

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 18.09.2018

Delivered on : 19.02.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.M.A.No.1386 of 2015

1.Kalaiyarasi
2.Vishal (Minor)
3.Tharnesh (Minor)
4.Manjula
5.V.Chandru (Minor) ... Appellants/petitioner
(2, 3 & 5 Petitioners are being minor,
hence Rep. by their mother the first petitioner)
Vs
1.A.Velankanni
2.M/s.National Insurance Company Ltd.,
Vijaya Plaza, 2nd Floor, C-32,
Second Avenue, Anna Nagar,
Chennai - 40. ... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree dated 17.02.2015 made in MCOP.No.944 of 2011 on the file of Motor Accident Claims Tribunal, Chief Small Causes Court, Chennai.

For Appellants : Mr.T.G.Ravichandran

For Respondents : Mr.S.Vadivel (for R2)
R1 - Exparte

JUDGMENT

This Civil Miscellaneous Appeal has been preferred by the claimants / appellants against the Judgment and decreetal order made in MCOP.No.944 of 2011 dated 17.02.2015 by the learned Chief Motor Accident Claims Tribunal (I Court of Small Causes), Chennai.

2.I heard Mr.T.G.Ravichandran, learned counsel for the appellants and Mr.S.Vadivel, learned counsel for the 2nd

respondent and perused the entire materials available on record.

3.The appellants herein / claimants filed a claim petition in MCOP.No.944 of 2011 on the file of the learned Chief Motor Accident Claims Tribunal (I Court of Small Causes), Chennai, claiming compensation of Rs.24,60,000/- for the death of Vikram in a road traffic accident which took place on 26.04.2010 at about 23.55 hours, while he was riding the motor cycle bearing registration No.TN-04-B-0013 from North to South in the left side of Lingu Chetty Street, at that time, the Motor cycle bearing registration No.TN-04-AA-4762 came from Mannady Street from West to East direction was ridden by its rider in a rash and negligent manner and hit the motor cycle bearing registration No.TN-04-B-0013 and the victim / deceased sustained grievous injuries and he died on 28.04.2010 in the Government Stanley Hospital, Chennai.

4.The 1st respondent herein is the owner of the motor cycle bearing registration No.TN-04-AA-4762 and the 2nd respondent is the insurer of the said motor cycle bearing registration No.TN-04-AA-4762. The 1st respondent was set ex-parte before the Tribunal. The 2nd respondent contested the claim by filing counter statement separately. The 1st claimant is the wife of deceased, the claimants 2, 3 and 5 are the minor sons of the deceased, the 1st claimant is the mother of the deceased.

5.In order to prove the claim, PW1 and PW2 were examined and Exhibits-P1 to P11 were marked on the side of the claimants. No evidence was adduced and no document was marked by the 2nd respondent.

6.The Tribunal after considering the evidence on record and also hearing both sides, held the deceased died only due to rash and negligent driving of the 1st respondent's vehicle and awarded a sum of Rs.11,77,000/- as compensation with interest at the rate of 7.5% per annum and cost and directed the respondents to pay and deposit the above amount of compensation.

7.Aggrrieved by the quantum of compensation awarded by the Tribunal, the claimants of this appeal before this Court. The Tribunal took the monthly income of the deceased as Rs.6,000/- and the relevant multiplier of 18 years of the deceased and after deducting 1/4th of the income for personal and living expenses of the deceased, determined the loss of income due to the death of the deceased as Rs.9,72,000/-. The Tribunal has awarded a sum of

Rs.2,05,000/- in other heads. Totally a sum of Rs.11,77,000/- was awarded.

8.The learned counsel appearing for the appellants/claimants contends that the Tribunal awarded very meager amount as compensation. The future prospects and other aspects were not considered properly by the Tribunal. Hence, the appellants seek enhancement of the award amount by entertaining the appeal.

9.Per contra, the learned counsel for the 2nd respondent/ Insurance Company contended that the deceased was not employed and he was not earning income as claimed by the appellants. The Tribunal without appreciating the evidence properly, wrongly awarded huge amount as compensation and the same is unsustainable. Thus the second respondent seeks dismissal of this appeal.

10.The deceased has stated to be employed as Survey Assistant in a private company earning a sum of Rs.9,000/- per month and marked the Ex.P9 alone the Entry permit of the deceased. However, the appellants have not produced any proof for income of the deceased. As such taking into consideration, the prevailing market condition, any person employed as a Coolie or Survey Assistant, can easily earned as Rs.9,000/- per month. Hence, the monthly income of the deceased is fixed at Rs.9,000/-. The age of the deceased being 25 years, following the Pranay Sethi case, if any self employed person aged less 40 years 40% of the income is to be taken as future prospects.

11.Following the Sarala Verma case the multiplier is 18. As such the loss of the dependency is calculated is as follows:

(1) Rs.9,000/-, add 40% of the amount of Rs.3,600/- towards future prospects = Rs.12,600/-

(2) Rs.12,600/- deducted 1/4th amount of Rs.3,150/- towards personal expenses of the deceased and the balance amount would be Rs.8,400/- as loss of income.

(3) Rs.9,450/- X 12 = Rs.1,13,400/- X 18 = Rs.20,41,200/- as total loss of income.

12.Following the Hon'ble Apex Court decision reported in 2017 (2) TNMAG (SC) National Insurance Co. Ltd., v. 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/-

Loss of Love & Affection = Rs.15,000/-

Funeral Expenses = Rs.15,000/-
Transportation = Rs. 5,000/-

13.Hence, the award of Rs.11,77,000/- granted by the Tribunal is enhanced to Rs.21,16,200/-. The award amount will carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit. In view of the above modified award amount, the 2nd respondent / Insurance Company is directed to deposit the award amount, less the amount if any, already deposited along with accrued interest within a period of six weeks from the date of receipt of a copy of this Judgment. On such deposit, the claimant is permitted to withdraw the amount awarded as above by filing proper application before the Tribunal. The Tribunal shall pass appropriate directions for the disbursal of the amount as stated supra on the filing of such application to the personal savings bank account of the appellant through RTGS/NEFT system. In other aspects the award of the Tribunal is confirmed.

14.In the result, this Civil Miscellaneous Appeal is partly allowed in the above observations. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vs

To

1. The Motor Accident Claims Tribunal,
Chief Small Causes Court, Chennai.

2. The Section Officer,
V.R Section,
High Court,
Chennai.

+2cc to Mr.T.G.Ravichandran, Advocate, Sr.No.14951

+1 cc to Mr. S.Vadivel, Advocate Sr.No.14955

C.M.A.No.1386 of 2015

AP(CO)
MP(24/05/2019)