

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 05.04.2018

Coram

The Honourable Mr. Justice S.BASKARAN

Civil Miscellaneous Appeal No.3497 of 2013

1.G.Lokambal
2.G.Saravanan
3.G.Dayalan
4.G.Revathi

....Appellants/Petitioners

...vs...

The Managing Director,
Tamil Nadu State Transport Corporation Limited,
Villupuram Division - III,
Kancheepuram.

...Respondent/Respondent

This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the Fair and Decreetal order dated 26.07.2012 made in MCOP.No.118 of 2008 on the file of the Motor Accident Claims Tribunal/II Additional District and Sessions Court, Ranipet in Vellore District.

For Appellants : Mr.P.Natarajan

For Respondent : Mr.K.J.Sivakumar

JUDGMENT

Being not satisfied with the quantum of compensation awarded by the Tribunal, dated 26.07.2012 made in MCOP.No.118 of 2008 on the file of the Motor Accident Claims Tribunal/II Additional District and Sessions Court, Ranipet in Vellore District, the petitioners/claimants have come forward with this present appeal seeking to enhancement of the award amount.

2. For the sake of convenience, the parties will be hereinafter referred to in this judgment as arrayed before the Tribunal.

3. The case of the petitioners is that on 13.01.2007 at about 22.30 hours, while the deceased was proceeding in his

bicycle in Kancheepuram - Chennai High Road, near Chinnayan Chatram, the respondent's bus bearing registration No.TN-21-N-0659 proceeding in the same direction came at high speed dashed against the bicycle which the deceased was riding causing him fatal injuries resulting in his death on the spot. The accident occurred due to the negligence of the respondent bus driver only. At the time of accident, the deceased was aged about 50 years and carrying on business by running petty shop and also working as security, was earning a sum of Rs.4,500/- per month. The petitioners who are the wife and children of the deceased were depending on his income. Hence, they seek a sum of Rs.7,00,000/- as compensation from the respondent.

4. Before the Tribunal, the respondent failed to appear before the Court and they remained exparte. The petitioner examined P.W.1 and produced documents Ex.P1 to Ex.P6 to prove their claim.

5. The Tribunal, on the basis of evidence produced by the petitioners, has fixed the liability on the part of the respondent and passed award for a sum of Rs.1,22,000/- as compensation to the petitioners. Being not satisfied with the quantum of compensation awarded by the Tribunal, the petitioners/claimants have come forward with the present appeal.

6. I have heard the learned counsel appearing for the appellants/petitioners and the learned counsel appearing for the respondent and perused the materials available on record.

7. The learned counsel appearing for the appellants/petitioners contended that the Tribunal failed to appreciate the oral evidence of P.W.1 and documents produced by them. The Tribunal erred in fixing the monthly income of the deceased at Rs.3,000/- where as he was earning not less than Rs.4,500/- per month. Similarly, the Tribunal wrongly fixed the age of the deceased as 60 instead of 50 years. The amount awarded by the Tribunal under the different heads is very nominal. The multiplier applied by the Tribunal is also not correct. The Tribunal ought to have deducted 1/4th amount towards the personal expenses of the deceased instead of deducting 1/3rd amount. Thus, the petitioners sought for enhancement of the award amount by entertaining the appeal.

8. Per contra, the learned counsel appearing for the respondent contends that the quantum of award passed by the Tribunal itself is on the higher side and no ground is made out by the petitioner to further enhance the same. The Tribunal in the absence of contra evidence let in by the respondents, has fixed the negligence on the part of the respondent driver only caused the accident, which is not correct. Thus, the respondent

sought for dismissal of this appeal.

9. The first petitioner who deposed as P.W.1 clearly spoke about the manner in which the accident occurred. The police also registered Ex.P1 First Information Report against the driver of the respondent bus only. Further, the petitioners produced a copy of the Rough Sketch as Ex.P2. It is clear from the oral evidence of P.W.1 as well as the contents of Ex.P1 First Information Report and Ex.P2 Rough Sketch that the accident occurred only due to the rash and negligent driving by the respondent bus driver. There is no contra evidence to the evidence let in by the petitioners as the respondent remained *exparte* before the Tribunal. In such circumstances, the Tribunal is justified in fixing the negligence on the part of the respondent bus driver alone caused the accident.

