

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.728 of 2013
and CMP.No.18235 of 2017

1.Jamuna
2.Minor Saravanakumar
3.Minor Harini Shree
Minors represented by their next friend
and mother, the 1st appellant
4.Lalithambal ...Appellants/Petitioners

Vs.

1.M/s.Winbro Logistics (P) Ltd.,
No.2, II Floor
Krishnan Koil Street
Chennai-600 001
2.The New India Insurance Company
Casino DO (712700)
Sundaram Finance Building
II Floor, No.21, Pattulos Road
Chennai-600 002 ...Respondents/Respondents

Prayer:Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 23.12.2010 passed in M.C.O.P.No.825 of 2009 on the file of Motor Accidents Claims Tribunal, Principal District Court, Dharmapuri.

For appellants : : Mr.P.Valliappan

for Respondents : : Mr.J.Michael Viswasam for R2.

J U D G M E N T

This Civil Miscellaneous Appeal is filed by the appellants/Petitioners, challenging the judgment and decree dated 23.12.2010 passed in M.C.O.P.No.825 of 2009 on the file of Motor Accidents Claims Tribunal, Principal District Court, Dharmapuri.

2. For the sake of convenience, the parties are referred to as per their litigative status before the Tribunal. It is a fatal case. The Petitioners who are the legal heirs of the deceased Balajee stated that the deceased Balajee was employed as a driver with M/s.KPN Transport Company, Salem, and on 20.06.2009, the deceased was on duty in the van bearing Reg.No.TN-30-H-2323 and due to tyre puncture, the said van was parked near Cholapuram Bus stand in the Thoothukudi to Ettayapuram NH-45B Main Road. At about 00.30 hours, the 1st respondent Lorry bearing Reg.No.TN-04-AB-8510 insured with the 2nd respondent came at high speed and dashed on the back side of the parked van causing fatal injuries to the deceased Balajee and other persons and they died on the spot. It is averred in the claim petition that the deceased by working as driver in M/s.KPN Travels Company was earning Rs.15,000/- per month and he was aged 47 years. The Petitioners who are the wife, children and mother of the deceased are dependant on his income. Thus, the Petitioners pleaded for a compensation of Rs.25,00,000/- from the respondents who are the owner and insurer of the offending vehicle.

3. On the other hand, opposing the claim of the Petitioners, the 2nd respondent-Insurance Company contends that the accident did not occur in the manner alleged by the Petitioners. The driver of the Lorry bearing Reg.No.TN-04-AB-8510 was not having valid driving licence and the said vehicle was not insured with the 2nd respondent. The Lorry bearing Reg.No.TN-04-AB-8510 was not in any way connected with the accident and the Petitioners have come forward with a false claim. Thus, the 2nd respondent sought for dismissal of the claim petition.

4. Before the Tribunal, on the side of the Petitioners, P.W.1 to P.W.3 were examined and produced Ex.P.1 to Ex.P.7 documents to prove their claim. While the 1st respondent remained exparte, on the side of 2nd respondent, neither oral nor documentary evidence was let in. The Tribunal, on the basis of available materials on record, found that the 1st respondent/driver alone caused the accident and awarded a sum of Rs.4,98,000/- as compensation payable by the respondents 1 and 2 jointly and severally to the Petitioners.

5. Being not satisfied with the quantum of the award, the Petitioners/claimants have come forward with the present appeal.

6. Heard both sides.

7. It is only quantum appeal. The learned counsel for the Petitioners/appellants contends that the Tribunal wrongly fixed the monthly income of the deceased at Rs.4000/- even though the deceased Balajee by working as driver was earning not less than Rs.15,000/- per month. The Tribunal ought to have deducted only 1/4th of the total income towards personal expenses. The evidence placed before the Tribunal was not properly considered. Thus, the Petitioners sought for enhancement of the award amount by entertaining the appeal.

8. Per contra, the learned counsel for the 2nd respondent/Insurance company contended that the Petitioner has not produced any acceptable evidence regarding the actual income of the deceased. The accident occurred not due to the negligence of the 1st respondent Lorry driver. The amount claimed by the Petitioner is exorbitant. Thus, the 2nd respondent sought for dismissal of the appeal.

9.1. Before the Tribunal, the 1st petitioner examined herself as P.W.1 and stated about the occurrence. The eye witness of the accident deposed as P.W.3 and according to him, only due to rash and negligent driving by the 1st respondent Lorry driver, the accident occurred. It is contended that the offending vehicle after the accident was driven away but number plate of the vehicle was found in the accident spot. The Police registered Ex.P.1-FIR on the basis of complaint given by Village Administrative Officer. P.W.2 has categorically spoken about the same. On the other hand, the 2nd respondent has not let in any evidence either oral or documentary. There is no explanation put forth by the 2nd respondent as to why and how the number plate of the vehicle was found on the occurrence spot. As such, the Tribunal has rightly concluded on the basis of P.W.3 evidence and contents of Ex.P.1 FIR that the negligence of the 1st respondent vehicle driver alone caused the accident. The same needs no interference.

9.2. It is clear from Ex.P.3 copy of the Insurance Policy that the vehicle of the 1st respondent was insured with the 2nd respondent and the driver of the offending vehicle was possessing valid driving licence as per Ex.P.4 and hence, as the insurer of the offending lorry, the second respondent-insurance company is liable to pay compensation.

