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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 09.10.2018

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and
THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY
C.M.A.No.2330 of 2017

1. Andal

2. Anjali

3.M.Santhosh

... Appellants/Petitioners/(Claimants)

Vs

1.Avinav Kannan

2.(R1 remained exparte before Tribunal)

2. The New India Assurance Co.Ltd.,
Motor Third Party Claims Hub,
No.45, Moore Street,
Chennai - 600 001.

... Respondents/Respondents
(Respondents)

PRAYER :Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act against the judgment and decree dated 23.08.2016 made in MACTOP.No.6335 of 2014 on the file of the Motor Accident Claims Tribunal, III Court of Small Causes, Chennai.

For Appellants : Mr.F.Terry Chella Raja

For Respondents : Mr.G.Udhaya Sankar for R2
R1 set exparte

J U D G M E N T

(KRISHNAN RAMASAMY, J)

Aggrieved over the award passed by the Motor Accident Claims Tribunal, III Court of Small Causes, Chennai in MACTOP.No.6335 of 2014 dated 23.08.2016 the appellants herein, who are the petitioners in the above said MCOP have filed this Appeal to set aside the award of a sum of Rs.11,63,800/- passed by the Claims



Tribunal as erroneous.

2. Heard Mr.F.Terry Chella Raja, the learned counsel appearing for the appellants and Mr.G.Udhaya Sankar, the learned counsel appearing for the second respondent.

3. The brief facts of the case are as follows:-

The present appeal is filed by the wife, son and daughter of Madheswaran who died in a road accident. It is stated in the petition that on 07.02.2014, at about 20:00 hrs, the deceased (Madheswaran) was walking on the left side of the G.S.T.Road, Urapakkam Iyancherry Junction, at that time, one Hyundai Car bearing Registration No.TN19L-0519 driven by its driver in a rash and negligent manner, came at a dangerous speed from Chengalpattu to Chennai direction and dashed on Madheswaran. Madheswaran fell down and sustained fatal injuries and died on the same day. The above accident occurred due to the rash and negligent driving of the car driver. Therefore, the first respondent being the owner, 2nd respondent being the insurer of the car are vicariously and statutorily liable to pay the compensation to the appellants/petitioners with interest and costs.

4. The case of the respondent/respondent is that the accident had not occurred due to the rash and negligent driving of the car driver but due to the negligent act of the deceased.

5. The only issue arising in the present appeal is pertaining to the quantum of compensation fixed by the Tribunal.

6. It is an admitted fact that Madheswaran was walking on the GST Road, Urapakkam and the car bearing registration no.TN19L-0519 belongs to the first respondent who drove the car in a rash and negligent manner dashed against Madheswaran and thereby the injured fell down and sustained fatal injuries. The accident occurred on 07.02.2014 at 20:00 hrs. After considering the pleadings and evidences, the Tribunal came to the conclusion that the accident occurred due to the rash and negligent driving of the first respondent. The police also registered FIR and after investigation they came to the conclusion that the first respondent is responsible for the accident. PW2 eye witness also confirms that the accident occurred due to the rash and negligent driving of the car driver. Therefore, the Tribunal came to the conclusion and fixed the negligence on the part of the first respondent car driver.

7. The first respondent car was insured with the second respondent and the same was valid from 04.09.2013 to 03.09.2014. The date of accident was on 07.02.2014 and it was proved that the second respondent is the insurer of the car which belongs to



the first respondent, which was subsisting on the date of accident. The accident occurred due to the negligent driving of the first respondent, therefore as the insurer of the first respondent's car, the Tribunal rightly fixed that the second respondent is liable to pay the compensation to the appellants/claimants.

8. PW1 who is the wife of the deceased deposed that her husband was taken to the hospital immediately after the accident and he died on the way to the hospital. Ex.P2 is the Post Mortem certificate and Ex.P.3 is the death certificate. There was no dispute regarding the death of the deceased. On a mere perusal of Ex.P.5 itself, it is clear that the deceased died of shock and haemorrhage of the multiple injuries sustained.

