

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 02.02.2018

Coram

The Honourable Mr. Justice S.BASKARAN

Civil Miscellaneous Appeal No.900 of 2013

1.Lakshmi
2.S.Elumalai
3.S.Sundara Pandian
4.S.Sudha ...Appellants/Petitioner
(4th petitioner declared as Minor
and 1st Petitioner discharged
from guardianship (S.Lakshmi)
vide court order dated 11/09/15
made in MP.No.1 & 2/15)

..vs..

1.S.Ravindran (was set exparte in the Trial court)
2.ICICI Lambord Gl. Insurance Co.
Chotabhai Towers,
No.140, Nungambakkam High Road,
Chennai-600 006. ...Respondents/Respondents

This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the Fair and Decreetal order dated 15.12.2012 made in MCOP.No.2158 of 2011 on the file of the Motor Accident Claims Tribunal/Court of Small Causes), Chennai.

For Appellants : Mr.M.Swamikannu

For Respondent : Mrs.Sri Vidhya for R-2
R1-set exparte before the
Tribunal

JUDGMENT

This civil miscellaneous appeal arises out of the Fair and decreetal order dated 15.12.2012 made in MCOP.No.2158 of 2011 on the file of the Motor Accident Claims Tribunal/Court of Small Causes), Chennai.

2. For 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 20.05.2011 at about 12.30 hours, while the deceased was riding his TVS Moped bearing Registration No.TN-48-A-1957 from south to north on the eastern side of the Chennai - Madurai NH, near Anaikkal Cross Road, Kovilpatti, Manaparai Taluk, a Car bearing Registration No.TN-58-T-2887 owned by the first respondent and insured with the second respondent came from behind at very high speed and driven in a rash and negligent manner dashed against the TVS Moped and dragged the deceased to some distance resulting in major head injuries to him. Consequently, the deceased Swamikannu Konar died on the same day itself in Government Hospital, Tiruchy. The petitioners, who are the wife and children of the deceased contends that the accident occurred only due to the negligence of the first respondent's car driver and as the owner and insurer of the vehicle, the respondents are liable to pay compensation to them. Further, the petitioners also avered that the deceased worked as agriculturist and also by doing mason work at Chennai earned a monthly income of Rs.10,000/- to Rs.12,000/-. Thus, the petitioners sought for compensation of Rs.27,00,000/- from the respondents.

4. On the other hand, the second respondent Insurance company opposed the claim petition by filing detailed counter alleging that the petition is liable to be dismissed for non joinder of necessary parties namely, the Insurance Company of the Motor cycle, in which the deceased travelled. The manner of accident is also disputed. The claim of the petitioners about the avocation, monthly income, age and other particulars is also disputed. The 2nd respondent further stated that the driver of the first respondent's car had valid driving license is to be established by the petitioners. It is further contended that the deceased was riding his motor cycle without valid driving license and as such he also contributed to the accident. Thus, 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.P4 to substantiate their claim. On the side of the respondent, neither oral evidence nor documentary evidence was produced.

6. The Tribunal, after considering the pleadings, oral and documentary evidence, concluded that the accident occurred only due to the rash and negligent driving of the driver of the offending vehicle owned by the first respondent and insured with the second respondent and directed the respondents jointly

and severally to pay a sum of Rs.7,42,261/- as compensation. The Tribunal has passed the award as follows:-

Loss of income	Rs. 6,84,528.00
Loss of love and affection	Rs. 30,000.00
Funeral Expenses	Rs. 10,000.00
Loss of consortium	Rs. 10,000.00
Medical Expenses	Rs. 7,733.00

Total	Rs. 7,42,261.00

Being not satisfied with the quantum of compensation awarded by the Tribunal, the petitioners/claimants filed this present appeal seeking enhancement of Award amount.

