

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.649 of 2007
and M.P.No. 1 of 2007

National Insurance Company Ltd.,
Motor Third Party Claims Office,
No.751, Anna Salai, III Floor,
Chennai - 2.

..Appellant
/2nd respondent

Versus

1.S.Lakshmi
2.Minor S.Gayathri
(Minor rep.by her mother and
Guardian S.Lakshmi)

[R2 declared as Major and her mother and
Guardian S.Lakshmi (R1) discharged from
guardianship vide Court order dated 22.02.2018
made in C.M.P.No.20734 and 20735 of 2017
in C.M.A.No.649 of 2007]

...Respondents/Petitioners

3.R.Amsaveni

... Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of
the Motor Vehicles Act, 1988, against the judgment and decree
dated 19.12.2005 made in M.C.O.P.No.3889 of 2001 on the file of
the Motor Accident Claims Tribunal, II Small Causes Court,
Chennai.

For Appellant : Mr.S.Arun Kumar
For Respondents : Mr.S.Gangaramprasad
[for R1 & R2]

J U D G M E N T

The appellant/Insurance Company has filed this appeal
against the judgment and decree dated 19.12.2005 made in
M.C.O.P.No.3889 of 2001 on the file of the Motor Accident Claims
Tribunal, II Small Causes Court, Chennai.

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 claimants is that on 28.06.2001 at about 00.05 hours, while the deceased Subramani was riding his two wheeler bearing Registration No.TN-07-J-3524 in Thyagaraya Road, Chennai and stopped at the junction of Annasalai to turn towards South, the water tanker lorry bearing Registration No.TSH-5157 belonging to the 1st respondent and insured with the appellant/2nd respondent came at high speed, dashed against the Stationery two wheeler causing fatal injuries to the deceased Subramani, who died subsequently in the hospital. The accident occurred only due to rash and negligent driving of the 1st respondent lorry driver. The deceased was aged 36 years and by working as head mason was earning Rs.8,000/- per month. The petitioners who are the wife and daughter of the deceased were depending on his income. Hence, the petitioners sought for a sum of Rs.12,50,000/- as compensation from the respondent.

4. On the other hand, opposing the claim of the petitioners, by filing counter, the 2nd respondent/Insurance Company contended that the vehicle involved in the accident was not insured with them and the driver of the lorry did not possess valid driving license. The accident occurred only due to negligence of the deceased who drove the two wheeler without noticing the oncoming lorry and dashed against the same. The 2nd respondent/Insurance Company is not liable to pay any compensation. The claim of the petitioners is exorbitant. Thus, the 2nd respondent/Insurance Company sought for dismissal of the petition.

5. Before the Tribunal, the petitioners examined P.W.1 to P.W.4 and produced documents Exs.P.1 to P.15 to prove their claim. On the other hand, the respondent did not let in either oral or documentary evidence. The Tribunal, on the basis of available evidence on record, found negligence of the 1st respondent lorry driver alone caused the accident passed an award for a sum of Rs.8,00,000/- payable by the respondents to the petitioners. Aggrieved over the said finding of the Tribunal, the 2nd respondent/Insurance Company has come forward with the present appeal.

6. The learned counsel for the 2nd respondent/Insurance Company/Appellant contended that the Tribunal wrongly fixed the notional income of the deceased at Rs.6,000/- per month without any proof. The Tribunal erred in applying multiplier '16' to calculate the loss of income. The evidence on record was not properly appreciated. The quantum of the award is exorbitant.

Thus, the 2nd respondent/Insurance Company/Appellant sought for setting aside the award passed by the Tribunal by entertaining the appeal.

7. Per contra, the learned counsel for the petitioners contended that the accident occurred during in the year 2001 and the Tribunal taking into account, the prevailing market trend fixed the notional income of the deceased at Rs.6,000/- per month and passed a just and reasonable award which needs no interference. Thus, the petitioners/claimants sought for dismissal of the appeal.

8. The appeal is filed only in respect of quantum of the award passed by the Tribunal. The 2nd respondent/Insurance Company/Appellant is not challenging the conclusion of the Tribunal regarding the negligence aspect. The petitioners clearly stated about the manner in which the accident occurred. The eye-witness to the occurrence, who deposed as P.W.2, also clearly stated that the rash and negligent driving by the driver of the lorry bearing Registration No.TSH-5157 alone resulted in the accident. The police also registered Ex.P.3 - F.I.R, against the lorry driver only. After investigation, the police laid charge sheet as per Ex.P.5 against the driver of the lorry only. Further Ex.P.4 - Rough Sketch of the spot also proves the claim of the petitioners. Thus, on the basis of above said evidence, the Tribunal has rightly concluded the negligence of the 1st respondent lorry driver alone caused the accident.

9. As stated above, the only issue raised by the 2nd respondent/Insurance Company is that the quantum of the award passed by the Tribunal is highly excessive. The petitioners stated the deceased was aged 36 years and by working as head mason was earning Rs.8,000/- per month. The wife of the deceased who deposed as P.W.1 clearly stated that the deceased used to earn Rs.2,000/- per week and he worked in Saudi Arabia and in proof of that produced the copy of the passport visa as Ex.P.2. The driving license of the deceased is produced as Ex.P.11 in both of the documents his date of birth is 01.08.1963, as such, the deceased was aged 38 years.

10. The petitioners examined the Superintendent of the concern, wherein, the deceased was employed by P.W.3 and he stated that the deceased worked as head mason and he used to pay Rs.2,000/- per week. The Tribunal, taking into consideration, the evidence on record concluded that the monthly earning of the deceased would be Rs.6,000/- and as he was aged 38 years applying the multiplier of '16' and after deducting 1/3rd of the income towards personal expenses fixed the loss of dependency at Rs.7,68,000/-. As the accident occurred in 2001, the monthly income fixed by the Tribunal appears to be just and proper. The

amount awarded under other heads by the Tribunal is also very nominal.

11. The learned counsel for the 2nd respondent/Insurance Company/appellant contended that the Tribunal has wrongly taken the notional income at Rs.6,000/- and awarded a compensation as discussed above. The deceased being a head mason, the calculation of the monthly income and award of amounts under other heads is just and proper. No valid ground is made out by the 2nd respondent/Insurance Company/appellant for setting aside the same. As such, there is no merit in the appeal and the same is liable to be dismissed. The point is answered accordingly.

12. In the result, the award passed by the Tribunal on 19.12.2005 made in M.C.O.P.No.3889 of 2001 on the file of the Motor Accident Claims Tribunal, II Small Causes Court, Chennai, is confirmed and the appeal is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar(CS VIII)

//True copy//

Sub Assistant Registrar

bri

To

1.The II Small Causes Court,
Chennai.

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

+lcc to Mr.S.Gangaram Prasad, Advocate SR.No.29339

+lcc to Mr.S.Arun Kumar, Advocate SR.No.29610

RJ(CO)
GN(30/05/2018)

C.M.A.No.649 of 2007