IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 20.02.2018

Coram

The Honourable Mr. Justice S.BASKARAN

Civil Miscellaneous Appeal No.2664 of 2006

1.Mrs.T.Swarnalakshmi
2.Saran Siva
3.Minor Hari Siva
(Minor rep. by Mother and
next friend Mrs.T. Swarnalakshmi)
4.Mrs.Jayalakshmi **(Died)**
***(Appellants 1 to 3 Recognized as LRS of Deceased 4th Appellant Viz Jayalakshmi Vide Memo dated 4.9.2017 and court order dated 8.6.2018 made in CMA.2664 of 2006)**
...Petitioners/Appellants

..vs..

1.V.Venkatesan
2.M/s.United India Insurance Co. Ltd.,
C/o.Motor Third Party Claims Office,
No.38,Anna Salai,
Chennai-600 002. ...Respondents/Respondents

This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the Fair and Decreetal order dated 03.02.2006 made in MCOP.No.2623 of 2004 on the file of the Motor Accident Claims Tribunal/Chief Judge, Small Causes Court, Chennai.

For Appellant : Mr.T.G.Balachandran

For Respondents : Mr.D.Baskaran for R-2.
R-1 Exparte

JUDGMENT

Being not satisfied with the finding of the Tribunal, dated 03.02.2006 made in MCOP.No.2623 of 2004 on the file of the Motor Accident Claims Tribunal/Chief Judge, Small Causes Court, Chennai, the petitioners/claimants filed this present appeal for enhancing the award amount.

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 22.04.2002 at about 00.15 hours, while the deceased was proceedings in his two wheeler bearing Registration No.TN-21-S-0010, in Maraimalai Adikalar Bridge, Saidapet, towards Guindy, the first respondent lorry bearing Registration No.TN-28-B-9873 was going ahead of him and the driver of the said lorry suddenly applied the brake without and warning signal resulting in the deceased dashing against the rear side of the lorry causing incident death to him. The accident occurred only due to the negligence of lorry driver who suddenly applied the brake and stopped the vehicle without any signal. So as to avoid hitting another vehicle, which was proceeding ahead of the said lorry. At the time of the accident, the deceased was aged about 32 years, employed as Pattern Master in a private industry, earning a sum of Rs.9,500/- per month. The petitioners, who are the wife, children and mother of the deceased are dependents of the deceased. Hence, due to the death of the deceased Thesigan, the petitioners have lost their only bread winner of the family. As such, the petitioners seek compensation of Rs.18,00,000/- 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 detailed counter stating that the claim of the petitioner about the manner and nature of the accident is disputed. The age, occupation and income of the deceased as claimed by the petitioners is disputed. The first respondent has not involved about the accident as required by the statue. The claim of the petitioners is exorbitant. Hence, the second respondent seeks dismissal of the petition.

5. Before the Tribunal, the first petitioner examined herself as P.W.1 and two other witnesses examined as P.W.2 and P.W.3 and produced documents Ex.P1 to Ex.P12 to prove their claim. On the side of the respondent, neither oral nor documentary evidence was produced.

6. The Tribunal, after considering the pleadings, oral and documentary evidence, found that the driver of the Trailor lorry as well as the deceased person contributed to the accident and fixed negligence on the part of them at 75% x 25% respectively and awarded a sum of Rs.6,44,880/- as compensation to the petitioners. Being not satisfied with the finding of the Tribunal. The petitioners/claimants has come forward with this present appeal sought for enhancing the award amont..

7. I have heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the respondents and perused the materials available on record.

8. The learned counsel appearing for the petitioners/claimants/ appellants contended that there is no contributory negligence on the part of the deceased and the finding of the Tribunal in that respect is unsustainable. The Tribunal failed to appreciate the evidence that at the time of accident, the lorry suddenly turned left side and stopped and resulting in the collision of two vehicles causing death of the deceased. The evidence on record clearly proves that only due to the sudden application of brake by the driver of the lorry, the accident is occurred. Fixing of 25% of the disability to the deceased is arbitrary and unnecessary. The Tribunal wrongly fixed the monthly income at Rs.6,995/- where as the cross salary of the deceased was Rs.9,075/-. The Tribunal also failed to apply the correct multiplier. The amount awarded under the different heads is also not correct. Hence, the petitioners seek to entertain the appeal and enhance the award amount.

9. Per contra, the learned counsel appearing for the second respondent contended that the accident occurred only due to the negligence of the deceased who was unable to control the two wheeler and dashed against the rear side of the lorry resulting in his death and that itself would clearly prove that only due to the high speed of the two wheeler, he failed to control the two wheeler dashing against the rear side of the lorry which was going ahead of him. The contributory negligence fixed by the Tribunal is perfectly correct and the amount awarded by the Tribunal is on the higher side. As such, the learned counsel appearing for the second respondent-Insurance Company seeks dismissal of the appeal.

