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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:04.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.3458 of 2013
and M.P.No.1 of 2013
and Cross Objection No.9 of 2014

CMA.No.3458 of 2013:-

M/s.New India Assurance Co.Ltd.

No.F-46, 1st Main Road

Anna Nagar East

Chennai-600 102

..Appellant/2nd respondent.

Versus

1.Dhanalakshmi

2.V.Natarajan

...Respondents 1 and 2/

Petitioners 1 and 2

3.R.Saravanan

...Respondent No.3/ 1st respondent.

(R3 - Exparte in Lower Court)

Cross Objection No.9 of 2014:-

1.Dhanalakshmi

2.Natarajan

...Cross Objectors/Respondent 1 & 2

Versus

1.M/s.New India Assurance Co.Ltd.

No.F-46, 1st Main Road

Anna Nagar East

Chennai-600 102

.. R1/Appellant

2.R.Saravanan

.. R2/R3

(R2 - Exparte before Tribunal)

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act and Cross Objection filed against the order and decree dated 28.08.2012 made in M.C.O.P.No.4158 of 2007 on the file of Motor Accident Claims Tribunal, Chief Court of Small Causes, Chennai.



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For appellant:- Mr.N.Vijayaraghavan
in CMA.No.3458/2013 and 1st
Respondent in Cross.Objection

For Respondents:- M/s.T.G.Ravichandran
1 and 2 in CMA.No.3458 OF 2013
and Cross Objectors 1 and 3 in
Cross Objection in 9 of 2014.

COMMON JUDGMENT

The Appellant/Insurance Company has filed C.M.A.No.3458 of 2013, challenging the order and decree dated 28.08.2012 made in M.C.O.P.No.4158 of 2007 on the file of Motor Accident Claims Tribunal, Chief court of Small Causes, Chennai. Cross Objectors/claimants filed Cross.Obj.No.9 of 2014 seeking enhancement of the compensation.

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 23.09.2006 while the deceased Ravishankar was riding motor cycle bearing Reg.No.TN-32-A-7363 from North to South in Rajaji salai at about 14.30 hours, while taking "U" turn, opposite to George Town court, Chennai, a tempo traveler bearing Reg.No.TN-22-AP-5419 came in the opposite direction, dashed against the motor cycle of the deceased, causing him fatal injuries resulting in his death subsequently. The accident occurred due to negligence of the 1st respondent vehicle driver only. The deceased was aged 29 years and he was a Veda Pundit, doing Purohitham. The Petitioners who are the Parents of the deceased claimed that their deceased son was earning Rs.15,000/- per month. Thus, they sought for a sum of Rs.15,00,000/- as compensation from the respondents who are the owner and insurer of the vehicle.

3. On the other hand, opposing the claim of the Petitioners, by filing counter, the 2nd respondent/Insurance company contends that the Petitioners have to prove that they are the legal heirs of the deceased and they are dependant on him for their maintenance. The 2nd respondent does not admit the claim of the Petitioners that the vehicle bearing Reg.No.TN-22-AP-5419 was insured with them. The claim of the Petitioners that the accident took place on 23.09.2006 at 14.30 hours is disputed. The accident does not occur in the manner alleged by the Petitioners. It was only due to violation of Traffic Rules by the deceased, the accident occurred. The claim of the Petitioners about the age, avocation and income of the deceased is denied. The claim of the Petitioner is very exorbitant. The



2nd respondent sought for dismissal of the Petition.

4. Before the Tribunal, the Petitioners examined P.W.1 to P.W.4, produced documents Ex.P.1 to Ex.P.11 to prove their claim. On the side of the respondents, R.W.1 was examined, but no documents was produced. The Tribunal, after analyzing the evidence on record, found negligence of the 1st respondent vehicle driver lone caused the accident, passed an award for a sum of Rs.5,91,600/- payable by the respondents to the Petitioners.

5. Being aggrieved by the finding of the Tribunal, the 2nd respondent/Insurance company has come forward with CMA.No.3458 of 2013. While not being satisfied with the quantum of the award, the Petitioners/claimants have preferred Cross Objection No.9 of 2014 seeking enhancement of the award amount.

