

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 05.02.2018

Coram

The Honourable Mr. Justice S.BASKARAN

Civil Miscellaneous Appeal No.2182 of 2013

1.Mrs.Beula Juliet

2.R.Devadass

3.Mrs.D.Charlet

4.Baby H.Jefflin Jose minor

Rep. by Mrs.T.Beula Juliet, the
first appellant herein.

.... Appellants /Petitioners

...vs..

1.K.Velu

2.United India Insurance Co., Ltd.,

Chandra Plaza. 1st Floor,

No.48, Arcot Road,

Saligramam, Chennai-600 093.

.... Respondents/Respondents

This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the Fair and Decreetal order dated 22.02.2013 made in MCOP.No.729 of 2009 on the file of the Motor Accident Claims Tribunal/(Chief Small Causes Court), Chennai.

For Appellants : Mr.S.Ravikumar

For Respondents : Mr.D.Baskaran for R-2

JUDGMENT

This civil miscellaneous appeal arises out of the Fair and Decreetal order dated 22.02.2013 made in MCOP.No.729 of 2009 on the file of the Motor Accident Claims Tribunal/(Chief Small Causes Court), Chennai.

2. For 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 20.02.2009 at about 20.10 hours, when the deceased was riding his motor cycle

bearing Registration No.TN-10-J-9303, in Poonamallee - Avadi Road, proceeding from South to North, near Vasantham Nagar, the Autorickshaw bearing Registration No.TN-22-AK-6018, came in the same direction at high speed and dashed against the motor cycle, in which, the deceased was traveling. Consequently, the deceased fell down and sustained multiple grievous injuries and died on the spot. Thus, the driver of the first respondent Autorickshaw alone is responsible for the accident and as the insurer, the second respondent is liable to pay the compensation. The petitioners further stated that the deceased was aged about 25 years at the time of accident and he was engaged as attender in room service in a Star Hotel, Chennai, earning a sum of Rs.10,000/- per month. Due to the death of the deceased, the petitioners have lost the contribution of the family from the deceased and therefore they claims 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 second respondent Insurance company filed counter stating that the petitioner has to prove the manner of accident and also the Autorickshaw was involved in the accident. It is further stated that the petitioner has to prove the vehicle involved in the accident was insured with the second respondent Insurance Company. Further, the second respondent contends that the petitioner has to prove the age, avocation and monthly income of the deceased. Hence, the second respondent seeks dismissal of the petition.

5. Before the Tribunal, the first petitioner examined herself as P.W.1 and other three witnesses were examined as P.Ws.2 to P.W.4 and produced documents Ex.P1 to Ex.P13 to substantiate their claim. On the side of the respondents, neither oral evidence nor documentary evidence was produced.

6. The Tribunal, after considering the pleadings, oral and documentary evidence, concluded that the accident occurred only due to the rash and negligent driving of the driver of the offending vehicle owned by the first respondent and insured with the second respondent and directed the respondents jointly and severally to pay a sum of Rs.13,66,728/- as compensation. The Tribunal has passed the award as follows:-

Pecuniary Loss	Rs.	12,16,728.00
Loss of consortium	Rs.	1,00,000.00
Loss of love and affection	Rs.	40,000.00
Funeral Expenses	Rs.	10,000.00

Total Rs. 13,66,728.00

Being not satisfied with the quantum of compensation awarded by the Tribunal, the petitioners/claimants filed this present appeal seeking enhancement of Award amount.

7. I have heard the learned counsel appearing for the appellants and the learned counsel appearing for the second respondent and perused the materials available on record.

8. The learned counsel appearing for the appellants/claimants/petitioner contended that the Tribunal ought to have awarded a sum of Rs.20,00,000/-, as compensation, but, the award passed by the Tribunal is on the lower side. Further the evidence and materials placed before the Tribunal was not properly considered. As the deceased was working as room boy, the notional income should have been fixed at Rs.10,000/- per month. Hence, the petitioners seek to enhance the award amount by entertaining the appeal.

9. Per contra, the learned counsel appearing for the second respondent Insurance company contended that there is no proof produced by the petitioners regarding the income of the deceased and further the accident occurred only due to the negligence on the part of the deceased, the petitioners are not entitled to any compensation from the second respondent. Thus, the second respondent insurance company seeks dismissal of the appeal.

