

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 04.10.2018

Delivered on : 27.02.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.M.A.No.2378 of 2016

1.Regina Mary
2.K.Britto
3.B.John Baptist Appellants/Claimants

Vs

1.M/s.The Bharath Petroleum Corporation Ltd.,
No.35, Vaithyanatha Mudali Street,
Tondiarpet,
Chennai - 600 081. (Set exparte before trial Court)
2.M/s.The New India Assurance Co. Ltd.,
No.45, 2nd Floor, Karnataka Bank Building,
2nd Line Beach,
Chennai - 600 001. Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 19.02.2016 made in MCOP.No.5854 of 2012 on the file of Motor Accident Claims Tribunal, Chief Judge, Small Causes Court, Chennai.

For Appellants : Mr.T.G.Ravichandran

For Respondents: Mr.G.Udhayashankar (for R2)

JUDGMENT

This Civil Miscellaneous Appeal has been preferred by the claimants / appellants against the Judgment and decreetal order made in MCOP.No.5854 of 2012 dated 19.02.2016 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.G.Udhayashankar, 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.5854 of 2012 on the file of the learned Chief Motor Accident Claims Tribunal (I Court of Small Causes), Chennai, claiming compensation of Rs.32,40,000/- for the death of Miss.Salomia Florida in a road traffic accident which took place on 28.03.2012 at about 14.45 hours, while she was pillion rider of the two wheeler bearing Registration No.TN-05-AJ-6964 from South to North direction in the left side of S.N.Chetty Street in front of Bora Muslim Burial Ground, Chennai-13, at that time, the lorry bearing Registration No.TN-04-S-2790 came from the same direction was driven by its driver in a rash and negligent manner and hit the two wheeler bearing registration No.TN-05-AJ-6964 and the victim / deceased sustained grievous injuries and she died on the spot.

4.The 1st respondent's lorry bearing registration No.TN-04-S-2790 and the 2nd respondent is the insurer of the said lorry bearing registration No.TN-04-S-2790. 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 mother of deceased, the 2nd claimant is father of deceased and the 3rd claimant is brother of deceased.

5.In order to prove the claim, PW1 to PW4 were examined and Exhibits-P1 to P20 were marked on the side of the claimants. No evidence was adduced and no other 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.23,48,000/- 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.Aggrieved by the quantum of compensation awarded by the Tribunal, the claimants filed this appeal before this Court. The Tribunal took the monthly income of the deceased as Rs.14,000/- and added 50% future prospect and arrived Rs.21,000/- the relevant multiplier of 18 years of the deceased and after deducting 1/2 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.22,68,000/-. The Tribunal has awarded a sum of Rs.80,000/- in other heads. Totally a sum of Rs.23,48,000/- 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 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 Junior Officer in M/s.Atlas Documentary Facilitators Company Private Limited / HDFC Bank and earned a sum of Rs.24,000/- per month and marked Educational Certificates of the deceased Exs.P7 to P12, the appointment order marked Ex.P13, regards Salary Ex.P14 Salary Certificate and Salary Statement is Ex.P19 were marked. As such taking into consideration the marked documents and Ex.P19, the average income of the deceased arrived Rs.20,508/- which was established by the PW4. Hence, the monthly income of the deceased is fixed at Rs.20,508/-. The age of the deceased being 23 years, following the Pranay Sethi case, if any self employed person aged less 40 years 50% 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.20,508/-, add 50% of the amount of Rs.10,254/- towards future prospects = Rs.30,762/-

(2) Rs.30,762/- deducted 1/2 amount of Rs.15,381/- towards personal expenses of the deceased and the balance amount would be Rs.15,381/- as loss of income.

(3) Rs.15,381/- X 12 = Rs.1,84,572/- X 16 = Rs.33,22,296/- 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.23,48,000/- granted by the Tribunal is enhanced to Rs.33,97,296/-. 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 and recover the same from the 1st respondent/owner of the vehicle. On such deposit, the claimants 1 and 2 are 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. The appellants are directed to pay the additional court fee and Registry is directed to draft the decree only after payment of the additional court fee by the appellants.

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

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

Vs

To

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

Copy TO

The Section Officer,
V.R. Section, High Court,
Madras. (2 copies)

+1cc to Mr.T.G.Ravichandran, Advocate, S.R.No. 18319
+1cc to Mr.G.Udaya Sankar, Advocate, S.R.No. 17868

C.M.A.No.2378 of 2016

PA(CO)
GN(11/06/2019)