

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED:06.02.2018

Coram

The Honourable Mr. Justice S.BASKARAN

Civil Miscellaneous Appeal No.419 of 2012
and
Cross Obj No.7 of 2014

The New India Assurance Company Ltd.,
Rajarajeswari Towers, 4th Floor,
New No.51, Dr. Radhakrishnan Salai,
Mylapore, Chennai-4. Appellant/1st Respondent in
Cross.Objn./2nd Respondent

...vs..

1.N.Malarselvi
2.N.Mohith,
Minor, rep. by his mother and next
friend first petitioner,
3.P.Thangam,
4.R.Ponnusamy Respondents 1 to 4/Cross.objectors/
Petitioners
5.A.Dayalan 5th Respondent/2nd Respondent in
Cross.Objn/1st Respondent

This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the Fair and Decreetal order dated 19.04.2011 made in MCOP.No.1039 of 2009 on the file of the Motor Accident Claims Tribunal/(Additional District & Sessions Court, Fast Track Court No.II), Poonamallee.

For Appellants : Mr.S.Jayasankar
in CMA/1st respondent and in Cross.Objectors

For Respondents : Mr.P.Natarajan for R1 to R4
1to 4 in CMA and for cross objectors

JUDGMENT

This civil miscellaneous appeal arises out of the Fair and Decreetal order dated 19.04.2011 made in MCOP.No.1039 of 2009 on the file of the Motor Accident Claims Tribunal/(Additional District Court, Fast Track Court No.II), Poonamallee.

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 21.08.2009 at about 21.00 hours, when the deceased Nandhakumar was riding his motor cycle bearing Registration No.TN-22-AC-8676, in Velacherry - Tambaram Main Road, from north to south and as he was moving upwards in the Velacherry over bridge, the first respondent owned Lorry bearing Registration No.TN-09-X-9263, which was standing near the centre median of the over bridge, suddenly came in reverse direction at high speed without any signal and hit the motor cycle, in which the deceased was travelling along with his wife. The accident occurred only due to the negligence of the first respondent vehicle driver. At the time of accident, the deceased was aged about 29 years and he was self employed as computer hardware service engineer and earned a sum of Rs.10,000/- to Rs.12,000/- per month. The petitioners who are the wife, minor son and parents of the deceased were depending on the income of the deceased. Due to the demise of the said Nandhakumar, the petitioners have suffered loss of income. Hence, the petitioners seek a sum of Rs.25,00,000/- 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 a counter stating that the negligence of the deceased rider of the two wheeler alone resulted in the accident and not the negligence of the first respondent lorry driver. The petitioners has to prove the age, occupation and income of the deceased. The accident was not reported to the second respondent insurance company. The petitioner has to prove the driver of the first respondent having valid driving licence and the offending vehicle having all the necessary papers to fly on the road. As the accident occurred only due to the negligence of the deceased, the claim of the petitioners is unsustainable. Hence, the second respondent Insurance Company seeks dismissal of the petition.

5. Before the Tribunal, the first petitioner examined herself as P.W.1 and produced documents Ex.P1 to Ex.P21 to substantiate their claim. On the side of the respondents, 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.19,24,541/- as compensation. The Tribunal has passed the award as follows:-

Loss of income	Rs.	14,40,000.00
Loss of consortium	Rs.	20,000.00
Loss of love and affection	Rs.	20,000.00
Transportation	Rs.	5,000.00
Funeral Expenses	Rs.	5,000.00
Medical Expenses	Rs.	4,34,541.00

Total	Rs.	19,24,541.00

Aggrieved over the said finding of the Tribunal, the second respondent Insurance Company has preferred the appeal and being not satisfied with the quantum of compensation awarded by the Tribunal, the petitioners/claimants have filed the Cross Objection No.7 of 2014.

7. The learned counsel for the second respondent insurance company contends that the notional monthly income fixed by the Tribunal at Rs.10,000/- is on the higher side and the same is fixed without any proof. The multiplier applied by the Tribunal is also not correct. The Tribunal ought to have applied multiplier 17 instead of 18 as done by it. The petitioner also failed to examine the author of Ex.P8 medical bills and as such the claim based on the said document should not be entertained. The amount awarded by the Tribunal under the different heads are on the higher side without any basis. As such, the second respondent insurance company seeks to set aside the award passed by the Tribunal by entertaining the appeal.

8. Per contra, the learned counsel for the petitioners/claimants contends that the Tribunal failed to consider the oral and documentary evidence of the petitioners properly. The Tribunal ought to have fixed the notional income of the deceased at Rs.25,000/- to Rs.30,000/-, since the deceased was working as computer hardware service engineer. The higher educational qualification of the deceased was not considered by the Tribunal properly. The Tribunal ought to have deducted only $\frac{1}{4}$ of the amount towards personal expenses and not at the rate of $\frac{1}{3}$ as done by it. The amount awarded by the Tribunal under the different heads are very nominal and the same is to be enhanced. Thus, the petitioners/cross objectors seek to enhance the quantum of compensation awarded by the Tribunal by allowing the Cross Objection filed by them.

