IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.3676 of 2010

1.M.Arumugam
2.Velmani
3.Chitra ..Appellants/Petitioners

Vs.

1.K.Arumugam
2.The Branch Manager
Oriental Insurance Company Ltd.,
D.O.Shan Complex,
6/990-B, Bazar Road
Mattancherry
Cochin, Kerala ..Respondents.

Civil Miscellaneous Appeal filed against the judgment and decree dated 12.01.2010 passed in M.C.O.P.No.253 of 2007 on the file of Motor Accidents Claims Tribunal, Principal District Court at Krishnagiri.

For appellants : : Mr.M.Sriram

for Respondents : : Mr.J.Chandran for R2
R1-Exparte.

J U D G M E N T

This Civil Miscellaneous Appeal is filed by the appellants/Petitioners, challenging the judgment and decree dated 12.01.2010 passed in M.C.O.P.No.253 of 2007 on the file of Motor Accidents Claims Tribunal, Principal District Court at Krishnagiri.

2. For the sake of convenience, the parties are referred to as per their litigative status before the Tribunal. It is a fatal case. The case of the petitioners is that on 06.11.2006 while the deceased Veerasamy was travelling as Cleaner in the Lorry bearing Reg.No.KA-01-B-9154 belonging to the 1st respondent and insured with the 2nd respondent from Tumkur to Salem, due to high speed in which the vehicle was driven by its driver, at about 22.00 hours, while going in M.D.Pura Ring Road,

Bangalore, the driver lost control and dashed against the parked Lorry bearing Reg.No.MED-4531 and in the impact, the deceased Veerasamy who was sitting on the left side of the Lorry, suffered fatal injuries and died on the spot. The Petitioners, who are the Parents and sister of the deceased are dependants and sought compensation of Rs.10,00,000/- 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 driver of the 1st respondent Lorry did not possess valid driving licence. The claim of the Petitioners about the age, avocation and income of the deceased are not true. The 1st respondent lorry bearing Reg.No.KA-01-B-9154 was not insured with the 2nd respondent. The accident did not occur in the manner alleged by the Petitioners. The accident occurred due to the negligence of the driver of the Lorry bearing Reg.No.MED-4531 who parked the vehicle in the middle of the road, without any signal. The owner and insurer of the said Lorry bearing Reg.No.MED-4531 are not impleaded and as such, the petition is bad for non-joinder of necessary parties. The claim of the Petitioners is exorbitant. Thus, the 2nd respondent-Insurance company sought for dismissal of the Claim Petition.

4. Before the Tribunal, the Petitioners examined P.W.1 and P.W.2 and produced documents Ex.P.1 to Ex.P.3 to prove their claim. On the side of the respondents, neither oral nor documentary evidence was let in. The Tribunal, on the basis of available evidence on record, found negligence on the 1st respondent Lorry driver alone caused the accident and passed award for a sum of Rs.2,86,000/- payable by the respondents 1 and 2 to the Petitioners.

5. Being not satisfied with the quantum of the award passed by the Tribunal, the petitioners/claimants have come forward with the present appeal.

6.Contentions raised on the side of the appellants/petitioners:-

The learned counsel for the petitioners/claimants contended that the Tribunal erred in fixing monthly income of the deceased at Rs.3000/- and the same is very low. The Tribunal wrongly took into account the age of the parents of the deceased while adopting the multiplier. The Tribunal ought to have applied multiplier '18' as the deceased was aged 20 years. The Tribunal instead of deducting 50% of the amount towards personal expenses of the deceased ought to have deducted only 1/4th of the income. The amount awarded under other heads is very low. Thus, the Petitioners/claimants sought for enhancement of the award amount by entertaining the appeal.

7. Contentions raised on the side of 2nd respondent/Insurance company:-

Per contra, the learned counsel for the 2nd respondent/Insurance company contends that the claim of the Petitioners is exorbitant and the award passed by the Tribunal itself is on the higher side. There is no need to enhance the quantum of the award passed by the Tribunal. Thus, the 2nd respondent/Insurance company sought for dismissal of the appeal.

8. The Main Issue in the Appeal:-
It is only quantum appeal. The 2nd respondent/Insurance company has not filed any appeal or cross objection challenging the award passed by the Tribunal.

9. Discussion regarding Negligence aspect:-
The Tribunal on the basis of eyewitness account of the accident given by P.W.2 as well as on the basis of Ex.P.1-FIR registered against the driver of the 1st respondent Lorry, held that negligence of the 1st respondent Lorry driver alone caused the accident. The 2nd respondent has not let in any evidence to contradict the petitioners' claim. Further, the driver of the 1st respondent vehicle was not examined before the Tribunal. As such, the conclusion of the Tribunal that negligence of the 1st respondent Lorry driver alone caused the accident is based on proper appreciation of evidence on record and the same needs no interference.