7. Heard both side counsel and perused the materials available on record.

8. As stated earlier, the petitioners claim that the deceased Swamikannu Konar, who is the husband of the first petitioner and father of other petitioners, met with the accident only due to the negligence of the first respondent's car driver. The petitioners produced Ex.P1 copy of first information report relating to the accident and it is evident from same, that a case has been registered in Crime No.91 of 2011 at Vala Nadu Police Station against the driver of the car bearing Registration No.TN-58-T-2887. Further, P.W.2 who witnessed the accident categorically stated that while he was proceeding in his bicycle along Chennai - Madurai NH from North to South, near Anaikkal Cross Road, on 20.05.2011, he saw the deceased Swami Kannu Konar, proceeding in his Moped in the same direction and at that time, the car bearing Registration No.TN-58-T-2887 came in the same direction at high speed and dashed against the two wheeler, in which the deceased was travelling on extreme left side of the road. It is evident that the first respondent's car dashed behind the two wheeler which was going ahead of the car on the left side of the road. The respondent has not disputed the accident, but only contends that the driver of the first respondent's car is not responsible for the accident. However, the respondents has not chosen to examine the driver of the first respondent's car or any other witness to contradict the evidence of P.W.2. Further, Ex.P1 first information report specifically states that the driver of the first respondent's car alone is responsible for the accident. In such circumstances, keeping in mind the evidence of eye witness P.W.2 and the fact that Ex.P1 first information report was registered against the driver of the car only, it is clear that the accident occurred only due to the rash and negligent driving by the first respondent car driver. Thus, the finding of the Tribunal in that regard is just and proper and the same

needs no interference.

9. According to the petitioner, the deceased Swami Kannu Konar was aged about 43 years at the time of the accident. However, as per Ex.P3 Postmortem certificate, the age of the deceased is stated as 50 years. Thus, the age of the deceased is fixed as 50 years.

10. The wife of the deceased who deposed as P.W.1 stated that her husband was agriculturist and also worked as mason in Chennai earning a sum of Rs.10,000/- to Rs.12,000/- per month. It is clear from the Ex.P4 legal heir certificate that the petitioners who are the wife and children of the deceased are dependent on the income earned by the deceased Swamikannu Konar. However, the petitioners have not produced any proof for avocation and monthly income of the deceased. Hence, the Tribunal fixed the notional income of the deceased at Rs.4,500/- per month. However, considering the age of the deceased was 50 years and he worked as agriculturist as well as doing mason work, it would appropriate to fix the monthly income as Rs.8,000/-. Considering the age of the deceased, 25% of income is added towards future prospectus. Rs.8000/- + 25% of future prospectus Rs.2000/- = Rs.10,000/-. Thus the loss of dependency is calculated as follows:- Rs.10,000/- x 12 = Rs.1,20,000/- x 13 = Rs.15,60,000/- and 1/4th amount is deducted towards personal expenses is Rs.3,90,000/- and the loss of income is comes to Rs.11,70,000/-.

11. 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
Loss of Estate	=	Rs.15,000.00
Funeral Expenses	=	Rs.15,000.00
Medical Expenses	=	Rs. 8,000.00

12. Accordingly, the compensation awarded by the Tribunal is modified as follows:-

WEB COPY

S1 No	Heads	Amount awarded by the Tribunal	Awarded by this Court
1.	Loss of income	6,84,528.00	11,70,000.00
2.	Loss of consortium	10,000.00	40,000.00
3.	Loss of love and affection	30,000.00	-
4.	Funeral Expenses	10,000.00	15,000.00
5.	Medical Expenses	7,733.00	8,000.00
7.	Loss of Estate	-	15,000.00
	Total	7,42,261.00	12,48,000.00

13. In view of the above modification, the civil miscellaneous appeal is partly allowed with costs. The second respondent/Insurance Company is directed to deposit the entire enhanced award amount of Rs.12,48,000/- with interest at the rate of 7.5% p.a. from the date of filing the claim petition till the date of deposit the entire award amount, 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 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 VI)

//True Copy//

Sub Assistant Registrar

rrg

To

The Motor Accident Claims Tribunal
Chief Judge
Court of Small Cases,
Chennai.

+1 cc to Mr.M.Swamikannu Advocate sr 7790
+1 cc to Mrs.R.Sreevidhya Advocate sr 8341

C.M.A.No.900 of 2013

ssd(co)

aa06/04/2018