

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.07.2018

CORAM

THE HONOURABLE MR. JUSTICE S.BASKARAN

CIVIL MISCELLANEOUS APPEAL NO.2588 OF 2010

1.Rangammal
2.Raman

.... Appellants/Petitioners

...vs...

1.K.S.Mani
2.M/s.Bajaj Alliance Insurance Co. Ltd.,
No.11 (Office No.6-A), Peoples Park 3rd Floor,
Government Art College Road,
Coimbatore.

.... Respondents/Respondents

This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the Fair and Decretal order dated 26.02.2010 made in MCOP.No.341 of 2007 on the file of the Motor Accident Claims Tribunal/Principal Sub Judge, Gobichettipalayam.

For Appellants : Mr.S.Kamadevan

For 2nd Respondent : Mr.S.Arunkumar
R1-set exparte
before Lower Court

JUDGMENT

Being not satisfied with the quantum of compensation awarded by the Tribunal, dated 26.02.2010 made in MCOP.No.341 of 2007 on the file of the Motor Accident Claims Tribunal/Principal Sub Judge, Gobichettipalayam, the present appeal has been filed by the petitioners/claimants for enhancement of 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 23.04.2007 at about 10.30. p.m., while the deceased Parameshwaran was travelling as pillion rider in the two wheeler bearing Registration No.TN-36-F-4440, from Sathy to Aathani Road, while going near Bannari Amman Engineering College, the first respondent Maruthi Omni Van bearing Registration No.TN-36-K-4064, came in the opposite direction at high speed in a rash and negligent manner dashed against the motor cycle in which the deceased was travelling as pillion rider causing him fatal injuries resulting in his death subsequently in the Hospital. The accident occurred only due to the negligence of the first respondent vehicle driver. At that point of time, the deceased was aged 22 years and earning a sum of Rs.200/- per day by working as agriculture coolie and marriage food contractor. The petitioners, who are the parents of the deceased were depending on his income. Thus, the petitioners sought for a sum of Rs.10,00,000/- 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 second respondent Insurance company filed counter contending that the accident does not occur in the manner alleged by the petitioners. The claim of the petitioners about the age, avocation and income of the deceased is denied. The petitioners to prove the driver of the first respondent vehicle possessed valid licence at the time of accident. There is no mistake on the first respondent vehicle driver and only due to the negligence of the two wheeler rider, the accident occurred. The claim of the petitioners is exorbitant. Thus, the second respondent-Insurance company sought for dismissal of the petition.

5.Before the Tribunal, the petitioners examined P.W.1 to P.W.3, produced documents Ex.P1 to Ex.P8 to substantiate their claim. On the side of the respondents, neither oral nor documentary evidence was let in.

6.The Tribunal, on careful analysis of evidence, found the negligence of the first respondent's Maruthi Van driver alone caused the accident, passed an Award for a sum of Rs.2,41,000/- payable by the respondents to the petitioners. Being not satisfied with the quantum of compensation awarded by the Tribunal, the petitioners/ claimants have come forward with this present appeal.

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

8.The learned counsel appearing for the appellants/claimants contends that the Tribunal failed to appreciate the evidence on record properly and passed an Award for very meager amount. The medical bill was not taken into consideration by the Tribunal. The Tribunal passed an Award without analysing the evidence properly failed to provide just compensation on various heads as sought for by the petitioners. Thus, the petitioners sought for enhancement of the Award amount by entertaining the appeal.

9.Per contra, the learned counsel appearing for the second respondent-Insurance Company contends that the Award passed by the Tribunal itself is on the higher side and there is no need to enhance the award amount. Thus, the second respondent-Insurance Company sought for dismissal of this appeal.

10.It is only quantum appeal. Both sides did not challenge the conclusion of the Tribunal regarding negligence aspect on the basis of P.W.1 oral evidence, the eye witness account of P.W.3 and the contents of Ex.P1 First Information Report as well as Ex.P2 Final Report filed by the police against the first respondent driver that the negligence of the first respondent driver alone caused the accident is just and proper and the same needs no interference.

11.The deceased travelled as pillion rider in the two wheeler bearing Registration No.TN-36-F4440. It is clear from Ex.P3 Motor Vehicle Inspector's report that the rider of the two wheeler possessed valid driving licence. Likewise, it is clear from Ex.P4 Motor Vehicle Inspector's report that the first respondent van driver also possessed valid driving licence. It is clear from both Ex.P3 and Ex.P4 that there was no mechanical defect in both the vehicle. Therefore, as the first respondent driver negligence alone caused the accident and the said vehicle was insured with the second respondent Insurance Company they are jointly and severally liable to pay the compensation.

12.The 2nd petitioner who deposed as P.W.1 stated that his deceased son was aged 22 years and he was earning a sum of Rs.6,000/- per month by working as an agriculture coolie and marriage food contractor. The petitioners have not produced any document regarding the age of the deceased. It is evident from Ex.P6 Postmortem Certificate as well as Ex.P7 Death Certificate that the deceased was aged 25 years. In such circumstances, the Tribunal is justified in fixing the age of the deceased as 24 years.

13.Even though, the petitioners claimed that the deceased was earning a sum of Rs.200/- per day, there is no proof for the same, the Tribunal fixed his income at Rs.100/- per day.

Pointing it out, the learned counsel appearing for the petitioners contended that the same is very low. As such, keeping in mind the fact that the deceased was employed as agricultural coolie, it will be appropriate to fix his notional monthly income at Rs.4,000/-. The deceased being aged 24 years, the correct multiplier to be applied is 17. However, the Tribunal has considered the age of the petitioners, who are the parents of the deceased and wrongly applied the multiplier 12. As the deceased was bachelor, 50% of the amount was deducted towards personal expenses. As such, the loss of dependency is calculated as follows:-

Rs.4,000/- - deducted 50% = Rs.2000/- x 12 = Rs.24,000/- x 17 = Rs.4,08,000/-.

14. 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, and funeral expenses, this Court is inclined to accord the compensation as under:-

Loss of Estate	=	Rs. 15,000.00
Funeral Expenses	=	Rs. 15,000.00
Loss of love and affection	=	Rs. 20,000.00

	Rs.	Rs. 50,000.00

15. 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	2,16,000.00	4,08,000.00
2.	Loss of Estate	2,500.00	15,000.00
4.	Loss of love and affection	20,000.00	20,000.00
5.	Funeral Expenses	2,500.00	15,000.00
	Total	2,41,000.00	4,58,000.00

Accordingly, the amount of Rs.2,41,000/- Awarded by the Tribunal is modified and the same is enhanced to Rs.4,58,000/-.

16.In the result, the Civil Miscellaneous Appeal is partly allowed. No costs. The amount of Rs.2,41,000/- awarded by the Tribunal dated 26.02.2010 made in MCOP.No.341 of 2007 on the file of the Motor Accident Claims Tribunal/Principal Sub Judge, Gobichettipalayam is enhanced to Rs.4,58,000/-. The Second respondent-Insurance Company is directed to deposit the entire enhanced award amount of Rs.4,58,000/- with interest at the rate of 7.5% p.a. from the date of claim petition till the date of deposit within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the petitioners/claimants are entitled to equal share. The petitioners/claimants are permitted to withdraw their respective share with accrued interest by filing necessary application before the Tribunal.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

rrg

To

The Sub judge,
Motor Accident Claims Tribunal,
Gobichettipalayam.

+1cc to Mr.S.Kamadevan, Advocate, S.R.No.42616
+1cc to Mr.S.Arunkumar, Advocate, S.R.No.42838

C.M.A.No.2588 of 2010

GJ(CO)
GSP/27/07/18

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