IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.3427 of 2012

1.Annalakshmi
2.Annadurai ..Appellants/Claimants

Versus

1.A.Nagarajan

2.The New India Assurance Co.Ltd.,
Old No.114, New No.204, Kutchery Road,
Mylapore, Chennai - 600 004.
[R1 remained ex-parte in the lower Court]
..Respondents/Respondents

Civil Miscellaneous Appeal filed under section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 28.06.2011 made in M.C.O.P.No.918 of 2008 on the file of the Motor Accident Claims Tribunal, Additional District Judge, Fast Track Court -IV, Chennai.

For Appellants : Mr.T.G.Balachandran
For Respondents : Mr. P.Kandasamy [for R2]

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J U D G M E N T

The petitioners/claimants have filed this appeal against the judgment and decree dated 28.06.2011 made in M.C.O.P.No.918 of 2008 on the file of the Motor Accident Claims Tribunal, Additional District Judge, Fast Track Court -IV, Chennai.

2. For the sake of convenience, the parties are referred to hereunder according to their litigative status before the Tribunal. The case of the petitioners/claimants is that on 02.02.2008, while the deceased-Selvam was proceeding in his bicycle along with pillion rider on Velachery Main Road, while going at Pallikaranai opposite to Kumaran Theatre around 09.00 a.m., a sewerage water tanker lorry bearing Registration No.TN-28-1878 came at high speed driven in a rash and negligent manner dashed against the bicycle of the deceased-Selvam, causing fatal injuries, resulting in his death on the spot itself. The accident occurred only due to the negligence of the 1st

respondent-lorry driver. The deceased was aged 19 years and by working as a centring worker was earning Rs.5,000/- per month. The petitioners/claimants who are the parents of the deceased were depending on the earnings of the deceased. Due to his demise, they lost their bread winner of the family. Thus, the petitioners/claimants seek a sum of Rs.10,00,000/- as compensation from the respondents who are the owner and insurer of the vehicle.

3. On the other hand, opposing the claim of petitioners/claimants, by filing counter, the 2nd respondent/Insurance Company contends that the accident did not occur in the manner alleged by the petitioners/claimants. The driver of the lorry did not possess valid driving license and the said lorry was not insured with the 2nd respondent. The claim of the petitioners/claimants about the age, avocation and income of the deceased is denied. The petitioners/claimants claim for compensation is exorbitant. Thus, the 2nd respondent/Insurance Company seeks dismissal of the petition.

4. Before the Tribunal, the petitioners/claimants examined P.Ws.1 to 3 and produced documents Exs.A.1 to A.8 to prove their claim. On the side of the respondents neither oral nor documentary evidence was let in. On the basis of available evidence on record, the Tribunal, found that the negligence of the 1st respondent-lorry driver alone caused the accident, passed an award for a sum of Rs.2,92,500/- payable by the respondents to the petitioners/claimants. Being not satisfied with the quantum of the award, the petitioners/claimants have come forward with the present appeal.

5. Heard both sides and perused the available materials on record.

6. The learned counsel for the petitioners/claimants contends that the accident occurred only due to the negligence of the 1st respondent-lorry driver and the Tribunal after correctly fixing negligence on him, passed an award for a very meagre amount. The Tribunal ought to have adopted the multiplier method, considering the age of the deceased but failed to do so. The Tribunal has not provided for future prospects and also wrongly deducted 50% of the income towards personal expenses of the deceased. The amount awarded under different heads is very nominal. Thus, the petitioners/claimants sought for enhancement of the award amount passed by the Tribunal.

7. Per contra, the learned counsel for the 2nd respondent/Insurance Company contends that the Tribunal has wrongly fixed the negligence on the 1st respondent-lorry driver and passed an award for higher amount than warranted. The Tribunal, failed to appreciate the evidence on record properly.

Thus, the 2nd respondent/Insurance Company sought for dismissal of the appeal.

8. This is only a quantum appeal. Both sides did not seriously contest the conclusion of the Tribunal, fixing negligence on the 1st respondent-lorry driver for causing the accident. The petitioners/claimants examined eye-witness to the accident as P.W.2 and he clearly stated that while he was proceeding at Velachery Main Road on 02.02.2008, he saw two persons proceeding in bicycle and at that time sewerage tanker lorry bearing Registration No.TN-28-1878 came at high speed dashed on the bicycle from behind crushing the rider of the cycle to death on the spot. P.W.2 also stated that it was only due to negligence of the tanker lorry driver the accident occurred. The Police also registered Ex.P.1 - F.I.R against the driver of the lorry and Ex.P.5 - Rough sketch of the occurrence spot also corroborates the P.W.2 version of the accident. The Police after completion of investigation laid Ex.P.7 - Charge sheet against the 1st respondent vehicle driver only. It is clear from Ex.P.1 - F.I.R, Ex.P.7 - Charge sheet and the evidence of P.W.2 that the negligence of the 1st respondent-lorry driver alone caused the accident. On the other hand, the respondents have not let in any evidence to contradict P.W.2's version of the accident. As such, the Tribunal is justified in concluding that the negligence of the 1st respondent vehicle driver alone caused the accident.