10. The main contention of the petitioners/claimants is that the accident occurred only due to the sudden application of the brake by the driver of the lorry and as such the Tribunal is not correct in fixing 25% negligence on the part of the deceased for causing the accident. Thus, it is to be seen whether there was any negligence on the part of the deceased or the accident occurred only due to negligence of the said lorry driver alone.

11. Admittedly, the accident occurred on 22.04.2004 at about 00.15 hours, being midnight, the traffic in the occurrence spot should be only minimum. The eye witness to the occurrence was examined as P.W.2 and he stated that he was driving his Auto from Saidapet to Guindy and at that time, the Trailer Lorry was proceeding ahead of his Auto and the deceased was riding a motor cycle behind the said trailer lorry. Suddenly the driver of the trailer lorry, which was attempting to over take another vehicle

applied brake resulting in the motor cycle dashing against the mudguard of the lorry and as such the accident took place. P.W.2 stated that the accident occurred only due to the rash and negligent driving of the trailer lorry. However, P.W.2 admitted that he did not lodge any complaint to the police who arrived at the spot within 15 minutes. The Police registered a case against the driver of the lorry as evidenced by Ex.P1 First Information Report. As per the averments in Ex.P1 FIR, the lorry bearing Registration No.TN-28-B-9873 was proceeding in the Maraimalai Adigalar Bridge at high speed and as the driver of the lorry suddenly applied brake, the motor cycle which was following the lorry dashed on the rear side of the lorry resulting in the death of the rider of the two wheeler at the accident spot itself. The petitioner also produced Ex.P2 Rough Sketch of the occurrence spot. The police after investigation laid the charge sheet against the driver of the lorry, as evidenced by Ex.P3 copy of the charge sheet. However, there is no evidence available on record as to whether the driver of the lorry was convicted or about the result of the Criminal Case filed against the driver of the lorry.

12. It is evident from the oral evidence of P.W.2 eye witness to the occurrence that there was no other vehicle around the place of accident at that point of time. According to P.W.2, the deceased was following the lorry at a distance of 20 feet. On perusal of Ex.P2 Rough Sketch, it is clear that the breadth of the road from the center median to the pedestrian platform is 30 meters. Admittedly, the lorry was a heavy goods vehicle. The learned counsel appearing for the petitioners/claimants contented that as the lorry was trying to overtake another vehicle suddenly turn left and as the driver applied the brake without any warning, the motor cycle dashed against the rear side of the lorry. Thus, the petitioners contends that only because the lorry suddenly turn left side and driver of the lorry applied brake the accident occurred. As stated earlier, P.W.2 evidence discloses that the fact that there was other vehicle or movement at the time of the accident. As such there is no reason for the first respondent lorry driver suddenly turn left as claimed by the petitioners. Even assuming that in Ex.P2 Rough Sketch, it is shown as if the lorry was driven in turning towards left there is no evidence on record to concluded that the lorry was suddenly turn left as claimed by the petitioners.

13. Further, as the deceased was riding his motor cycle following the lorry, he could also by cautious while driving. As evidenced by P.W.2 deposition there was a gap of 20 feet between lorry and motor cycle, in which the deceased was going. As rightly pointed out by the learned counsel appearing for the second respondent that if the motor cycle is going a normal

speed, the rider could have control to avoid dashing against the lorry. Even if the lorry stop suddenly, but as the motor cycle was proceeding at high speed, the rider was unable to control the two wheeler resulting in the accident. As stated earlier, the motor cycle has dashed against the rear side of the lorry which was going ahead. Even Ex.P2 Rough Sketch nothing is stated about any vehicle coming in the opposite direction. P.W.2 has not stated about any vehicle coming in the opposite direction at the time of the accident. It is also evident from P.W.2 evidence that there was a gap of 5 feet between the lorry and the motor cycle on the side ways. In such circumstances, it is apparent that the deceased could have avoid dashing against the lorry if he come at normal speed.

14. The learned counsel appearing for the petitioners/claimants contended that Ex.P2 Rough Sketch also shows that the trailer lorry was suddenly turned towards left in the path of the motor cycle and this fact was not considered by the Tribunal. The sudden shifting towards the left side of the lorry on the pathway of the motor cycle is the "proximate cause" in causing the accident. The motor cycle would not have collided if the tractor trailer lorry has not swerved suddenly without any signal. He further stated that unless or until there are any act or omission on the part of the deceased which materially contributed to the occurrence. It is further contended that there is no evidence to show that there was any act or omission on the part of the deceased which caused the accident. Further, the petitioners has not produced the driving licence of the deceased.

