

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.M.A.Nos.3417 of 2017 & 1749 of 2018
and
C.M.P.No.13479 of 2018

CMA.No.3417 of 2017:

- 1.Sumi Mandal
- 2.Jit Manadal (Minor)
- 3.Rupam Mandal (Minor)

[Minor petitioners are represented
by their mother and Natural
Guardian Mrs.Sumi Mandal]

... Appellants /Petitioners

-vs-

- 1.M.Vijay
- 2.M/s.Reliance General Insurance Co. Ltd.,
Reliance House, 6th Floor,
No.6, Haddows Road,
Chennai - 600 006.

... Respondents/Respondents

CMA.No.1749 of 2018:

M/s.Reliance General Insurance Co. Ltd.,
Reliance House, 6th Floor,
No.6, Haddows Road,
Chennai - 600 006.

... Appellant /2nd Respondent

-vs-

- 1.Sumi Mandal
- 2.Minor Jit Mandal
- 3.Minor Rupam Mandal

[Minor petitioners are represented
by their mother and Natural
Guardian Mrs.Sumi Mandal]

... Respondents 1 to 3/Petitioner

4.M.Vijay

... 4th Respondent/1st Respondent

PRAYER IN CMA.No.3417 of 2017: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 to set aside the decree and judgment dated 09.08.2017 made in MATCOP. No.6016 of 2014 on the file of the Motor Accident Claims Tribunal, Chief Small Causes Judge, Chennai.

PRAYER IN CMA.No.1749 of 2018: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the award and decree dated 09.08.2017 made in MCOP.No.6016 of 2014 on the file of the Motor Accidents Claims Tribunal, Chief Court of Small Causes, Chennai.

For Appellants : Mr.T.Ananthasekar in CMA.No.3417/17
Mr.S.Arunkumar in CMA.No.1749/18

For Respondent : Mr.S.Arunkumar for R2 in CMA.No.3417/17
Mr.T.Ananthasekar
for R1 to 3 in CMA.No.1749/18

J U D G M E N T

[Judgment of the Court was delivered by R.SUBRAMANIAN,J.]

The challenge in these appeals is to the award of the Motor Accident Claims Tribunal, (Chief Court of Small Causes), Chennai made in MACTOP.No.6016 of 2014. The appeal in CMA.No.3417 of 2017 is by the claimants who are the wife, children of one Hemanta Mandal who died in a road accident that occurred on 28.03.2014 seeking enhancement. The appeal in CMA.No.1749 of 2018 is by the Insurance Company questioning the award on the ground of negligence as well as quantum.

2. According to the claimants, the deceased was riding a motor cycle bearing registration No.TN-21-L-6210. While he was entering the East Coast Road from Kovalam cut Road, the motor cycle bearing registration No.TN-18-K-8008 which was proceeding from Mahabalipuram to Chennai that is from South to North driven by its driver in a rash and negligent manner came from behind and dashed against the motor cycle driven by the deceased. As a result of the impact, the deceased suffered head injuries leading to his death. The claimant would contend that the deceased was a building sub-contractor and was earning about Rs.6,00,000/- per annum. His untimely death at the age of 38 has resulted in monetary loss to the family apart from loss of consortium to the 1st claimant wife and loss of love and affection to the claimants 2 and 3 who are the minor children. The claimants assessed the loss at Rs.66,00,000/-.

3. The claim petition was resisted by the Insurance Company contending that it was the deceased who was responsible for the accident. According to the Insurance Company, the deceased who came from the cut road took a right turn onto the East Coast Road without looking for on coming vehicles resulting in the accident. Since the deceased was negligent, the Insurance Company claimed that it is not liable to pay compensation. The particulars relating to the age and income of the deceased were also disputed by the Insurance Company.

