

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.3081 of 2013

- 1.K.V.Ramasamy
- 2.Pushpalatha
- 3.Lavanya

..Appellants/Claimants

Versus

1. R.Pandian
(Set exparte before tribunal)
2. Reliance General Insurance Co.,Ltd.,
Sri Laxmi Complex,
1st Floor, Bharathi Street,
Omalur Main Road,
Swarnapuri, Salem.

..Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988 against the judgment and decree dated 25.01.2012 made in M.C.O.P.No.61 of 2009 on the file of the Motor Accident Claims Tribunal, Additional District Judge, Fast Track Court, Namakkal.

For Appellants : Mr.MA.P.Thangavel

For Respondents : Mr.N.Vijayaraghavan [for R2]

J U D G M E N T

The petitioners/appellants have filed this appeal against the judgment and decree dated 25.01.2012 made in M.C.O.P.No.61 of 2009 on the file of the Motor Accident Claims Tribunal, Additional District Judge, Fast Track Court, Namakkal.

2. For the sake of convenience, the parties are referred to hereunder according to their litigative status before the Tribunal.

3. The case of the petitioners is that on 12.09.2008 at about 2.00 p.m while the deceased Rajammal was travelling as a pillion rider in the two wheeler bearing Registration No.TN-28-K-4214 driven by one Natarajan in Thuraiyur Main Road from West-East near Ponni Gas Godown - Shanthi Tea Stall, a Mini door

Tempo bearing Registration No.TN-34-B-6201 came at high speed in the opposite direction, dashed against the two wheeler in which the deceased was travelling causing her grievous head injury, which subsequently resulted in her death. The deceased Rajammal was aged 46 and she was employed as a Junior Telecom Officer in BSNL, Namakkal, earning Rs.25,000/- per month. Her death has caused mental agony and loss of income to the petitioners, who are the husband and children of the deceased. Hence, they seek a sum of Rs.35,00,000/- as compensation from the respondents who are the owner and insurer of the offending vehicle.

3. On the other hand, opposing the claim of the petitioners by filing counter, the 2nd respondent/Insurance Company denies the age, avocation and income of the deceased. The 2nd and 3rd petitioners are married and living separately and they are not dependant on the deceased. The accident did not occur as alleged by the petitioners. The rider of the two wheeler, without noticing the vehicle that has been coming in the opposite direction, suddenly swerved his two wheeler and came to the centre of the road, resulting in the accident. The owner and the insurer of the two wheeler bearing Registration No.TN-28-K-4214 need to be impleaded as respondents in the claim petition. The claim of the petitioners is exorbitant. As the rider of the two wheeler alone is responsible for the accident, the 2nd respondent/Insurance Company is not liable to pay any compensation. Hence, the 2nd respondent/Insurance Company seeks dismissal of the appeal.

4. Before the Tribunal, the 1st petitioner examined himself as P.W.1, the eye-witness to the occurrence as P.W.2 and the employer of the deceased as P.W.3. The petitioners also produced Exs.P.1 to P.6 and Ex.X1 document to prove their claim. On the side of the respondents neither oral nor documentary evidence were let in. The Tribunal, after considering the available evidence on record, found that the 1st respondent tempo van driver's negligence alone caused the accident, awarded a sum of Rs.11,64,000/- as compensation to the petitioners. Being not satisfied with the quantum of the award, the petitioners/claimants have come forward with the present appeal.

5. Heard both sides and perused the available materials on record.

6. The learned counsel for the petitioners/claimants/appellants contends that the deceased was aged only 46 and by working as Junior Telecom Officer, BSNL, Namakkal, she was earning Rs.23,930/- per month as per Ex.X1, but the Tribunal wrongly fixed the monthly income as Rs.10,567/-; the Tribunal also failed to provide for 30% increase in income as future prospectus and deduction of personal expenses ought to have been done at 1/4th, instead of

1/3rd as done by the Tribunal; the amount awarded under other heads is very low; hence, the petitioners/claimants seek to entertain the appeal and enhance the quantum of the award passed by the Tribunal.

7. Per contra, the learned counsel for the 2nd respondent/Insurance Company contends that the Tribunal ought to have fixed contributory negligence on the rider of the two wheeler on the basis of available evidence, but failed to do so; the Tribunal, without properly appreciating the evidence on record, awarded a higher amount as compensation; thus, the 2nd respondent/Insurance Company seeks to dismiss the appeal.

8. The petitioners claimed that the deceased Rajammal while travelling as a pillion rider in the two wheeler met with the accident on 12.09.2008 at 2.00 p.m., and the same occurred due to the rash and negligent driving of the driver of the tempo traveller belonging to the 1st respondent. The eye-witness to the occurrence, P.W.2, clearly stated about the manner of the accident. According to P.W.2 as he was riding the two wheeler near Ponni Gas Godown on the left side of Thuraiyur Main Road, the 1st respondent's vehicle bearing Registration No.TN-34-B-6201 came in the opposite direction at very high speed and dashed against the two wheeler. The 2nd respondent/Insurance Company has not chosen to let in any oral or documentary evidence to contradict the version stated by P.W.2. Further, the police have registered Ex.P.1 - F.I.R against the driver of the said tempo van only. Further more, nothing contrary is elicited in the cross-examination of P.W.2 to disbelieve his version. As such, the finding of the Tribunal that the negligence on the part of the driver of the 1st respondent's vehicle alone, caused the accident, is just and proper and the same needs no interference at the hands of this Court.

