IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 11.06.2018

Coram

The Honourable Mr. Justice S.BASKARAN

Civil Miscellaneous Appeal No.3663 of 2013

1.J.Jothi
2.Suganthi
3.Suguna
4.J.Sankaralingam ... Appellants/Petitioners

..vs..

1.Prathaban
2.Shriram General Insurance Company Ltd.,
No.66. 2nd Floor, City Centre Complex,
Thirumalai Pillai Street, T.Nagar,
Chennai-600 017. ... Respondents/Respondents

This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the Fair and Decreetal order dated 03.07.2013 made in MCOP.No.2735 of 2009 on the file of the Motor Accident Claims Tribunal/IV Judge, Small Causes Court, Chennai.

For Appellants : Mr.K.Varadhakamaraj

For Respondents : Mr.J.Micheal Visuvasam for R-2

JUDGMENT

Being not satisfied with the quantum of compensation awarded by the Tribunal, dated 03.07.2013 made in MCOP.No.2735 of 2009 on the file of the Motor Accident Claims Tribunal/IV Judge, Small Causes Court, Chennai, the present appeal has been filed by the petitioners/claimants for 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 30.06.2009 at about 15.45 hours, while the deceased was riding his two wheeler bearing Registration No.TN-20-U-8744 from south to north in the Ennore Express Road, while going near Pathitinar Koil, the first respondent's Lorry bearing Registration No.TN-59-K-8034, which came at high speed, driven in a rash and negligent manner from behind, dashed on the two wheeler of the deceased causing him fatal injuries, resulting in his death. The accident occurred only due to the negligence of the respondent lorry which was insured with the second respondent. The deceased who was aged about 31 years, was earning a sum of Rs.16,000/- per month from his own business. The petitioners, who are the wife and children of the deceased were dependents on the earnings of the deceased/husband/father. Due to the sudden demise of the deceased/husband/father, the petitioners have lost the bread winner of the family. Thus, the petitioner sought for a sum of Rs.20,00,000/- as compensation 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 contending that the accident does not occur in the manner alleged by the petitioners. The driver of the first respondent vehicle was not having valid licence. No permit was issued and no fitness certificate was available for the lorry. The age, avocation and income of the deceased alleged in the petition is not true. The claim of the petitioners is exorbitant. Hence, the second respondent-Insurance company sought for 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.P8 to substantiate their claim. On the side of the respondents, neither oral nor documentary evidence was let in.

6. The Tribunal, on the careful analysis of evidence, found the negligence of the first respondent's lorry driver alone caused the accident, passed an Award for a sum of Rs.9,04,000/- payable by the respondents to the petitioners. Being not satisfied with the quantum of compensation awarded by the Tribunal, the petitioners/claimants have come forward this present appeal.

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

8. The learned counsel appearing for the appellants/claimants contends that the Tribunal has fixed the monthly income of the deceased at Rs.7,000/-, even though the oral and documentary evidence was produced to prove that the monthly income of the deceased was at Rs.16,000/-. The amount awarded by the Tribunal under different heads is very nominal. The future prospects was not provided for. Thus, the appellants/claimants sought for enhancement of the award amount by entertaining the appeal.

9. Per contra, the learned counsel appearing for the second respondent-Insurance Company contends that the accident does not occur due to the negligence of the first respondent's lorry driver and as such the petitioners are not entitled to seek compensation. The amount claimed by the petitioner is exorbitant. The Tribunal correctly fixed the notional income and awarded a just and fair compensation. There is no ground made out to interfere with the same. Thus, the second respondent-Insurance Company sought for dismissal of this appeal.

10. It is only a quantum appeal. Both sides are not disputing the conclusion arrived at by the Tribunal that the negligence of the first respondent's driver alone caused the accident. The eye witness to the occurrence who deposed as P.W.2 clearly stated about the manner in which the accident occurred and it is evident from his deposition that the rash and negligent driving by the first respondent lorry driver alone caused the accident. Further, the police also registered the case against the first respondent lorry driver as evidenced by Ex.P1 First Information Report and after completion of investigation, the police also laid charge sheet against the first respondent lorry driver alone as evidenced by Ex.P4 charge sheet. It is therefore clear from the same that the accident occurred only due to the negligence of the first respondent lorry driver. On the other hand, the respondents has not chosen to examin either the driver of the said lorry or any other witness to contradict the version given by the petitioners. As such, it is clear from P.W.2 eye witness account, the contents of Ex.P1 First Information report, Ex.P4 Charge Sheet and Ex.P2 Rough Sketch of the accident spot that the accident occurred in the manner alleged by the petitioner and the conclusion of the Tribunal to that effect is just and proper. Thus, the same needs no interference.