6. The learned counsel for the appellant/2nd respondent-Insurance company contends that the tribunal failed to appreciate the evidence regarding the "U" turn taken by the deceased at a place where it was not permitted and as such, the deceased alone is responsible for the accident. The quantum of the compensation fixed by the Tribunal is excessive. The Tribunal wrongly provided 30% towards future prospects. Thus, the 2nd respondent sought for setting aside the award by entertaining the appeal.

7. On the other hand, the learned counsel for the Petitioners/claimants contends that the Tribunal after holding negligence of the 1st respondent vehicle driver alone caused the accident did not appreciate properly the evidence of P.W.4 who deposed about the educational qualification of the deceased properly. The Tribunal failed to apply correct multiplier of "18", but wrongly applied multiplier 9. The Tribunal failed to fix the monthly income of the deceased properly and arrive at future prospects proportionately. The interest provided by the tribunal is very less. The Tribunal wrongly deducted 50% of the income towards personal expenses of the deceased. The quantum of the award is very meager. The claimants thus sought for enhancement of the award amount by entertaining the Cross Objection.

8. The Civil Miscellaneous Appeal as well as Cross Objection relates to quantum of award only. Both sides have not seriously argued the appeal in respect of negligence issue. Even though the learned counsel for the 2nd respondent/Insurance company



contended that the deceased took "U" turn in the place where the same was not permitted and thereby the accident occurred, conceded that there was no evidence available on record to prove the same. The accident took place on 23.09.2006 at about 14.30 hours. The Petitioners examined eyewitness to the occurrence as P.W.2 and he clearly stated that on 23.09.2006, as he was waiting in front of G.T.Court, at about 14.30 hours, he saw the vehicle bearing Reg.No.TN-32-N-7363 coming from North to South in Rajaji Salai and as he was taking "U" turn, a tempo bearing Reg.No.TN-AP-5419 came from south to north in a very rash and negligent manner, dashed on the two wheeler and thereby the deceased suffered grievous injuries. Thus, it is clear from P.W.2 evidence that the Tempo Traveller came at high speed and dashed on the motor cycle. It is also evident from Ex.P.2-copy of rough sketch that the accident occurred while the deceased was taking U turn. Even though the learned counsel for the 2nd respondent/Insurance company contended that judicial notice is to be taken of the fact that it is impossible for any vehicle to move at high speed near GT court, it cannot be stated that driving of vehicle at high speed is not at all possible. It is categorically stated by P.W.2 that as the deceased was taking U turn, the 1st respondent vehicle driver drove his van in a rash and negligent manner, dashed against the deceased causing him fatal injuries. The respondent has not let in any evidence to disprove P.W.2's claim. Further during cross examination of P.W.2, nothing is elicited to discredit his version of the accident. Thus, P.W.2 evidence clearly proves the nature of the accident.

9. Further the Police have registered Ex.P.1-FIR against the 1st respondent vehicle driver only. Subsequently, after completion of investigation, the Police laid charge sheet against the 1st respondent driver only as per Ex.P.3-Copy of Charge sheet. Considering the same, it is clear that only due to the negligence of the driver of the 1st respondent vehicle the accident occurred. In such circumstances, the Tribunal is justified in concluding that the negligence of the 1st respondent vehicle driver alone caused the accident and the same is confirmed.

10. The Petitioners who are the parents of the deceased stated that the deceased was aged 29 years and he was a Veda Pundit doing Purohitham earning Rs.15,000/- per month. The 1st petitioner who deposed as P.W.1 stated that the deceased was aged 29 years. There is no document produced by the Petitioners in support of the same. However, it is clear from Ex.P.5-Post Mortem Certificate and Ex.P.6-Death Certificate that the age of



the deceased was 29 years. Hence the same is accepted.

11. The Petitioners claim that the deceased was earning Rs.15,000/- per month. They examined P.W.3 who himself is a Veda Pundit and he stated that the deceased completed his Veda studies at Tiruvannamalai during 1987-1995. It is also stated by the Petitioners that the deceased learnt to do Poojas and Homams from P.W.3 during 1997 to 2005. Thereafter, he was individually performing poojas and homams. P.W.3 produced Ex.P.9 series of documents containing Income Tax particulars and PAN card of himself (PW3).