4. The Tribunal which heard the Original Petition on an analysis of the evidence on record came to the conclusion that the accident occurred due to the rash and negligent driving of the two-wheeler bearing registration No.TN-18-K-8008 which was admittedly insured with the appellant Insurance Company. In coming to the said conclusion, the Tribunal relied upon Ex.P1, FIR and evidence of PW2 who was the eye witness. The Tribunal also faulted the Insurance Company for not examining the driver of the offending two-wheeler.

5. On quantum, the Tribunal took the income of the deceased at Rs.8,000/- per month. The Tribunal dis-believed the income tax returns filed as Exs.P10 to P12. The Tribunal added 50% towards future prospects. Deducting 1/3rd towards personal expenses and applying multiplier of '15', the Tribunal arrived at the loss of dependency at Rs.14,40,000/-. It also awarded a sum of Rs.50,000/- towards loss of consortium to the wife, Rs.75,000/- towards loss of love and affection to the minor children, Rs.22,865/- towards transport charges, Rs.1,52,864/- towards medical expenses based on Ex.P3 medical bills, Rs.25,000/- towards funeral expenses. Thus, the total compensation awarded by the Tribunal worked out to Rs.17,65,729/-. The Tribunal also granted interest at 7.5% per annum from the date of filing of the petition.

6. We have heard Mr.T.Ananthasekar, learned counsel appearing for the appellants in CMA.No.3417 of 2017 and respondents 1 to 3 in CMA.No.1749 of 2018 and Mr.S.Arunkumar, learned counsel appearing for the appellant in CMA.No.1749 of 2018 and 2nd respondent in CMA.No.3417 of 2017. The 4th respondent in CMA.No.1749 of 2018 though served is not appearing either in person or through counsel.

7. Mr.S.Arunkumar, learned counsel appearing for the Insurance Company would contend that a perusal of the sketch Ex.P2 would demonstrate that the accident had happened almost in the middle of the East Coast Road. The offending two-wheeler bearing registration No.TN-18-K-8008 was admittedly proceeding from Mahabalipuram to Chennai that is from South to North. The

deceased who had joined the East Coast Road from kovalam cut road that is from East to West had taken a deep turn resulting in the accident.

8. We have perused the sketch, FIR as well as the evidence of PW2, who is the eye witness to the accident. We must at once point out that the Tribunal has come to the just conclusion on negligence. The version in the FIR and the evidence of PW2, which has not been in any manner destabilized in cross examination, is that the deceased joined the East Coast Road from Kovalam cut road and took a right turn to proceed towards North. The rider of the offending vehicle bearing registration No.TN-18-K-8008 who was also proceeding towards North came from behind and hit against the two-wheeler which the deceased was riding at the time of the accident.

9. The location of the vehicles at the time of the accident as per sketch Ex.P2 would show that the accident occurred almost in the middle of the road. From the evidence of PW2 and the contents of FIR we conclude that the rider of the two-wheeler bearing registration No.TN-18-K-8008 had caused the accident by his rash and negligent driving. The fact that the accident had occurred almost on the middle of the road would show that the offending vehicle was also not keeping left as required under law. We therefore see no reason to interfere with the findings of the Tribunal on the ground of negligence.

10. As regards quantum, Mr.T.Ananthasekar, learned counsel appearing for the appellants in CMA.No.3417 of 2017 would submit that the Tribunal erred in rejecting the income tax returns for the assessment years 2010-11 and 2011-12. The gross total income for the year 2010-11 is shown as Rs.4,48,637/- and the gross total income for the assessment year 2011-12 is shown as Rs.4,76,191/-. However, the gross total income for the assessment year 2012-13 is shown as Rs.2,97,174/-. The authenticity of these documents cannot be disputed. Of course, the claimants have filed Form-16A for the period immediately before the accident which shows that the deceased had received about Rs.13,77,180/- for the period between October 2013 to May 2014, but, the entire amount cannot be treated as income. Admittedly, the deceased was a sub-contractor, therefore, he must have incurred certain expenses in procurement of inputs as well as towards labour charges. The Tribunal has rejected the income tax returns on the ground that there is a discrepancy between the profit and loss account and the actual income declared.

