IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 22.02.2018

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The Honourable Mr. Justice S.BASKARAN

Civil Miscellaneous Appeal No.3546 of 2013

1.A.Farhana Begum
2.S.Nuzhath Khanam
3.Minor S.Farhath Khanam
4.Minor S.Zohara Khanam
(Minor appellants 3 and 4 rep. by their mother and NF the first appellant herein)
... Appellants/Claimants

..vs..

1.M/s.Kataria Automobiles Ltd,
No.37-38, Maruti Parking,
Karter Puri Road,
Gurgam District,
Haryana - 122 001.

2.National Insurance Company Ltd.,
Motor Third Party Claims Cell
No.751, Anna Salai,
Chennai-600 002.
... Respondents/Respondents

This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the Fair and Decreetal order dated 22.08.2011 made in MCOP.No.5785 of 2005 on the file of the Motor Accident Claims Tribunal/II Judge, Court of Small Causes, Chennai.

For Appellants : Mr.K.V.Muthuvisakan

For Respondents : Mr.S.Vadivel for R-2

Not being satisfied with the quantum of compensation awarded by the Tribunal dated 22.08.2011 made in MCOP.No.5785 of 2005 on the file of the Motor Accident Claims Tribunal/II Judge, Court of Small Causes, Chennai, the present appeal has been filed by the petitioners/claimants to enhance 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 08.07.2005 at about 18.20 hours, when the deceased was going in his two wheeler bearing Registration No.TN-04-U-6973, in Manali Express Highways road, near 4th Gate of TPL Company, towards Ennore, the lorry belonging to the first respondent, insured with the second respondent bearing Registration No.RJ-09-G-3379 came at high speed in the same direction and dashed against the two wheeler, in which the deceased was travelling resulting in the death of the deceased due to fatal injuries suffered by him. The accident occurred only due to the negligence of the first respondent lorry driver. At the time of the accident, the deceased was aged about 41 years and he was carrying on business as Partner of M/s.M.I. Trading Corporation, earning a sum of Rs.20,000/- per month. Thus, the petitioners who are the wife and children of the deceased claiming themselves as dependents of the deceased are seeking compensation of Rs.20,00,000/- from the respondents who are the owner and insurer of the offending vehicle.

4. On the other hand, opposing the claim petition, the second respondent-Insurance company filed counter stating that the nature and manner of the accident as claimed by the petitioners is not correct. The other averments in the petition about the age, occupation and monthly income of the deceased also denied. The accident occurred only due to the reckless act of the deceased and not due to the negligence on the part of the first respondent lorry driver. Hence, the second respondent seeks dismissal of the petition.

5. Before the Tribunal, the petitioners examined P.W.1 and P.W.2 and produced documents Ex.P1 to Ex.P11 to substantiate their claim. On the side of the respondents, neither oral evidence nor documentary evidence was produced.

6. The Tribunal, on the basis of available materials on record, fixed the negligence of the first respondent lorry driver as the sole reason for the accident and awarded a sum of Rs.8,91,000/- as compensation. Being not satisfied with the quantum of compensation awarded by the Tribunal, the petitioners/claimants have come forward with the present appeal.

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

8. The learned counsel appearing for the petitioners/appellants contended that the Tribunal failed to fix the age of the deceased at 41 and his monthly income at Rs.20,000/- as claimed by the petitioners. The Tribunal erred in not providing for future prospects to the petitioner. Instead of applying multiplier 15, the Tribunal wrongly applied the multiplier as 14. The Tribunal awarded lesser amount under the various heads, even though the petitioners produced sufficient evidence in support of their contention. Hence, the petitioners seek enhancement of the award amount as sought for by them by entertaining the appeal.

9. On the other hand, the learned counsel appearing for the second respondent-Insurance Company contended that the Tribunal after assessing the evidence on record has wrongly awarded higher compensation without any basis. The Tribunal also erred in fixing the negligence on the part of the first respondent lorry driver as the cause for the accident. The accident occurred only due to the negligence of the deceased was not considered by the Tribunal. As such, the second respondent seeks for dismissal of the appeal.

