IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.3050 of 2013

1.Parthiban
3.Saravanan (Minor)
Rep. By His brother Parthiban ..Appellants/ Petitioners

-Vs-

1.Ramasamy

2.M/s.Vishwanathan & Co.
No.76/F-1, Logamanya Street
R.S.Puram, Coimbatore.

3.United India Insurance Company Ltd.,
R.S.Puram, Coimbatore.

(Respondents 1&2 are already set exparte before the tribunal. Hence notice dispensed with in this appeal) ..Respondents/Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, against the Judgment and decree dated 30.07.2010 made in M.C.O.P.No.921 of 2005 on the file of Motor Accident Claims Tribunal, Additional Sub Court at Tiruppur.

For appellants : : Mr.MA.P.Thangavel
For Respondents : : Mr.N.Vijayaraghavan for R3.
R1 and R2-Exparte.

J U D G M E N T

The Appellants are the Petitioners and filed this appeal challenging the Judgment and decree dated 30.07.2010 made in M.C.O.P.No.921 of 2005 on the file of Motor Accident Claims Tribunal, Additional Sub Court at Tiruppur.

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 16.07.2005 at 14.30 hours, as the deceased was proceeding in the two wheeler bearing Reg.No.TAC 383 near RVS College, Sahaya Annai Nagar, Sulur, the 1st respondent Lorry bearing Reg.No.TN-37-Q-9599 came at high speed, dashed against the two wheeler in which the deceased was going, causing him fatal injuries, resulting in his death. The negligence of the said Lorry driver alone caused the accident. The deceased was aged 45 years and he was earning Rs.3500/- per month, by working as Security in a Private Company, apart from getting Rs.3000/- per month as Ex-serviceman Pension. The Petitioners who are the sons of the deceased have lost the bread winner of the family resulting in the loss of love and affection as well as financial loss. Hence the Petitioners seeks a sum of Rs.5,00,000/- as compensation from the respondents.

3. On the other hand, opposing the claim of the Petitioners, by filing counter, the 3rd respondent/Insurance company contends that the accident occurred only due to negligence of the deceased. The Lorry was not driven rashly by the 1st respondent at the time of the accident. The deceased contributed to the accident. The age, occupation and income of the deceased is not admitted. The claim of the Petitioners is highly excessive. The 3rd respondent seeks 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.8 to prove their claim. The respondents examined R.W.1, but no document was produced. The Tribunal, after analysing the evidence on record, found negligence of the 1st respondent Lorry driver alone caused the accident, passed an award for a sum of Rs.25,000/- payable by the respondents to the Petitioner. Aggrieved over the said finding of the Tribunal, the Petitioners/claimants have come forward with the present appeal.

5. Heard both sides and perused the records carefully.

6. The learned counsel for the appellants/Petitioners contends that the Tribunal failed to consider the evidence of P.W.2 who is the father in law of the deceased, stating clearly that his daughter left the matrimonial home and also produced Ex.P.4-Release Deed executed by his daughter Selvi who is the mother of the Petitioners/Appellants herein. The Tribunal, without considering the evidence of P.W.1 and P.W.2 and contents of Ex.P.4-document, passed an award for a sum of Rs.25,000/- holding that without impleading the wife of the deceased, compensation cannot be awarded. The conclusion of the Tribunal that the deceased was receiving pension from Army and as such, the Petitioners have not suffered any loss of income due to the death of the deceased is not proper. The amount awarded by the Tribunal is very nominal. The Petitioners are entitled for

compensation under various conventional heads. Thus, the Petitioners/claimants seeks to enhance the quantum of the award by entertaining the appeal.

7.1. Per contra, the learned counsel for the 3rd respondent/Insurance company contends that the mother of the Petitioners herein has not been impleaded in the proceedings and as such, the petition is bad for non-joinder of necessary parties. The amount awarded by the Tribunal is appropriate. The Petitioners are not dependant on the deceased. Thus, the 3rd respondent seeks for dismissal of the appeal.

7.2. The Petitioners who are the sons of the deceased have come forward with the claim Petition. The Tribunal, considering the evidence on record held that the wife of the deceased/the mother of the petitioners is not added as Party to the Proceedings and as such, no loss of income can be assessed and on that ground, passed an award granting only Rs.5000/- towards funeral expenses and Rs.20,000/- towards loss of affection, totally Rs.25,000/- to the Petitioners. Pointing it out, the learned counsel for the Petitioners contends that the Tribunal is not justified in refusing to pass award providing for loss of dependency to the Petitioners who are the minor sons. The 1st Petitioner who deposed as P.W.1 categorically stated that his mother left his deceased father and is living with somebody else. The grand father of the Petitioners and father of deceased Mohanraj's wife who deposed as P.W.2 clearly stated that his daughter was given in marriage to the deceased Mohanraj, but she went away with some one else. P.W.2 also produced release deed executed by his daughter/Mother of the Petitioners as Ex.P.4. Considering the above said factors, the contention of the Petitioners that they are entitled to be provided for loss of dependency is to be accepted and the finding of the Tribunal contrary to the same is unsustainable.