9. In the petition, the age of the deceased was mentioned as 45 years, whereas in Ex.P2 Post Mortem certificate and Ex.P3 Death certificate, the age of the deceased was mentioned as 48 years old. Therefore the Tribunal rightly took the age of the deceased as 48 years as mentioned in the post mortem certificate.

10. The deceased left behind his wife, son and daughter. As per the evidence of PW1, the deceased was working as a Meat chopper in "The Ark Chicken Mutton Corner". To substantiate the contention of PW1, PW3 (Loganathan) deposed that he is a co-employee of the deceased in the "Ark Chicken Mutton Corner" wherein the deceased was earning about Rs.700/- per day. However, no documentary proof was produced either by PW1 or PW3 for the salary of the deceased before the Tribunal. Hence, the Tribunal did not accept the evidence of PW1 and PW3 with regard to the earning of the deceased. Further, to substantiate the contention of PW1 and PW3 with regard to the earning of the deceased no other documents were filed before the Tribunal. Therefore, the Tribunal did not accept the salary of the deceased as Rs.20,000/- per month.

11. However, the Tribunal had accepted the views, principles and the method of income arrived by the Apex Court in Syed Sadiq Vs. United India Insurance Company, reported in 2014 (1) TNMAC 459 case. In the said case the Hon'ble Apex Court fixed the monthly notional income at Rs.6,500/- for a vegetable vendor, who sustained injuries in the accident which occurred in the year 2008. The Tribunal also took the same figure of Rs.6,500/- for the deceased who met with accident and died during the year 2014. However, the Tribunal failed to consider that the accident occurred during the year 2014 and other factors as mentioned below before fixing the monthly salary of the deceased.

(i) The rise in the cost of living affects everyone across the board. It does not make any distinction between rich and poor. As a matter of fact, the effect



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of rise in prices which directly impacts the cost of living is minimal on the rich and maximum on those who are self-employed or who get fixed income/emoluments. They are the worst affected people. Therefore, they put extra efforts to generate additional income necessary for sustaining their families.

(ii) The salaries of those employed under the Central and State Governments and their agencies/instrumentalities have been revised from time to time to provide a cushion against the rising prices and provisions have been made for providing security to the families of the deceased employees. The salaries of those employed in private sectors have also increased manifold. Till about two decades ago, nobody could have imagined that salary of Class IV employee of the Government would be in five figures and total emoluments of those in higher echelons of service will cross the figure of rupees one lakh.

(iii) Although, the wages/income of those employed in unorganised sectors has not registered a corresponding increase and has not kept pace with the increase in the salaries of the Government employees and those employed in private sectors but it cannot be denied that there has been incremental enhancement in the income of those who are self-employed and even those engaged on daily basis, monthly basis or even seasonal basis. We can take judicial notice of the fact that with a view to meet the challenges posed by high cost of living, the persons falling in the latter category periodically increase the cost of their labour. In this context, it may be useful to give an example of a tailor who earns his livelihood by stitching cloths. If the cost of living increases and the prices of essentials go up, it is but natural for him to increase the cost of his labour.

12. Therefore it is just and necessary to increase the notional income of Rs.6,500/- fixed by the Hon'ble Apex Court during the year 2008 corresponding to the cost of living, prices of the essentials and inflation. Hence to determine the notional income of the deceased who was working as a daily wager in "The Ark Chicken Mutton Corner" in the year 2014, we decided to apply the cost of inflation index as issued by the Central Board of Direct Tax (CBDT) for the purpose of determination of notional income of the deceased person.