10. According to the petitioners, the husband of the first petitioner met with an accident on 08.07.2005 at about 18.20 hours, due to the negligent driving of the first respondent lorry driver resulting in the death of the husband of the first petitioner who is the father of the other petitioners herein. The petitioners examined the eye witness to the occurrence as P.W.2 and he stated that while he was returning home from his work spot on 08.07.2005 at about 6.30 hours, he saw a person proceeding towards Ennore in his motor cycle near 4th gate of TPL Company in Manali Fast Track Road and at that time, a lorry bearing Registration No.TN-04-U-6973 came in the same direction at high speed and dashed against the motor cycle from behind. P.W.2 further stated that in the impact of the said collision, the rider of the two wheeler was thrown out and he suffered fatal injuries. P.W.2 categorically stated that the accident occurred only due to the rash and negligent driving of the driver of the first respondent lorry. Nothing is elicited in the cross examination of P.W.2 to discredit his evidence. Further, the police have registered Ex.P1 First Information Report against the driver of the lorry only. As such, it is clear from the oral evidence of P.W.2, who is third party eye witness to the occurrence and the contents of Ex.P1 first information report, that the accident occurred only due to the rash and negligent driving of the first respondent lorry driver.

11. The respondent have not come forward to examine the driver of the first respondent lorry to contradict the claim of the petitioner. In the absence of any contra evidence as to the

version given by P.W.2, it is clearly established by the petitioners as per the oral evidence of P.W.2 and Ex.P1 First Information Report that the rash and negligent driving by the first respondent lorry driver alone resulted in the accident.

12. The petitioners claimed that the deceased was husband of the first petitioner and father of the other petitioners. Ex.P4 legal heir certificate establishes the same. The petitioners states that they are dependents on the income earned by the deceased. As such in the absence of any other contra evidence, the claim of the petitioners that as wife and children of the deceased, all of them are dependents of the deceased is clearly established.

13. The claim of the petitioners that the offending vehicle belongs to the first respondent and insured with the second respondent is not disputed. As the negligence of the first respondent lorry driver is found to be cause for the accident, the respondents who are the owner and the insurer of the vehicle are liable to pay the compensation as rightly held by the Tribunal.

14. The petitioners claim that the deceased suffered grievous injuries in the accident which occurred on 08.07.2005 and died due to the same. The petitioners produced the death certificate as Ex.P2 and copy of the postmortem certificate as Ex.P3. It is clear from the contents of Ex.P3 that the death occurred due to the injuries suffered by the deceased in the accident as stated above.

15. In the petition, the age of the deceased is stated to be 41 years. However, in Ex.P5 Mark Sheet of the deceased, his date of birth is stated as 01.04.1963. Hence, at the time of death, the age of the deceased was 43 years. The petitioners claim that the deceased carried on business as Partner in M/s.M.I. Trading Corporation dealing with Hardware materials and earned a sum of Rs.20,000/- as monthly income. The petitioners produced Form-C registration of Firms as Ex.P7 and Certificate of Registration is produced as Ex.P8. The Lease Deed for the place in which the business was carried on is produced as Ex.P10 and Partnership Deed is produced as Ex.P11. It is clear from the said Ex.P11 that the deceased and his wife the first petitioner herein were the partners of the said Firm. There is nothing on record to show that any income tax was paid by the deceased. In fact, in her oral evidence of the wife of the deceased who deposed as P.W.1 admitted that the deceased was not an income tax assessee. The petitioners produced the Commercial Tax Assessment order as Ex.P9 wherein the total turnover of the business is mentioned as Rs.10,02,963/- and the taxable turnover mentioned as Rs.81,161/-. The petitioners also produced the statement of account maintained by the partnership firm in the

City Union Bank as Ex.P6. On the basis of the said documents, the Tribunal fixed the notional income of the deceased at Rs.6,000/- per month.