10. The petitioners claim that the deceased was aged 50 years and by running a petty shop and also working as security was earning a sum of Rs.4,500/- per month. The Tribunal fixed the monthly income of the deceased at Rs.3,000/-. This according to the petitioners is not correct and they seek to fix the monthly income at Rs.4,000/-. The petitioner has not produced any documents to prove the avocation and income of the deceased. As per Ex.P3 Postmortem Certificate, the deceased was stated to be 50 years old. However, it is pointed out that the Tribunal has wrongly fixed the age of the deceased as 60 years. In the judgment under challenge, the Tribunal has stated as per Ex.P3 the age of the deceased is 60 years which is not correct. It is evident from Ex.P3 Postmortem Certificate that the deceased was aged about 50 years. Thus, the age of the deceased is to be fixed at 50 years and the multiplier is to be applied is 13. Considering the nature of business carried on by the deceased, it will be appropriate to fix the monthly income of the deceased at Rs.3,500/-. Considering the age of the deceased was 50 years, 25% income is to be added towards future prospects. Thus, the monthly income will be Rs.3,500/- add 25% of the income of Rs.875/-, the total amount would be Rs.4,375/-. Considering the number of dependents are four in numbers, 1/4th amount is to be deducted towards the personal expenses of the deceased. Accordingly, the loss of dependency is calculated as follows:-

(1) Rs.4,375/-, 1/4th amount of Rs.1,093/- is deducted towards personal expenses and the balance amount would be Rs.3,282/-.

(2) Rs.3,282/- x 12 = Rs.39384 x 13 = Rs.5,11,992/- will be total loss of income.

11. Following the Apex Court decision reported in 2017 (2) TN MAG 609 (SC) NATIONAL INSURANCE CO. LTD., Vs. PRANAY SETHI

AND OTHERS, towards loss of estate, loss of consortium and funeral expenses, this Court is inclined to modify the compensation as under:-

Loss of Estate	=	Rs. 15,000.00
Loss of Consortium	=	Rs. 40,000.00
Funeral Expenses	=	Rs. 15,000.00

12. Accordingly, the compensation awarded by the Tribunal is modified as follows:-

S1 No	Heads	Amount awarded by the Tribunal	Awarded by this Court
1.	Pecuniary Loss of income	72,000.00	5,11,992.00
2.	Funeral Expenses	10,000.00	15,000.00
3.	Loss of love and affection	40,000.00	-
4.	Loss of Estate	-	15,000.00
5.	Loss of consortium		40,000.00
	Total	1,22,000.00	5,81,992.00

Accordingly, the compensation awarded by the Tribunal is modified and the same is enhanced to Rs.5,81,992/- and the same is rounded to Rs.5,82,000/- .

13. In the result, the civil miscellaneous appeal is partly allowed. No costs. The amount of Rs.1,22,000/- awarded by the Tribunal dated 26.07.2012 made in MCOP.No.118 of 2008 on the file of the Motor Accident Claims Tribunal/II Additional District and Sessions Court, Ranipet in Vellore District is hereby enhanced to Rs.5,82,000/-. The respondent is directed to deposit the entire award amount of Rs.5,82,000/- with interest at the rate of 7.5% p.a. from the date of claim petition till the date of deposit the award amount, after deducting the amount that has already been deposited by them within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the appellants/claimants are entitled to equal share of the award amount. The appellants/claimants are permitted to withdraw their respective share with accrued interest by filing necessary application before the Tribunal.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1.The Motor Accident Claims Tribunal,
The II Additional District and Sessions Court,
Ranipet in Vellore District

2.The Section Officer,
VR Section,
High Court, Madras

+1cc to Mr.K.J.Sivakumar, Advocate Sr.No.25705

+1cc to Mr.P.Natarajan, Advocate Sr.No.25035

RK(CO)
sm:24.4.2018

C.M.A.No.3497 of 2013



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