

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.459 of 2008

1.Veerammal
2.Ramaswamy
3.Sekar
4.Mallika
5.Arukkani
6.Ramayee

... Appellants/Petitioners 1 to 6

Versus

1.P.K.Duraiswamy

2.M/s.National Insurance Company Limited,
No.66, Perundurai Road,
Erode.

... Respondents/Respondent 1 and 2

Civil Miscellaneous Appeal filed under section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 27.01.2005 made in M.C.O.P.No.17 of 2003 on the file of the Motor Accident Claims Tribunal, Principal Sessions and District Judge, Namakkal.

For Appellants : Mr. N.Aniruthan

For Respondents : Mr. S.Arun Kumar [for R2]

J U D G M E N T

The petitioners/claimants have filed this appeal against the judgment and decree dated 27.01.2005 made in M.C.O.P.No.17 of 2003 on the file of the Motor Accident Claims Tribunal, Principal Sessions and District Judge, Namakkal.

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 22.12.2002 at about 07.00 a.m., while the deceased was walking in the Paramathy to Tiruchengode Main Road near Kadaiveethi tea stall, a tempo van bearing Registration No.TN-33-A-9004 came from behind at high speed dashed against the deceased causing him fatal injuries, resulting in his death on the spot. The

accident occurred only due to the negligence of the tempo van driver. At that point of time, the deceased was aged 55 years and by doing Coolie work was earning Rs.5,000/- per month. The petitioners/claimants who are the wife, sons and daughters of the deceased were depending on the earnings of the deceased. Due to his sudden demise, the petitioners/claimants have lost the Love and Affection of the deceased as well as his contribution to the family. Thus, the petitioners/claimants sought for a sum of Rs.5,00,000/- as compensation from the respondents.

3. On the other hand, opposing the claim of the petitioners/claimants, by filing counter, the 2nd respondent/Insurance Company contends that the accident did not occur due to the negligence of the 1st respondent vehicle driver. The claim of the petitioners/claimants about the age, avocation and income of the deceased is denied. The driver of the 1st respondent did not possess valid driving license at the time of the accident. The amount claimed by the petitioners/claimants is highly excessive. Thus, the 2nd respondent/Insurance Company sought for dismissal of the petition.

4. Before the Tribunal, the petitioners/claimants examined P.W.1 and produced documents Exs.P.1 to P.7 to prove their claim. On the side of the respondents neither oral nor documentary evidence was let in. On the available evidence on record, the Tribunal, found that the negligence of the 1st respondent vehicle driver alone caused the accident passed an award for a sum of Rs.90,500/- payable by the respondents to the petitioners/claimants. Being not satisfied with the quantum of the award passed by the Tribunal, 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 Tribunal failed to consider the evidence of the petitioners/claimants, that the deceased was earning Rs.5,000/- per month. The amount awarded by the Tribunal under different heads is very low. Thus, the petitioners/claimants sought for enhancement of the award amount by entertaining the appeal.

7. Per contra, the learned counsel for the 2nd respondent/Insurance Company contends that the compensation awarded by the Tribunal itself is on the higher side and there is no need to enhance the same. The claim of the petitioners/claimants is without any basis. Thus, the 2nd respondent/Insurance Company sought for dismissal of the appeal.

8. This is only a quantum appeal. Both sides have not disputed the conclusion of the Tribunal fixing negligence on the 1st respondent vehicle driver as the cause for the accident. It is clear from the evidence of P.W.1 as well as the contents of Ex.P.1 - F.I.R and Ex.P.4 - Copy of the final report filed by the Police that the case was registered against the 1st respondent vehicle driver only. Further, it is clear from ExP.5 - Copy of the judgment passed by the Judicial Magistrate, Paramathi in C.C.No.8 of 2003 that Murugasen driver of the 1st respondent, admitted his guilt and suffered punishment. Thus, on the basis of above said oral and documentary evidence, it is apparent that the Tribunal has correctly concluded that the negligence of the 1st respondent vehicle driver alone caused the accident.

9. The petitioners/claimants states that the deceased was aged 55 years and by working as a coolie was earning Rs.5,000/- per month. In the absence of any other documents regarding the age of the deceased, on the basis of Ex.P.2 - Post mortem certificate, the Tribunal has correctly fixed the age of the deceased as 55 years. Since the accident occurred during 2002 and the deceased was aged 55 years, the Tribunal has adopted the multiplier of '8' and the same is proper.

10. The petitioners/claimants states that by working as a coolie, the deceased was earning Rs.5,000/- per month. However, there is no proof for the same. As such, it will be appropriate to fix the earning of the deceased at Rs.100/- per day. Thus, the monthly earning of the deceased would be Rs.3,000/-. Considering the fact that the petitioners/claimants 4 to 6 are married daughters of the deceased, only the petitioners/claimants 1 to 3 can be considered as dependants of the deceased. Therefore, 1/3rd of the income is to be deducted towards personal expenses of the deceased. Thus, the monthly contribution of the deceased to the family will be, [Rs.3,000 - (Rs.3,000 x 1/3)]=Rs.2,000/-. The correct multiplier to be applied is '8'. Thus, the loss of dependency is calculated as follows:-

$$\text{Rs.2,000} \times 12 \times 8 = \text{Rs.1,92,000/-}$$

Thus, a sum of Rs.1,92,000/- is granted as compensation under the head "Loss of Dependency".

11. The Tribunal has awarded the undermentioned amounts under conventional heads. As the accident occurred during the year 2002, the same needs no interference. Thus, 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 Dependancy	81,000.00	1,92,000.00
2	Funeral Expenses	2,000.00	2,000.00
3	Loss of Consortium	5,000.00	5,000.00
4	Loss of Estate	2,500.00	2,500.00
5	Total	90,500.00	2,01,500.00

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

(i) The award of the Tribunal is enhanced to Rs.2,01,500/- from Rs.90,500/-.

(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 enhanced 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) As the petitioners/claimants 4 to 6 are not dependants of the deceased, the petitioners/claimants 1 to 3 alone are entitled for share in the compensation. Thus, the apportionment of the modified enhanced award amount is as follows:-

Petitioner 1 - 50%
 Petitioners 2 and 3 - 25% each

(v) On such deposit, the petitioners/claimants 1 to 3 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 the filing of such application.

(vi) The 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(CO)

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accident Claims Tribunal,
Principal Sessions and District Judge,
Namakkal.
2. The Section Officer,
V.R.Section, High Court, Madras.

+1cc to Mr.M.Aniruthan, Advocate Sr.46517

C.M.A.No.459 of 2008

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