10. Discussion regarding Quantum of award:-
(i) Age:- The father of the deceased deposed as P.W.1 and stated that his son deceased Veerasamy was aged 20 years at the time of accident and by working as Cleaner was earning Rs.5000/- per month. The Petitioners have not produced any documents about the age of the deceased. Hence, on the basis of Ex.P.3-Post Mortem Certificate and Ex.P.2-Death Certificate of the deceased Veerasamy, his age is fixed as 20 years.

(ii) Multiplier:- The Tribunal while applying multiplier considered the age of the mother of the deceased and fixed multiplier '15'. The mother of the deceased who is the 2nd petitioner is stated to be 40 years old and accordingly, the above said multiplier was adopted by the Tribunal. The same is not correct. Following the Ruling of the Apex court reported in 2009 (2) TN MAC 1 (SC) in Smt.Sarla Verma and Others Vs. Delhi Trasnport Corporation and Another, it is only the age of the deceased that is to be taken into account. The deceased was 20 years old at the time of the accident, therefore, the correct multiplier to be applied herein is '18'.

(iii) Deductions:- The deceased being bachelor, 50% of the income has to be deducted towards personal expenses. Even though the petitioners/claimants contended that only 1/4th of the income has to be deducted, the same cannot be entertained. The Tribunal has correctly deducted 50% of the income towards personal expenses of the deceased and the same is confirmed.

(iv) Income:- The deceased was stated to be employed as a Cleaner in the Lorry and earning Rs.5000/- per month. However, there is no proof for the same. As such, the Tribunal, keeping in mind the fact that the accident occurred in the year 2006, fixed the monthly notional income of the deceased at Rs.3000/-. The same is just and proper.

(v) Future Prospects:- The deceased was aged 20 years and employed as Cleaner in the Lorry. Hence, it will be appropriate to add 40% of the income towards Future Prospects.

(vi) Loss of Dependency:- To arrive at the loss of dependency to the family of the deceased Veerasamy, the calculation is as under:-

Notional Monthly Salary - Rs.3000/-
Add:- 40% Future Prospects :- 1200/-
Rs.3000/- + 1200 = Rs.4200/-
Deduction 50% towards personal expenses (2100)
Rs.4200/- - Rs.2100/- = Rs.2100/-
By applying multiplier '18' :- 2100 x 12 x 18 = Rs.4,53,600/-.

(vii) Compensation under conventional heads:- Considering the facts and circumstances of the case, it will be appropriate to confirm the award Rs.10,000/- under the head "Loss of Estate" and Rs.3,000/- under the head "Transport expenses". However, it will be appropriate to award Rs.15,000/- under the head "Funeral expenses".

11. Except for the above modification, this court finds no ground to interfere with the award passed by the Tribunal. Accordingly, the modified compensation payable to the appellants/petitioners is as under:-

Sl.No.	Heads	Amount awarded by the Tribunal	Amount awarded by this Court
1.	Loss of dependency	Rs.2,70,000/-	Rs.4,53,600/-.
2.	Loss of estate	Rs. 10,000/-	Rs. 10,000/-
3.	Transport expenses	Rs. 3,000/-	Rs. 3,000/-
4.	Funeral expenses	Rs. 3,000/-	Rs. 15,000/-
	Total	Rs. 2,86,000/-	Rs. 4,81,600/-

12. In the result,

(i) The Civil Miscellaneous Appeal is Partly Allowed;

(ii) The appellants/Petitioners are entitled to award amount of Rs.4,81,600/- [Rupees Four Lakhs Eighty one thousand six hundred only] with 7.5% interest per annum from the date of petition till the date of realisation.

(iii) The 2nd respondent/Insurance company is directed to deposit the enhanced award amount along with accrued interest and cost within a period of six weeks from the date of receipt of a copy of this order, less the amount already deposited, if any. On such deposit, the appellants/Petitioners are permitted to withdraw the same, by filing necessary application before the Tribunal, in the following apportionment. 1st petitioner - 40%; 2nd petitioner - 40%; 3rd petitioner - 20%. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

nvsri

To

The Principal District Judge,
Motor Accident Claims Tribunal,
Principal District Court at Krishnagiri.

+1cc to Mr.J.Chandran, Advocate Sr.31696
+1cc to Mukund R.Pondiyan, Advocate Sr.32224

C.M.A.No.3676 of 2010

gmr[co]
srg 21/06/2018