10.1. The Petitioners stated that the deceased was aged 47 years. The Xerox copy of the driving licence of the deceased Balajee is produced as Ex.P.5; while the copy of the Post Mortem is produced as Ex.P.2. On the basis of the same, the Tribunal has correctly found the age of the deceased as 47 years. There is no contrary evidence let in by the 2nd respondent in that regard. As such, the conclusion of the Tribunal that the age of

the deceased was 47 years, is just and proper. The Petitioners contend that the deceased was employed as driver in M/s.KPN Travels, Salem, and his monthly income was Rs.15,000/-. The Petitioners also examined P.W.2 Venkatesan who stated that he is employed as Manager in M/s.KPN Travels Limited and usually their drivers are given Rs.500/- per trip. According to P.W.2, the deceased was given duty more than 15 times per month. However, there is no documentary proof produced by P.W.2. As such, the Petitioners has not established the actual monthly income of the deceased with acceptable evidence. The fact that the deceased possessed driving licence is not denied or disputed by the 2nd respondent. Taking note of the avocation of the deceased and the fact that that the accident occurred on 20.06.2009, it will be appropriate to fix the notional monthly income of the deceased at Rs.6000/-. Considering the fact that the number of dependants are four in numbers, it will be appropriate to deduct 1/4th towards personal expenses of the deceased. Following the Ruling in the case of Sarla Verma & Ors vs Delhi Transport Corp.& Another [2009 (2) TN MAC 1 (SC):2009] the deceased being aged 47 years, the multiplier to be applied is 13. Further, by following the Ruling in the case of National Insurance Co. Ltd., Vs. Pranay Sethi and Others [2017 (2) TN MAC 609 (SC)] considering the age of the deceased, 25% of the income has to be added towards future prospects. Thus the loss of dependency is calculated as follows:-
Monthly salary - 6000/-
25% future prospects =1500
6000 + 1500 = 7500
Deduction 1/4th (Rs.1875) 7500 - 1875 = 5625
5625 x 12 x 13 = 8,77,500/-
Thus, a sum of Rs.8,77,500/- is awarded under the head "loss of dependency".

10.2 The learned counsel for the Petitioners/claimants contends that due to sudden demise of the deceased Balajee, the petitioners 2 and 3 lost love and affection of their father and the 3rd petitioner lost her lovable son. He relied upon the Ruling of the Kerala High Court reported in 2017 SCC Ker 23174 [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] and contended that the sum of Rs.5,000/- each awarded by the Tribunal under the head "Loss of Love and affection" to petitioners 2 to 5 may be confirmed.

10.3. Considering the above submission, it will be appropriate to confirm the sum of Rs.5,000/- each awarded by the Tribunal under the head "Loss of love and affection" to Petitioners 2 to 4 and accordingly, the same is confirmed. Further, the sum of Rs.5000/- awarded under the head "Transport expenses" is also just and reasonable and hence, the same is

confirmed. Following the Apex court decision reported in 2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and Others], the compensation towards conventional heads, is modified as under:-

Funeral expenses -15,000/-
 Loss of estate -15,000/-
 Loss of consortium -40,000/-
 Add: Loss of dependency 8,77,500/-
 Total = Rs.9,47,500/-

10.4. Accordingly, the compensation awarded by the Tribunal stands modified and enhanced from Rs.4,98,000/- to 9,47,500/- and the same is as shown below.

Sl.No.	Heads	Amount awarded by the tribunal	Amount awarded by this Court
1	Loss of dependency	Rs. 4,68,000	Rs. 8,77,500
2.	Loss of consortium to 1 st petitioner	Rs. 5,000	Rs. 40,000
3.	Loss of love and affection to 2 nd and 3 rd petitioners	Rs. 10,000	Rs. 10,000
4.	Loss of love and affection to 4 th petitioner	Rs. 5,000	Rs. 5,000
5.	Funeral expenses	Rs. 5,000	Rs. 15,000
6	Loss of Estate	---	Rs. 15,000
7.	Transport expenses	Rs. 5,000	Rs. 5,000
	Total	Rs. 4,98,000/-	Rs. 9,67,500/-

11. In the result,

(i) This Civil Miscellaneous Appeal is Allowed;

(ii) The award amount is enhanced to Rs.9,67,500/- from Rs.4,98,000/-;

(iii) The award amount will carry interest at the rate of 7.5% from the date of petition till the date of realisation;

(iv) The 2nd respondent / Insurance Company is directed to deposit the entire award amount along with proportionate interest and cost, as ordered by this court, less the amount, if any already deposited.

(v) The Petitioners 1 to 4 are entitled to the award amount on the following apportionment:- 1st petitioner/wife-40%; 2nd, 3rd and 4th petitioners-20% each; The Petitioners 1 and 4/Appellants 1 and 4 are entitled to withdraw their respective shares of the award amount along with accrued interest. The Tribunal shall pass necessary orders for disbursal of the award amount by following the appropriate procedure. Insofar as Minor Petitioners 2 and 3 are concerned, their shares shall be invested in Fixed Deposit in a Nationalised Bank, till they attain the age of majority. The interest accrued on the minor shares shall be withdrawn by their guardian/mother once in three months.

(vi) No costs. Consequently, connected MP is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

nvsri

To

- 1.The Principal District Judge,
The Motor Accident Claims Tribunal, Dharmapuri.
- 2.The Section Officer,
V.R.Section, High Court, Madras.

+1cc to Mr.J.Michael Visuvasam, Advocate Sr.35247
+1cc to Mr.P.Valliappan, Advocate Sr.35410

C.M.A.No.728 of 2013

mr[co]
srg 10/08/2018

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