11. The first petitioner is wife of the deceased who deposed as P.W.1 and stated that her husband was earning a sum of Rs.16,000/- per month from carrying on Gunny business and he was aged 31 years. However, the petitioner has not produced any document to prove the age of the deceased. In Ex.P3 Postmortem

Certificate and Ex.P5 copy of the death certificate, the age of the deceased stated to be 49 years. As such, in the absence of any other materials, on the basis of Ex.P3 Postmortem Certificate, the age of the deceased is fixed at 49 years by the Tribunal and the same is correct.

12. The wife of the deceased while deposing as P.W.1 stated that her husband was carrying on Gunny business as Proprietor of Suganthi Gunny Stores and was earning a sum of Rs.16,000/- per month. To show that the deceased carried on Gunny store business, the licence issued by the Corporation of Chennai is produced as Ex.P8 and the acknowledgment receipt for the Income Tax returns during the year,2008-2009 is produced as Ex.P7. As stated above, the accident occurred in,2009, and as no other document is produced except the above said document, the Tribunal found that Ex.P7 is a self assessment returns file and the same is not conclusive enough to prove the income of the deceased. Even though in Ex.P7, the gross total income is stated to be Rs.1,51,093/-, the Tribunal, considering that no other documents to substantiate Ex.P7 income return was filed, fixed the notional income at Rs.7,000/- per month. This, the petitioner contends is totally erroneous and seeks to fix the monthly income at Rs.16,000/-. On the other hand, the learned counsel appearing for the second respondent-Insurance Company contended that mere filing of one year self assessment returns and that to not an authenticated copy is not sufficient to prove the claim of the petitioners. Considering the above said circumstances and the fact that under Ex.P8, the deceased was authorised to carry on Gunny beg business, it will be appropriate to fix the notional monthly income of the deceased at Rs.10,000/-. Considering the fact that the deceased was aged 49 years and he was carrying on his own business, it will be appropriate to add 25% of the same towards future prospects. (Rs.10,000/- x 25 % = Rs.2,500/- + Rs.10,000/- = Rs.12,500/-). As there are five dependents, 1/4th amount of Rs.3,125/- is deducted towards his personal expenses. The age of the deceased is fixed at 49 years, the multiplier is to be applied as 13. As such, the loss of dependency is calculated is as follows:-

(1) Rs.12,500/- - 1/4th amount of Rs.3,125/- = Rs.9,375/-.
(2) Rs.9,375/- x 12 = Rs.1,12,500/- x 13 = Rs.14,62,500/-.

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

14. 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	8,19,000.00	14,62,500.00
2.	Loss of Estate	-	15,000.00
4.	Loss of love and affection	50,000.00	-
5.	Funeral Expenses	10,000.00	15,000.00
6.	Loss of consortium	25,000.00	40,000.00
	Total	9,04,000.00	15,32,500.00

Accordingly, the compensation warded by the Tribunal is modified and the same is enhanced to Rs.15,32,500/-.

15. In the result, the Civil Miscellaneous Appeal is partly allowed. No costs. The amount of Rs.9,04,000/- awarded by the Tribunal dated 03.07.2013 made in MCOP.No.2735 of 2009 on the file of the Motor Accident Claims Tribunal/IV Judge, Small Causes Court, Chennai is enhanced to Rs.15,32,500/-. The Second respondent/ Insurance Company is directed to deposit the entire enhanced award amount of Rs.15,32,500/- with interest at the rate of 7.5% p.a. from the date of claim petition till the date of deposit within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the first petitioner/first claimant is entitled to 40% of the award amount and the petitioners 2 to 4/claimants 2 to 4 are each entitled to 20% of the award amount. The petitioners/claimants are permitted to withdraw their respective share with accrued interest by filing necessary application before the Tribunal.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

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To

1.The IV Judge,
The Motor Accident Claims Tribunal,
Small Causes Court,
Chennai.

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

+1cc to Mr.K.VARADHAKAMARAJ, Advocate, S.R.No.36313
+1cc to Mr.J.MICHAEL VISUVASAM, Advocate, S.R.No.36083

C.M.A.No.3663 of 2013

SKV(CO)
TR(10/07/2018)