9. The husband of the deceased, who deposed as P.W.1, stated that his wife Rajammal died only due to the injuries suffered by her in the accident. It is clear from Ex.P.2 - Post mortem certificate and Ex.P.3 - Inquest Report that the deceased Rajammal suffered injury in the above said accident and subsequently died in the hospital, due to the effect of injuries suffered by her. According to P.W.1, his wife, the deceased Rajammal was working as the Junior Telecom Office in BSNL, Namakkal, earning Rs.23,930/- per month with bright promotional prospects which would have enabled her to get much higher salary in future.

10. To substantiate the claim about the monthly income of the deceased, the petitioners examined P.W.3 the Junior Manager of BSNL who stated that the deceased was having further period of 12 years 2 months 18 days of service to her credit and had she been alive, she would have got promotion as Sub Divisional Engineer in the year 2009 and further higher promotions during

2013 and 2019. P.W.1 also produced Ex.X.1 - series documents, which is the salary certificate of the deceased Rajammal which clearly prove that the gross salary of the deceased was Rs.28,231/- during the month of August 2008.

11. The Tribunal, after considering Ex.X.1 document, found that the family of the petitioners is getting basic family pension with Dearness Allowance totalling to Rs.17,664 and as such, the fixed net loss of income at Rs.10,567/- per month. In the said amount, the Tribunal deducted 1/3rd towards personal expenses of the deceased and held that Rs.7,045/- would be the contribution of the deceased to the family. Accordingly, the Tribunal fixed the loss of income by applying the multiplier of 13 and arrived at a sum of Rs.10,99,020/- as loss of income.

12. Aggrieved over the said finding of the Tribunal, the learned counsel for the petitioners contends that the Tribunal ought to have taken the basic Salary at Rs.23,930/- as evidenced by Ex.X.1, without considering the family pension now being received by the petitioners. The said contends of the petitioners appears to be just and proper. Further, as the deceased was aged 46 years at the time of the accident, the multiplier to be applied is '13'. Further towards future prospectus of the deceased 30% is to be added and as there are three petitioners, 1/3rd of the income has to be deducted towards the personal expenses of the deceased. Thus, taking into account the monthly income of the deceased is Rs.23,930/-, the loss of contribution to the family by the deceased is calculated as follows:-

Further, deduction of 10% towards income tax is to be provided.

Accordingly, the loss of dependency will be,

Gross Salary = Rs.23,930/-

deduction of 10% towards income tax - 2393

23930-2393 = Rs.21,537/-

Add 39% towards future prospects,

(Rs.21,537 * 30%) =Rs.6,461/-

21537 + 6461 = Rs.27,998/-

deduction of 1/3rd towards personal expenses

[27998-(27998*1/3)] = Rs.18,666/-

Correct multiplier to be applied is 13,

Rs.18,666 * 12*13 = Rs.29,11,896/-

Thus, a sum of Rs.29,11,896/- is to be awarded under the head "Loss of Income". Further, a sum of Rs.5,000/- is awarded under the head "Transportation".

13. In respect of awarding compensation under conventional heads, as per the Constitution Bench judgment of the Supreme Court reported in 2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and Others], compensation be awarded

towards loss of estate and funeral expenses each Rs.15,000/- and for loss of consortium Rs.40,000/- is awarded.

14. Accordingly, the compensation awarded by the Tribunal stands modified as follows:

Sl. No.	Head	Amount granted by the Tribunal	Amount awarded by this Court
1	Loss of dependency	Rs.10,99,020.00	Rs.29,11,896.00
2	Funeral Expenses	Rs. 5,000.00	Rs. 15,000.00
3	Loss of Consortium	Rs. 10,000.00	Rs. 40,000.00
4	Loss of Estate	-	Rs. 15,000.00
5	Love and Affection for 3 persons	Rs. 45,000.00	-
6	Transport	Rs. 5,000.00	Rs. 5,000.00
7	Total	Rs.11,64,020.00	Rs.29,86,896.00

15. In the result, the Civil Miscellaneous Appeal is Partly Allowed as follows:-

- (i) The award of the Tribunal is enhanced to Rs.29,86,896 /- from Rs.11,64,020/-.
- (ii) The award amount will carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.
- (iii) In view of the above enhanced award amount, the 2nd respondent/Insurance Company is directed to deposit the award amount, less the amount, if any, already deposited, along with accrued interest within a period of six weeks from the date of receipt of a copy of this judgment.
- (iv) The appellants/petitioners/claimants are not entitled to any interest for the condoned delay (default), period, if any.
- (v) The apportionment of the modified award amount is as under:-
1st appellant = 40%
2nd and 3rd appellant = 30% each
- (vi) On such deposit, the claimants are permitted to withdraw the amount awarded as above by filing proper application before the Tribunal. The Tribunal shall pass appropriate directions for the disbursal of the amount as stated supra on the filing of such application.

(vii) Petitioners/appellants shall pay necessary court fee before receiving the copy of this judgment for the enhanced compensation amount. No costs.

-s/d-
Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

bri

To

- 1.The Additional District Judge,
Motor Accident Claims Tribunal,
Fast Track Court, Namakkal.
- 2.The Section Officer,
V.R.Section, High Court, Madras. (2 Copies)

+1 CC to Mr.Ma.Pa. Thangavel, Advocate sr 15000

+1 CC to Mr.M.B. Gopalan, Advocate sr 15010.

C.M.A.No.3081 of 2013

SV(CO)
CS/28/06/18



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