15. However, as stated earlier, there is nothing on record to show any vehicle coming in the opposite direction, the deceased has also dashed on rear side of the lorry going ahead of him. As per the evidence of P.W.2, there was a distance of 20 feet between the vehicle in which the deceased was going. In such circumstances, if the deceased was going a normal speed and following the traffic rules, he could have avoid hitting the lorry even if it had stopped suddenly. As such, it is clear that the driver of the lorry who is alleged to have suddenly stopped the vehicle as well as the deceased who was following the lorry by their acts caused the accident and as such the negligence is to be apportionment of both of them. In such circumstances, the Tribunal has rightly assessed the negligence on the part of the lorry driver at 75% against whom the case was registered and the negligence on the part of the deceased at 25% and the same is just and proper, the same needs no interference by this Court.

16. The first petitioner who deposed as P.W.1 stated that her husband was employed as Pattern Master in R.K. Industries and he was getting a salary of Rs.9,075/- per month. The identity card of the deceased is produced as Ex.P5 and the postmortem report as Ex.P4. The petitioner examined P.W.3 who is employed in private company, where the deceased was working. To prove the nature of employment and monthly salary of the deceased, P.W.3 stated that he was working as administrative assistant in R.K. Industries, Chennai-32 and deposed that the monthly salary of the deceased was Rs.9,075/-. The salary certificate of the deceased is marked as Ex.P8. Likewise, P.W.3 produced Ex.P10 showing the Provident Fund deductions made in the salary of the deceased. The Bank statement of the deceased showing the payment of monthly salary is produced as Ex.P11. The petitioners also produced as additional documents before this Court, namely, the appointment order as well as the Employees Provident Fund Statement as Ex.P13 and Ex.P14. It is evident from P.W.3 deposition that the basic salary of the deceased was Rs.9,000/- per month and including the allowance which was Rs.9,075/- per month. The deceased was aged stated to be 32 years at the time of the accident. The petitioners have not produced any document to prove the age of the deceased. As such the Tribunal on the basis of Ex.P4 Postmortem Certificate fixed the deceased age as 32 years. The same is not disputed by either side. Thus, the age of the deceased was fixed at 32 years. Since the age of the deceased 32 years at the time of the accident, the multiplier in this case is 16. The Tribunal after taking into consideration Ex.P8, Ex.P9, Ex.P11 and Ex.P12 documents found that after deductions, the net salary given to the petitioner was Rs.7,995/- per month and then deducted Rs.1000/- towards income tax and fixed the contribution to the family at Rs.6,995/- per month. In the said amount, after deducting 1/3rd towards his personal expenses, fixed the monthly contribution to the family at Rs.4,633/-. This the learned counsel appearing for the petitioners/claimants contended that totally in correct, the Tribunal taken the total salary and there was no need to deduct income tax. Thus, the petitioners seek to re-fix the monthly income of the deceased. It is evident from the about said documents produced by the petitioners/claimants and the evidence of P.W.3 that the monthly total income of the deceased was Rs.9,075/-, as such even if the amount was deducted towards Employees Provident Fund and other contributions made by the petitioner, the same is to be treated only as investment. As such, the total salary of the deceased as Rs.9,075/- is to be taken as the monthly salary. The petitioner was aged about 32 years at the point of time, the multiplier is 16. The learned counsel appearing for the petitioners/claimants contended that even if he was in probation period, he would get permanent employment on completion of one year probation. It is true that he would have been permanent on

successful completion of probation. But, on the date of accident he was only on probation and as such as per Ex.P13, appointment order, he will be made permanent only on successful completion of probation.

17 In such circumstances, following the Apex Court decision reported in 2017 (2) TN MAG 609 (SC) NATIONAL INSURANCE CO. LTD., Vs. PRANAY SETHI AND OTHERS, the deceased being yet to made a permanent worker, but he was getting a fixed salary, it will be appropriate to add 40% of the income towards future prospectus. Thus, the monthly income at Rs.9,075/- and add 40% of the amount of Rs.3,630/- towards future prospects = Rs.12,705/- as monthly income. Thus, the monthly income of the deceased fixed at Rs.12,705/- and the annual income comes to (Rs.12,705/- x 12 = Rs.1,52,460/-) = Rs.1,52,460/- and after deducting a sum of Rs.25,738/- [(i) Rs.50,000/- tax exemption. (ii)Rs.50,000/- to Rs.60,000/- 10% tax Rs.1,000/-. (iii) Rs.60,001/- to Rs.90,000/- 20% tax Rs.6,000/-. (iv) Rs.90,001 and above tax deduction 30%, Rs.62,460/- 30% deduction Rs.18,738/-. Total Tax Amount of Rs.25,738/-] which would be the income tax payable, a sum of Rs.1,26,722/- as annual income of the deceased. Since there are four dependents 1/4th amount deducted towards his personal expenses. Rs.1,26,722/- - 1/4th deduction is Rs. 31,680/- = Rs.95,042/-. As such the loss of income calculated is as follows:-