9. The petitioners/claimants stated that the deceased was aged 19 years and by working as a centring worker was earning Rs.200/- per day and on average was earning Rs.5,000/- per month. Due to his demise, the petitioners/claimants have lost monitory contribution of the deceased. The learned counsel for the petitioners/claimants contends that the notional income of the deceased should be fixed at Rs.6,500/- but the Tribunal has fixed the monthly income at Rs.3,000/-. Considering the demand, for centring workers and other attendant factors, it will be appropriate to fix the notional monthly income of the deceased at Rs.5,000/-.

10. It is clear from Ex.P.6 - Post mortem certificate that the age of the deceased was 19 years. In the absence of any other documentary proof, relying upon Ex.P.2 - Death certificate and Ex.P.6 - Post mortem report, the age of the deceased is fixed as 19 years. Considering the age of the deceased, 40% of the income is to be added towards future prospects. As the deceased was a Bachelor, 50% of the income is to be deducted towards personal expenses. For the said age group, the multiplier to be applied is '18'. Thus, the loss of dependency is calculated as follows:-

[Rs.5,000+(Rs.5,000x40%)] = Rs.7,000/-
[Rs.7,000-(Rs.7,000x50%)] = Rs.3,500/-
Rs.3,500 x 12 x 18 = Rs.7,56,000/-

Thus, a sum of Rs.7,56,000/- is granted as compensation under the head “Loss of Dependency”.

11. The Tribunal has awarded amounts under loss of estate and funeral expenses at Rs.2,500/- and Rs.2,000/-. In view of the judgment of the Supreme Court reported in 2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and Others], the compensation to be awarded for loss of estate and funeral expenses is modified and sum of Rs.15,000/- each towards loss of estate and funeral expenses is granted.

12. The learned counsel for the petitioners/claimants also contended that as the aged parents of their only son, the petitioners/claimants are suffering due to death of their son and they are entitled to seek compensation for loss of love and affection of their son. In support of the same, the learned counsel for the Petitioners/Claimants relied upon the Ruling of the Kerala High Court in the case of [1.Valsamma and others Vs. V.A.Baiju, 2. Rev.FR.Joseph Vattakalam, and 3.The National Insurance Co.Ltd., - [MACA.Nos.711 and 921 of 2010]. As the petitioners/claimants was suffering due to the death of their only son towards loss of Love and Affection Rs.25,000/- is awarded. Accordingly, the Award passed by the Tribunal is modified as follows:-

Sl. No.	Head	Amount granted by the Tribunal (Rs.)	Amount awarded by this Court(Rs.)
1	Loss of Dependency	2,88,000.00	7,56,000.00
2	Funeral Expenses	2,000.00	15,000.00
3	Loss of Estate	2,500.00	15,000.00
4	Love and Affection	-	25,000.00
	Total	2,92,500.00	8,11,000.00

13. In the result, the Civil Miscellaneous Appeal is Allowed as follows:-

(i) The award of the Tribunal is enhanced to Rs.8,11,000/- from Rs.2,92,500/-.

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

(iii) In view of the above modified award amount, the 2nd respondent/Insurance Company is directed to deposit the award amount, less the amount, if any, already deposited, along with accrued interest within a period of six weeks from the date of receipt of a copy of this judgment.

(iv) The petitioners/claimants are entitled to equal share in the enhanced compensation amount.

(v) On such deposit, the petitioners/claimants are permitted to withdraw the amount awarded as above by filing proper application before the Tribunal. The Tribunal shall pass appropriate directions for the disbursal of the amount as stated supra on filing of such application.

(vi) Petitioners/Claimants shall pay necessary court fee before receiving the copy of this judgment for the enhanced compensation amount, if required.

No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

1. Additional District and Sessions Judge,
   The Motor Accident Claims Tribunal,
   Fast Track Court -IV, Chennai.

+1cc to Mr.P.Kandasamy, Advocate sr.no.46964

C.M.A.No.3427 of 2012

sj(co)
nr 04/09/2018