13. The CBDT vide Notification No.370142 (E) (No.26/2008) (F.No.370/42/3/2008-TPL) dated 13.06.2008 specifies the cost of



inflation index as mentioned in column No.3, for the financial year mentioned in the corresponding entry in column No.2 in the below said tabular column:-

S.No.	Financial Year	Cost of Inflation Index
1	2001-2002	100
2	2002-2003	105
3	2003-2004	109
4	2004-2005	113
5	2005-2006	117
6	2006-2007	122
7	2007-2008	129
8	2008-2009	137
9	2009-2010	148
10	2010-2011	167
11	2011-2012	184
12	2012-2013	200
13	2013-2014	220
14	2014-2015	240
15	2015-2016	254
16	2016-2017	264
17	2017-2018	272
18	2018-2019	280

14. As per the above said index, the cost of inflation index for the year as 2007-2008 is 129 and for the year 2013-2014 will be 220. Now we determine the notional income of the deceased in the manner stated below:-

The notional income fixed by the Hon'ble Supreme Court of India for the vegetable vendor i.e., Rs.6,500/-during the year 2007-2008	X	Cost of Inflation Index for the year 2013-2014
		Cost of inflation index for the year 2007-2008.

Therefore income of the deceased is Rs.6500 x 220 / 129 = Rs.11,085/-. The notional income of the deceased after applying inflation index, will be a sum of Rs.11,085/-. Hence, we re-fix



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17. The Tribunal awarded a sum of Rs.1,00,000/- towards loss of consortium. In this regard, as held by the Hon'ble Apex Court in the judgment of Pranay Sethi's case (cited supra), we re-fix the amount as Rs.40,000/- towards "loss of consortium". The Tribunal awarded a sum of Rs.1,50,000/- towards "loss of love and affection" to the 2nd & 3rd appellants and the same is confirmed. As no amount was awarded towards "Loss of estate" by the Tribunal, a sum of Rs.15,000/- is fixed under that caption. The Tribunal awarded a sum of Rs.10,000/- towards "Transportation" and the same is confirmed. Under the head "Funeral expenses" the Tribunal awarded a sum of Rs.25,000/-. As held in Pranay Sethi's case (cited supra) by the Hon'ble Supreme Court of India, this Court is inclined to reduce the said amount to Rs.15,000/- from Rs.25,000/-.



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18. Hence the total compensation payable to the appellants is as hereunder.

Head	Amount (Rs.)
Loss of Dependency	Rs.14,30,052/-
Loss of consortium	Rs.40,000/-
Loss of love and affection to the 2 nd appellant/daughter	Rs.75,000/-
Loss of love and affection to the 3 rd appellant/son	Rs.75,000/-
Loss of estate	Rs.15,000/-
Funeral expenses	Rs.15,000/-
Transportation	Rs.10,000/-
Total	Rs.16,60,052/-

19. The total amount of compensation shall be shared by the appellants 1 to 3 herein, in the following manner:-

The wife of the deceased who is the first appellant herein shall receive a sum of Rs.8,60,052/-, daughter of the deceased who is the second appellant herein shall receive a sum of Rs.4,00,000/-, and the son of deceased who is the third appellant herein shall receive a sum of Rs.4,00,000/-.

20. The second respondent/New India Assurance Co.Ltd. are directed to deposit the entire amount awarded by this Court along with interest and costs before the Tribunal within a period of four weeks from the date of receipt of a copy of this order, after deducting the amount already deposited, if any. The interest awarded by the Tribunal at the rate of 7.5% per annum is unaltered and the apportionment shall be as ordered by this Court. On such deposit being made, the Tribunal shall transfer the amount to the respective claimants bank account through RTGS within a period of one week thereon.

21. In the result the Civil Miscellaneous Appeal is partly allowed and the award passed by the Tribunal to the tune of Rs.11,63,800/- is enhanced to Rs.16,60,052/-. Consequently, the connected miscellaneous petition is also closed. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

dpq



To

1. The III Judge,
Court of Small Causes,
(Motor Accident Claims Tribunal)
Chennai.

Copy to
The Section Officer,
VR Section, High Court,
Madras-104.

+1cc to Mr.G.Udaya Sankar, Advocate, S.R.No.69925

+1cc to Mr.M.Malar, Advocate, S.R.No.69902

C.M.A.No.2330 of 2017

SV(CO)
GSP(12/12/2018)