Rs.95,042/- x 16 = Rs.15,20,672/-.

18. 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
Funeral Expenses	=	Rs.15,000.00
Loss of Estate	=	Rs.15,000.00
Transportation	=	Rs. 5,000.00

19. Accordingly, the compensation warded by the Tribunal is modified as follows:-

Sl No	Heads	Amount awarded by the Tribunal	Awarded by this Court
1.	Loss of income	8,39,340.00	15,20,672.00
2.	Loss of Estate	-	15,000.00
3.	Loss of love and affection	5,000.00	-
4.	Loss of expectation of life	5,000.00	-

Sl No	Heads	Amount awarded by the Tribunal	Awarded by this Court
5.	Loss of clothing	500.00	-
6.	Loss of consortium	5,000.00	40,000.00
7.	Funeral Expenses	5,000.00	15,000.00
4.	Transportation charges	-	5,000.00
	Total	8,59,840.00	15,95,672.00

20. In view of the contributory negligence fixed on the part of the second respondent-Insurance Company at 75% is Rs.11,96,754/- and on the part of the deceased at 25% is Rs.3,98,918/-.

21. In the result, the civil miscellaneous appeal is partly allowed. No costs. The award passed by the Tribunal dated 03.02.2006 in M.C.O.P.No.2623 of 2004 is modified to the effect that the second respondent/Insurance Company is directed to deposit the entire enhanced award amount of Rs.11,96,754/- with interest at the rate of 7.5% p.a. from the date of filing till the date of deposit and 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. The apportionment of the award made by the Tribunal is holds good. On such deposit, the petitioners/claimants 1,2 and 4 are permitted to withdraw their respective share with accrued interest by filing necessary application before the Tribunal. The third petitioner/claimant is minor, his share amount is directed to deposit any one of the Nationalized Bank till he attain majority. The first petitioner/claimant is permitted to withdraw the accrued interest once in three months.

rrg 20/02/2018

This Civil Miscellaneous Appeal having been listed on Friday the eighth day of June 2018 under caption for being mentioned in pursuant to the earlier order dated 20.02.2018 and in the present of Mr.G. Balachandran, Advocate for the appellants and this court made the following order;

This matter is listed today under the caption “for being mentioned”.

2. It is represented that the appellants filed a memo on 04.09.2017 stating that the 4th appellant/wife Mrs.Jayalakshmi has died and along with the memo, death certificate was also filed.

3. On a perusal of the records, it is seen that the said memo along with death certificate was not put up with the bundle at the time of disposal of the appeal itself. Now, taking into consideration the above submission of the counsel for the appellants, the said memo is taken on file. The memo dated 04.09.2017 is ordered. Accordingly, the Registry is directed to carry out the necessary amendment and to issue a fresh order copy.

4. It is pointed out by the learned counsel for the petitioners/appellants that in the order dated 20.02.2018, the deceased 4th petitioner/wife was alloted 20% of the award amount. Out of the same, 10% is alloted to the 1st petitioner and 2nd and 3rd petitioners/appellants are allotted 5% each. Other conditions in the order dated 20.02.2018 remain unaltered.

bri 08.06.2018

Sd/-
Assistant Registrar(CS II)
dt. 26.03.2018

Corrected as per order of this
Court dated 03.7.2018

Sd/-
Assistant Registrar (Cs-II)
dt. 03/07/2018

//True Copy//

Sub Assistant Registrar

rrg
To
The Chief Judge, Small Cause Court,
The Motor Accident Claims Tribunal,
Chennai.

To be substituted to the
order already despatched
on 17.4.2018 & 05.07.2018

copy to
The Section Officer(copies-2)
VR Section,High Court Madras
+2 ccs to Mr.D.Bhaskaran Advocate sr 12083,12709
+1 cc to Mr.T.G.Balachandran Advocate sr 13125

C.M.A.No.2664 of 2006

svi(co)
aa 03/04/2018
Eu.03.07.2018
EU 25.7.2018