11. We find that the Tribunal has committed an error in rejecting the income returns. Even as per the profit and loss accounts for the year ending 31st March 2011, the net profit has

been shown as taxable income in the return. We therefore conclude that the Tribunal ought to have accepted the income tax returns and fixed the income based on the same without resorting to fixation of notional income.

12. As rightly pointed out by Mr.S.Arunkumar the income as per the income tax returns is not static but varies year by year. While it is in the region of about 4.50 lakhs to 4.75 lakhs for the assessment years 2010-11 and 2011-12, it has dipped to Rs.2,97,174/- for the assessment year 2012-13. We are therefore of the considered opinion that the income of the deceased could be fixed safely at Rs.4,00,000/- per annum. The deceased was aged about 38 years at the time of the accident. Therefore, the future prospects could be taken at 40%. If 40% of Rs.4,00,000/- is added, the income for the purposes of determination of loss of dependency would be Rs.5,60,000/- (4,00,000+1,60,000). The deceased has left behind three dependents, therefore, 1/3rd of the income has to be deducted towards personal expenses, this would give a balance of Rs.3,73,333/- which would be the actual loss of dependency. Applying a multiplier of '15', the total loss of dependency would be Rs.55,99,995/-.

13. The Tribunal has awarded a sum of Rs.50,000/- towards loss of consortium to the 1st claimant wife and Rs.75,000/- towards loss of love and affection to the claimants 2 and 3. In view of the larger bench judgment of the Hon'ble Supreme Court in National Insurance Co. Ltd Vs. Pranay Sethi and others reported in 2018 (1) LW 331, the amount awarded towards loss of consortium is reduced to Rs.40,000/- and the amount awarded towards loss of love and affection is reduced to Rs.50,000/-.

14. The Tribunal has awarded a sum of Rs.22,865/- towards transport charges and a sum of Rs.1,52,864/- towards medical expense, Rs.25,000/- towards funeral expenses. The said awards are sustained. The Tribunal has not awarded any amount towards loss of estate and damage to clothing and other articles. We award a sum of Rs.15,000/- towards loss of estate and Rs.5,000/- towards damage to clothing and other articles. Thus, the total award works out to Rs.59,10,724/- and the same is rounded off to Rs.59,10,000/-.

15. The award is apportioned as follows:-

--> The 1st claimant, wife would be entitled to Rs.24,10,000/- with proportionate interest and entire costs.

--> The claimants 2 and 3, the minor children would be entitled to Rs.17,50,000/- each with proportionate interest.

16. The Insurance Company is directed to deposit the award amount less the amount if any already deposited within a period

of six (6) weeks from the date of receipt of the copy of this judgment. On such deposit the 1st claimant/ 1st appellant in CMA.No.3417 of 2017 would be entitled to withdraw her share of the compensation. The Tribunal is directed to invest the share of the minor claimants in an interest bearing fixed deposit in Bank of India, Gajol Branch, District Malda, West Bengal - 732124 till they attain majority. The 1st claimant wife is permitted to withdraw quarterly interest from the fixed deposit for the maintenance of the minors.

17. In fine, the appeal in CMA.No.3417 of 2017 is allowed and the appeal in CMA.No.1749 of 2018 is dismissed. There will be no order as to costs in these appeals. The claimants shall pay the deficit Court fee since they have restricted their claim to Rs.20,00,000/-. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

dsa

To
The Motor Accidents Claims Tribunal,
Chief Court of Small Causes, Chennai.

+2cc to Mr.T.Andha Sekar, Advocate, S.R.No.67545, 67546

+1cc to Mr.S.Arun Kumar, Advocate, S.R.No. 67031

सत्यमेव जयते

C.M.A.Nos.3417 of 2017 & 1749 of 2018

GSP (02/11/2018)

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