated 14.11.2005 made in M.C.O.P.No.708 of 2003 on the file of Motor Accident Claims Tribunal, Principal District Court, Namakkal.

2. For convenience sake, the parties are referred to hereunder according to their litigative status before the Tribunal. It is a fatal case. The case of the Petitioners is that on 12.09.2003 at about 3.15 p.m., while the deceased Thiagarajan was riding his two wheeler bearing Reg.No.TN28-H-6098 in the Karur to Namakkal N.H.7 Road, while going near Nalliyampalayam Pirivu Road, the 1st respondent Lorry bearing Reg.No.TN-51-Z-7277



which was insured with the 2nd respondent came at high speed, dashed against the two wheeler in which the deceased was travelling, causing him fatal injuries, resulting in his death on the spot. The accident occurred due to negligence of the 1st respondent lorry driver alone. The deceased was aged 48 years and employed as Foreman, Grade -I, in TNEB and his monthly income was Rs.11,286/-. The Petitioners who are the wife and children of the deceased were depending on the income of the deceased. Due to his demise, the Petitioners lost the bread winner of the family. Thus the Petitioners sought for a sum of Rs.15,00,000/- as compensation from the respondents.

3. On the other hand, opposing the claim of the Petitioners, by filing counter, the 2nd respondent/Insurance company contends that the accident does not occur in the manner alleged by the Petitioners. The deceased drove the vehicle in intoxicated mood and dashed against the lorry which was parked. As per MVI report, there was no damage to the front side of the Lorry. It will show that the lorry driver was not negligent and lorry did not dash against the two wheeler. Only due to negligent driving of the deceased, under the influence of alcohol, the accident occurred. The claim of the Petitioners about the age, avocation and income of the deceased is false. Thus, the 2nd respondent sought for dismissal of the petition.

4. Before the Tribunal, the Petitioners examined P.W.1 to P.W.3, produced documents Ex.P.1 to Ex.P.11 to prove their claim. On the side of the 2nd respondent, no oral evidence was let in. Court documents Ex.X.1 and Ex.X.2 was marked. The Tribunal, after analyzing the evidence on record, found negligence of the 1st respondent vehicle driver caused the accident, passed an award for a sum of Rs.5,55,544/- payable by the respondents.

5. Being not satisfied with the quantum of the award, the Petitioners/claimants have come forward with the present appeal.

6. The learned counsel for the Petitioners/claimants contends that the Tribunal failed to fix the monthly income of the deceased at Rs.11,286/- and wrongly fixed the take home salary of Rs.5,149/- as monthly income of the deceased. Ex.P.9 and Ex.P.10 clearly proves that the monthly salary of the deceased was Rs.11,286/-. The Tribunal failed to provide for reasonable amount under different heads. The multiplier was not properly adopted. The quantum of award passed by the tribunal is very low. Thus, the Petitioners/claimants sought for enhancement of the award amount by entertaining the appeal.



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7. Per contra, the learned counsel for the 2nd respondent contended that the accident occurred only due to negligence of the deceased and as such, the Petitioners are not entitled for compensation. The amount provided by the Tribunal itself is very excessive. Thus, the 2nd respondent sought for dismissal of the appeal.

8. It is only quantum appeal. Neither side contended the issue of negligence. The Tribunal, on the basis of P.W.2 eye witness account as well as Ex.P.1-FIR in which the Police registered case against the 1st respondent lorry driver and also the final report filed by the Police against the lorry driver as per Ex.P.5, held that the accident occurred only due to negligence of the 1st respondent lorry driver. There is no contra evidence let in by the respondents to contradict the petitioners' claim. Thus, the Tribunal's finding that negligence of the 1st respondent lorry driver alone caused the accident is just and proper and the same needs no interference.

9. The Petitioners stated that the deceased was aged 48 years and by working as Foreman, Grade-I, in TNEB, was earning Rs.11,286/- per month. The driving licence of the deceased is produced as Ex.P.6. The copy of the SSLC Book is produced as Ex.P.11. Copy of Post Mortem Certificate is produced as Ex.P.2.

It is evidence from Ex.P.11 SSLC Book of the deceased that his date of birth is 07.11.1954. Based on the same, his age is fixed as 46 years. For that age group, the multiplier to be applied is '13'.

10. The Petitioners claim that the deceased was earning Rs.11,286/- per month by working as Foreman, Grade-I, in TNEB. To prove the same, P.W.3 who is working as Junior Engineer in TNEB was examined. According to him, the monthly salary of the deceased was Rs.11,286/-. After deductions, the deceased was getting Rs.5,549/- as take home salary. The extract of the salary register of the deceased is produced as Ex.X.1 and Ex.X.2.

11. The tribunal after considering the evidence of P.W.3 and Ex.X.1 and Ex.X.2 documents, fixed the take home pay of the deceased as monthly income and the same is disputed by the Petitioner. Admittedly, the deceased monthly salary was Rs.11,286/-. He was aged 49 years. The multiplier to be applied is '13'. As the number of dependants are three, out of monthly income, 1/3rd has to be deducted towards personal expenses of the deceased. The calculation for loss of dependency is as follows:-

Monthly salary Rs.11,286/-

Add: 30% future prospects (3385)



11,286 + 3385 = 14,671/-

Deduction 1/3rd towards personal expenses (4890)

14,671 - 4890 = Rs.9781.

9781 x 12 x 13 = Rs.15,25,836/-

Thus, Rs.15,25,836/- is awarded under the head "loss of dependency".

Following the Apex Court decision reported in 2017 (2) TN MAC 609 (SC) [National Insurance Co.Ltd., Vs. Pranay Sethi and Others], the compensation towards conventional heads, is as under:-

Loss of consortium - 40,000/-

Funeral expenses - 15,000/-

Loss of Estate - 15,000/-

Add: 15,25,836/-

Total; Rs. 15,95,836/-

Thus, the total award amount comes to Rs.15,95,836/-

The apportionment of the award amount to the appellants/claimants is as under:-

1st appellant/claimant - 40%

Appellants 2 and 3 /claimants 2 and 3 - 30% each.

14. In the result, the Civil Miscellaneous Appeal is Allowed.

(i) The award amount is enhanced to Rs.15,95,836/- from Rs.5,55,544/-.

(ii) The apportionment of the award amount is as under:-

1st appellant/claimant - 40%

Appellants 2 and 3 /claimants 2 and 3 - 30% each.

(iii) The award amount will carry interest at the rate of 7.5% from the date of petition till the date of realisation;

(iv) The second respondent/Insurance company is directed to deposit the entire award amount along with proportionate interest and cost, within a period of six weeks from the date of receipt of a copy of this order.

(v) The appellants/claimants 1 to 3 are entitled to withdraw the same along with accrued interest, less the amount, if any already withdrawn.

(vi) The Tribunal shall pass necessary orders following the appropriate procedure for disbursement of the award amount.

(vii) If necessary, appropriate court fee for the enhanced



award amount shall be payable by the appellants, before obtaining the copy of the decree.

(ix) No costs.

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Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

nvsri

To

1.The Motor Accidents Claims Tribunal,
Principal District Court, Namakkal.

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

+1cc to Mr.N.Manokaran, Advocate, S.R.No.41085

+1cc to Mr.R.Srividhya, Advocate, S.R.No.40802

C.M.A.No.1624 of 2006

MR(CO)
GSP(01/02/2019)