10. It is evident from the evidence of P.W.2 eye witness to the occurrence that the Autorickshaw came from behind at high speed and dashed against the motor cycle, in which, the deceased was travelling causing injuries to the deceased. It is evident from P.W.2 deposition that the motor cycle of the deceased was proceeding on the left side of the road and it is only the Autorickshaw coming from behind at high speed dashed against the deceased. Thus, P.W.2 has clearly stated about the manner of accident and the same was not contradicted by any oral evidence on the side of the respondents. Further Ex.P2 charge sheet and Ex.P8 First Information Report clearly proves that the driver of the first respondent vehicle alone is responsible for the accident. Ex.P1 Rough Sketch of the occurrence spot also supported the claim of the petitioners. In such circumstances, the finding of the Tribunal that the negligence on the part of the first respondent vehicle driver alone is responsible for the accident is justifiable and the same needs no interference.

11. It is evident from Ex.P3 Postmortem Certificate that the deceased died due to the head injury suffered by him in the accident. The same is not disputed. As such it is clear that the victim died because of the injuries suffered by him in the accident caused by the first respondent vehicle driver.

12. The petitioners claims that the deceased was engaged as room boy in Le Meridian Hotel, Chennai, earning a sum of

Rs.10,000/- per month. The petitioners produced the catering course certificate of the deceased as Ex.P6, and Identity card of the deceased as Ex.P7, Diploma certificate of the deceased as Ex.P9 to prove the avocation and income of the deceased. The petitioners examined the Senior Human Resources Co-ordinator of the Le Meridian Hotel as P.W.4, who deposed that the deceased was working in their concern and he was getting a monthly salary of Rs.6,500/-. P.W.4 produced the copy of the appointment order of the deceased as Ex.P11 and salary certificate of the deceased as Ex.P12 and Authorisation Letter to give deposition before the Court as Ex.P10. It is evident from the oral evidence of P.W.4 and the said documents produced by him that the deceased obtained Diploma in Hotel and catering management and he was working as room boy earning a sum of Rs.6,500/- per month.

13. On the other hand, there is no contra evidence let in by the respondents to prove the same. Further, it is claims that the deceased used to get additional income by doing other works in the Hotel itself. In such circumstances, it will be appropriate to fix the notional income of the deceased at Rs.7,500/- per month. According to the petitioners, the deceased was aged about 25 years and the same is evident from Ex.P3 Postmortem Certificate of the petitioner. In such circumstances, the correct multiplier to be applied is 18. As such, the deceased would have earned a sum of Rs.7,500/- p.m., and he is entitled to future prospectus at 40%. Thus, Rs.7,500/- + 40% future prospectus = Rs. 10,500/- would be his earning per month. There are four petitioners, who claims to be a dependents on the income of the deceased. Hence, 1/3rd amount is to be deducted towards his personal expenses. As such the loss of income calculated is as follows:- Rs.10,500/- - 1/3rd amount(towards personal income) of Rs.,3500/- = Rs.7,000/- x 12 = Rs.84,000/- x 18 = Rs.15,12,000/-. Thus, the loss of income comes to Rs.15,12,200/-.

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, 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

15. Accordingly, the compensation warded by the Tribunal is modified as follows:-

S1 No	Heads	Amount awarded by the Tribunal	Awarded by this Court
1.	Pecuniary Loss of income	12,16,728.00	15,12,200.00
2.	Loss of consortium	1,00,000.00	40,000.00
3.	Loss of love and affection	40,000.00	-
4.	Funeral Expenses	10,000.00	15,000.00
5.	Loss of Estate	-	15,000.00
	Total	13,66,728.00	15,82,200.00

16. In view of the above modification, the civil miscellaneous appeal is partly allowed with costs. The second respondent/Insurance Company is directed to deposit the entire enhanced award amount of Rs.15,82,200/- with interest at the rate of 7.5% p.a. 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 deposits, the first and fourth petitioners/claimants are entitled to 40% each of the award amount and the petitioners/claimants 2 and 3 are entitled to 10% each of the award amount. The petitioners/claimants 1, 2 and 3 are permitted to withdraw their respective share with accrued interest by filing necessary application before the Tribunal. The fourth petitioner being minor, her share amount shall be kept in a fixed deposit in any one of the Nationalized Bank till she attain majority and her mother the first petitioner herein is permitted to withdraw the accrued interest once in three months till the minor child attain majority.

Sd/-

Assistant Registrar (CS III)

//True copy// सत्यमेव जयते

Sub Assistant Registrar

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To

1.The Motor Accident Claims Tribunal
Chief Judge, Court of Small Cases,
Chennai.

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2.The Record Keeper,
VR Section, High Court,
Madras.

+1cc to Mr.K.Varadha Kamaraj, Advocate SR.No.8234

+1cc to Mr.D.Baskaran, Advocate SR.No.8299

C.M.A.No.2182 of 2013

VGII(CO)
GN(03/04/2018)



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