9. I have considered the rival submissions and perused the materials available on record.

10. The first petitioner, who is the wife of the deceased was travelling along with the deceased as a pillion rider at the

time of accident and she deposed as P.W.1 before the Tribunal and clearly stated about the manner in which the accident took place. According to her, as they were proceeding in the two wheeler, the first respondent lorry which was stationary in the Velacherry over bridge suddenly came in the reverse without any signal and dashed against the two wheeler, in which P.W.1 was travelling as pillion rider along with deceased Nandhakumar. The police have also registered a case against the driver of the first respondent lorry as evidenced by Ex.P1 first information report. After conducting investigation, the police have also laid the charge sheet Ex.P4 against the driver of the first respondent lorry only. The petitioners also produced Ex.P2 rough sketch to support their contention. It is evident from the oral evidence of P.W.1, who is an eye witness to the occurrence and the documents Ex.P1, Ex.P2 and Ex.P4 that the negligence on the part of the first respondent lorry driver alone resulted in the accident. Further, the respondents has not chosen to examine any witness on their side to contradict the version of P.W.1 as to how the accident occurred as the driver of the first respondent lorry is not examined. In such circumstances, it is clear from the evidence of P.W.1 and the documents produced by her that the accident occurred only due to the negligence of the first respondent lorry driver and the Tribunal has rightly concluded to that effect. The said conclusion is based on proper appreciation of the evidence available on record and the same needs no interference.

11. The petitioners claims that the deceased Nandhakumar was aged about 29 years at the time of the accident and he was earning a sum of Rs.10,000/- to Rs.12,000/- per month by working as computer hardware service engineer. The petitioners produced the SSLC Mark Sheet of the deceased as Ex.P9, wherein his date of birth is given as 29.07.1981. The petitioners also produced the Postmortem report of the deceased as Ex.P3 and death certificate as Ex.P5. On the basis of the said documents, the age of the deceased is fixed at 27 years by the Tribunal is just and proper.

12. According to the petitioners, the deceased obtained B.Sc computer degree and MBA degree and he was also qualified in typing. The petitioners produced Ex.P10 to Ex.P14 to prove the educational qualification of the deceased. According to the petitioners, prior to his death, the husband of the first petitioner was working privately as computer hardware service engineer and he was getting a income of Rs.25,000/- to Rs.30,000/- per month. However, as the petitioners failed to produce any proof of income earned by the deceased, the Tribunal fixed the notional income of the deceased at Rs.10,500/- per month. Considering the educational qualification of the deceased and other attendant circumstances, in the absence of any proof

to prove the income, this court is of the view that the notional income of the deceased can be fixed at Rs.9,500/- instead of Rs.10,000/-fixed by the Tribunal. Since the deceased was aged about 27 years at the time of the accident, it will be appropriate to add 40% of the amount towards future prospectus. The correct multiplier applied in this case is 17. Since there are four dependents $\frac{1}{4}$ of the amount to be deducted towards personal expenses. Hence, the loss of income calculated is as follows:-

Rs.9,500/- + added 40% (towards future prospectus)
Rs.3,800/- = Rs.13,300/- - deducted $\frac{1}{4}$ th amount (towards personal expenses)Rs.3375/- = Rs.9,975/- x 12 = Rs.1,19,700/- x 17 =Rs.20,34,900/-. Thus, the loss of income comes to Rs.20,34,900/-.

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 Estate = Rs. 15,000.00
Loss of consortium = Rs. 40,000.00
Funeral Expenses = Rs. 15,000.00
Transportation = Rs. 10,000.00

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

S1 No	Heads	Amount awarded by the Tribunal	Awarded by this Court
1.	Pecuniary Loss of income	14,40,000.00	20,34,900.00
2.	Loss of consortium	20,000.00	40,000.00
3.	Loss of love and affection	20,000.00	-
4.	Funeral Expenses	5,000.00	15,000.00
5.	Loss of Estate	-	15,000.00
6.	Transportation charges	5,000.00	10,000.00
7.	Medical Expenses	4,34,541.00	4,34,541.00
	Total	19,24,541.00	25,49,441.00

15. Though the compensation awarded by the Tribunal is enhanced to Rs.25,49,441.00 and the same is restricted to the claim made by the petitioners/claimants in the claim petition, namely, Rs.25,00,000/-. Hence, the petitioners/claimants are entitled to compensation for a sum of Rs.25,00,000/-.

16. In the result, the civil miscellaneous appeal is dismissed. No costs. The Cross Objection is allowed with costs. The second respondent/Insurance Company is directed to deposit the entire enhanced award amount of Rs.25,00,000/- with interest at the rate of 7.5% p.a. 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 deposits, the first and second petitioners/claimants are entitled to 40% each of the award amount and the petitioners/claimants 3 and 4 are entitled to 10% each of the award amount. The petitioners/claimants 1, 3 and 4 are permitted to withdraw their respective shares with accrued interest by filing necessary application before the Tribunal. The second petitioner is minor and his share amount shall be kept in a fixed deposit in any one of the Nationalized Bank till he attain majority and his mother the first petitioner herein is permitted to withdraw the accrued interest once in three months till he attained majority.

rrg

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1.The Motor Accident Claims Tribunal
Additional District Judge,
Fast Track Court No.II,
Poonamallee.

2.The Section Officer,
VR Section,
High Court, Madras

+lcc to Mr.S.Jayasankar, Advocate Sr.No.9244
+lcc to Mr.P.Natarajan, Advocate Sr.no.9879
+lcc to Mr.P.Natarajan, Advocate Sr.no.9879 dt.2.4.2018

GJII(CO)
sm:20.3.2018

C.M.A.No.419 of 2012
and
Cross Obj.No.7 of 2014