8. The Petitioners examined eyewitness to the occurrence as P.W.3 and he clearly stated that on 16.07.2005 while he was coming back after taking lunch at Mercy hotel at about 1 pm, he saw a two wheeler going from west to east, and a Lorry which came from east to west, in high speed, dashed on the two wheeler and caused serious injuries to the rider of the two wheeler. The Police also registered Ex.P.1-FIR against the driver of the said lorry only. On the other hand, no contra evidence was let in by the respondents to disprove the Petitioners' claim. The 1st respondent driver is not examined. In such circumstances, on the basis of P.W.3 evidence, which is corroborated by Ex.P.1-FIR, the Tribunal has correctly concluded that the negligence of the 1st respondent driver only caused the accident and the same needs no interference.

9. P.W.1 states that the deceased was aged 45 years at the time of the accident. However, there is no proof produced for the same. As such, on the basis of Ex.P.8-Post Mortem Certificate and Ex.P.2-Death Certificate, his age is fixed as 46 years.

10. The Petitioners stated that their father was earning Rs.3500/- by working as Security in a Private company and Rs.3000/- as pension from Army. The Petitioners produced Pension Certificate as Ex.P.6 and salary certificate as Ex.P.7. However, the employer of the deceased was not examined. As such, the salary certificate cannot be accepted on its face value. However considering the overall aspects, it will be appropriate to fix the monthly income of the deceased at Rs.5000/- who was aged 46 years. Further, following the decision of 2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and others], it will be appropriate to add 25% of the income towards future prospects. Considering the age of the deceased, following the Ruling reported in 2009(2) TN MAC 1 (SC) [Sarla Verma Vs. Delhi Transport Corporation and another], the multiplier to be adopted herein is '13' and taking note of the number of dependants of the deceased, 1/3rd of the income is to be deducted towards personal expenses of the deceased. Thus, the calculation for loss of dependency is as under:-

Monthly salary - Rs.5000/-
Add : 25% towards future prospects - 1250
Rs.5000 + 1250 = 6250
Deduction : 1/3rd towards personal expenses of the deceased.
6250 - 1/3rd (2083) = 4167
4167 x 12 x 13 = Rs.6,50,052/-.

The Petitioners are young sons of the deceased and following the Ruling reported in CDJ 2018 SC 083 [Munusamy and others Vs. The Managing Director, Tamil Nadu State Transport Corporation (Villupuram) Ltd.] they are entitled to Rs.25,000/- each towards loss of love and affection. Further, following the Pranay sethi case [2017 (2) TN MAC 609 (SC)], the claimants are entitled to Rs.15,000/- towards "loss of estate", Rs.15,000/- towards "funeral expenses". They are also entitled for Rs.10,000/- towards "Transportation". In view of the foregoing discussion, the modified award amount is as under:-

Sl.No.	Heads	Amount awarded by the Tribunal	Amount awarded by this Court
1.	Loss of dependency	---	6,50,052/-.
2.	Loss of love and affection	Rs.20,000/-	50,000/-
3.	Funeral expenses	5,000/-	15,000/-
4.	Loss of estate	---	15,000/-

Sl.No.	Heads	Amount awarded by the Tribunal	Amount awarded by this Court
5.	Transportation	---	10,000/-
	Total	Rs.25,000/-	Rs.7,40,052/- rounded off to Rs.7,40,000/-.

11. In the result,

(i) This Civil Miscellaneous Appeal is Allowed.

(ii) The quantum of the Award is enhanced from Rs.25,000/- to Rs.7,40,000/-.

(iii)The award amount will carry interest at the rate of 7.5% per annum from the date of petition till the date of realisation. However, the appellants/claimants are not entitled to interest for the period of delay of 507 days in filing the appeal. [vide order dated 26.08.2013 in M.P.No.3 of 2013 in CMA.SR.No.69516 of 2012].

(iv) The appellants are directed to pay the necessary court fee for the enhanced award amount, within two weeks from the date of receipt of copy of the Judgment.

(v) The 3rd respondent/Insurance company is directed to deposit the entire 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, if any already deposited.

(vi) On such deposit, the appellants/claimants are entitled to withdraw the same in equal proportion.

No costs.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

nvsri

To

1. The Additional Subordinate Judge,
   Motor Accident Claims Tribunal, Tiruppur.

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

+ 1 cc to Mr.M.B. Gopalan, Advocate Sr.51989

+ 1 cc to M/s. Ma.P. Thangavel, Advocate Sr.57712

C.M.A.No.3050 of 2013

RSI(CO)
EU(01/11/2018)