16. However, the learned counsel appearing for the petitioners contended that after the death of her husband, the first petitioner being a lady herein as the sole surviving partner was not in a position to carry on business and closed down the partnership Firm. Thus the petitioner contends that there is total loss of income, as the business itself is closed down. In such circumstances, the learned counsel for the petitioners contended that the income of the deceased should be fixed on the higher side. However, no document is produced by the petitioner about any communication forwarded to Registrar of firms about the closure of partnership business. There is also no independent evidence let in regarding the closure of business except the interested testimony of P.W.1. Further, the learned counsel appearing for the second respondent contended that being a Partnership Firm, consisting of two partners, the deceased was get only 50% of the amount as other partner is entitled for the remaining 50% provide the amount. Taking into consideration the rival contention as well as the Annual turn over of the business as evidenced by Ex.P9 Commercial Tax Assessment Order and the fact that the partners are spouses, it will be appropriate to fix the monthly income of the deceased at Rs.8,000/-. The age of the deceased is stated to be 43 years at the time of the accident, as the deceased was a self employed person carrying on his own business, following the Apex Court decision reported in 2017 (2) TN MAG 609 (SC) NATIONAL INSURANCE CO. LTD., Vs. PRANAY SETHI AND OTHERS, 25% of his monthly income is to be treated as future prospects. Thus, it will be appropriate to add 25% of the earning towards future prospects. Hence, the monthly income is fixed as Rs.8,000/-, 25% of amount of Rs.2000/- is added = Rs.10,000/-. There are four petitioners, who claims to be dependents on the income of the deceased. Hence, 1/4th amount is to be deducted towards the personal expenses of the deceased, the age of the deceased was 43 years at the time of the accident, the multiplier to be applied is 14. As such, the loss of income is calculated as follows:- Rs.10,000/- 1/4th amount (towards personal income) of Rs.2,500/ = Rs.7,500/- x 12 = Rs.90,000/- x 14 = Rs.12,60,000/-. Thus, the loss of income would be Rs.12,60,000/-.

17. 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 award the compensation as under:-

Loss of consortium = Rs. 40,000.00
Loss of Estate = Rs. 15,000.00
Funeral Expenses = Rs. 15,000.00
Transportation = Rs. 10,000.00

18. Accordingly, the compensation warded by the Tribunal is modified as follows:-

Sl No	Heads	Amount awarded by the Tribunal	Awarded by this Court
1.	Pecuniary Loss of income	7,56,000.00	12,60,000.00
2.	Loss of love and affection	1,00,000.00	-
3.	Loss of Consortium	25,000.00	40,000.00
4.	Funeral Expenses	10,000.00	15,000.00
5.	Loss of Estate	-	15,000.00
6.	Transportation charges	-	10,000.00
	Total	8,91,000.00	13,40,000.00

19. In the result, the Civil Miscellaneous Appeal is partly allowed. No costs. The total compensation of Rs.8,91,000/- awarded by the Tribunal dated 22.08.2011 made in MCOP.No.5785 of 2005 on the file of the Motor Accident Claims Tribunal/II Judge, Court of Small Causes, Chennai is enhanced to Rs.13,40,000/-. The second respondent-Insurance Company is directed to deposit the entire award amount as modified by this Court with interest at the rate of 7.5% p.a., 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 petitioners/claimants are entitled to equal share in the award amount. The petitioners 1 and 2 /claimants 1 and 2 are permitted to withdraw their respective share with accrued interest by filing necessary application before the Tribunal. The petitioners 3 and 4/claimants 3 and 4 are minor, their share amount shall be deposited in any one of the Nationalized Bank till they attained majority. The first petitioner/first claimant is permitted to withdraw the accrued interest once in three months.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

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To

The II Judge,
Court of Small Causes,
The Motor Accident Claims Tribunal
Chennai.

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

+1cc to Mr.S.VADIVEL, Advocate, S.R.No. 13805
+1cc to Mr.K.V.MUTHU VISAKAN, Advocate, S.R.No. 13844

C.M.A.No.3546 of 2013

KJI(CO)
TR(22/03/2018)