12. The Petitioners examined P.W.4 who stated that he was Manager of Ramanashramam, Thiruvannamalai, and the deceased completed vedic studies in the Ashram during 1987 to 1995. The certificate issued by Sri Ramanasramam is Ex.P.11. It is clear from the evidence of P.W.4 and Ex.P.11 that the deceased is a Vedic Scholar performing Poojas and Homams. However, there is no evidence regarding monthly earnings of the deceased. Hence, the Tribunal fixed the monthly income of the deceased at Rs.8000/-. Disputing the same, the Petitioners contend that higher amount of monthly income should be fixed. Considering the claim of the Petitioners, this court is of the view that it will be appropriate to fix the monthly income of the deceased at Rs.9000/-. Considering the age of the deceased was 29 years, the correct multiplier to be applied is '17'. Further the deceased being a young man carrying out his profession of Purohitham, he is entitled for future prospects. Hence, 40% future prospects is necessarily to be added. Since the deceased was a bachelor, 50% deduction is to be made on his income. Accordingly, the pecuniary loss to the claimants is as under:-

9000 + 40% future prospects - 50% deduction towards personal expenses.

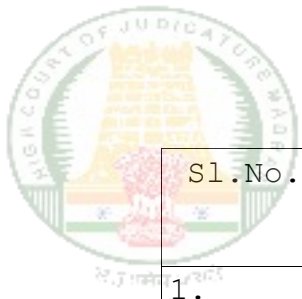
$9000 + 3600 = 12,600/-$

$12,600 - 50\% = 6300.$

$6300 \times 12 \times 17 = 12,85,200/-.$

Thus, the Petitioners/claimants/Cross objectors are entitled to Rs.12,85,200/- towards "loss of dependency/Pecuniary loss".

13. Considering the date of accident and the other attendant circumstances, the compensation provided by the Tribunal towards "loss of love and affection to petitioners at Rs.20,000/- and towards "Funeral expenses" at Rs.10,000/- is confirmed. Thus, the modified compensation award is as under:-



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Sl.No.	Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)
1.	Pecuniary Loss	Rs. 5,61,600/-	12,85,200/-
2.	Loss of love and affection	Rs. 20,000/-	20,000/-
3.	Funeral expenses	Rs. 10,000/-	10,000/-
	Total	Rs. 5,91,600/-	13,15,200/-

14. In the result, (i) Civil Miscellaneous Appeal No.3458/2013 is dismissed. Cross Objection No.9 of 2014 is Partly allowed.

(ii) The award amount is enhanced to Rs.13,15,200/- from Rs.5,91,600/-.

(iii) The award amount will carry interest at the rate of 7.5% per annum from the date of petition till the date of deposit.

(iv) This court in CMA.No.3458/2013 and MP.No.1/2013, by order dated 02.01.2014, directed the appellant/Insurance company to deposit the entire award amount granted by the Tribunal and also permitted the claimants to withdraw 50% of the award amount. Hence, the appellant in CMA.No.3458 of 2013/Insurance company is directed to deposit the enhanced award amount along with accrued interest, less the amount already deposited, within a period of six weeks from the date of receipt of a copy of this order.

(v) On such deposit, Claimants/Cross Objectors are entitled to the award amount in equal share and shall withdraw the same along with accrued interest, less the amount already withdrawn.

(vi) The Tribunal shall pass necessary orders for the disbursal of the award amount.

(vii) No costs. Consequently, connected MP is closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

nvsri



To

1.The Motor Accident Claims Tribunal,
(The Judge,Chief Court of Small Causes),
Chennai.

2.The Section Officer,
V.R.Section, High Court, Madras. (2 Copies)

+1cc to Mr.N.Vijayaraghavan, Advocate in sr.43297

+1cc to Mr.T.G.Ravichandran, Advocate in sr.43570

C.M.A.No.3458 of 2013
and Cross Obj.9 of 2014

EV(Co)
CS/19/11/2018