

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 08.09.2020

PRONOUNCED ON : 14.09.2020

CORAM

THE HON'BLE DR.JUSTICE G.JAYACHANDRAN

Civil Miscellaneous Appeal No.1242 of 2016

1.Rajan

2.Jaya

3.Bhuvaneshwaran

....

Appellants

VS

1.M.N.Badrinath

2.M/s.Reliance General Insurance
Company Ltd.,

570, Naigaum Cross Road,
Next Royal Industrial Estate,
Wadala (W),

Mumbai – 400 031.

सत्यमेव जयते

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Respondents

Prayer:- This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 29.02.2016 made in M.C.O.P.No.2501 of 2014 on the file of the Motor Accident Claims Tribunal, (Special District Court) Dharmapuri.

For Appellants : Mr.M.Sivakumar

For R.1 : No Appearance

For R.2 : Mr.S.Arunkumar

JUDGMENT

This Civil Miscellaneous Appeal is filed by the claimants for enhancement of compensation.

2.The claim petition reads as below:-

On 03/03/2014 at about 5.30 pm when the deceased Saravanan was proceeding in his Two wheeler near the Perandapalli – Pukkasgaram Road near Kathirepalli Anjaneyar temple, a Taurus Lorry bearing registration No. KA 08-2003 driven rash and negligently dashed against the Two wheeler. Saravanan died on the spot due, to the fatal injury on his head.

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3.At the time of accident, Saravanan was 25 years old. He was employed in Hyundai Company at Hosur earning Rs.21,000/- per month. Claim petition was

filed for compensation of Rs.40,00,000/- by his parents and 23 years old brother. The owner of the offending Lorry and its Insurer were arrayed as respondents in the claim petition.

4.The second respondent Insurer filed counter denying liability and it runs as follows:-

The insured did not inform about the accident. The victim had no driving license. He is the cause for the accident and he being the tortfeasor, the owner and the Insurer of the Two wheeler are necessary parties. For non joinder of necessary parties, the claim petition is to dismissed. For income and qualification of the deceased, there is no proof and claim is excessive and exorbitant.

5.The Tribunal considering the evidence held that the Driver of the offending Lorry was the tortfeasor. The salary certificate marked as Ex A-9 indicates that the deceased was earning Rs.15,000/- pm. However, he was not a permanent employee. He joined service only on 15/02/2013. The accident occurred within one year. There is no evidence to indicate that he had future

prospects. Therefore, while computing loss of income taking his tentative income as Rs.15,000/- per month, applied multiplier without adding future prospects and awarded Rs.17,70,000/- as compensation.

6.In this appeal, the claimants' main contention is that, the deceased was a Mechanical Engineering graduate. He was earning Rs.21,000/- pm and Ex A-9 salary certificate proves it. The Tribunal strangely declined to add future prospects of 50% to the salary. Hence, the award has to be enhanced.

7.The learned counsel for the second respondent Insurance company submitted that, the Tribunal failed to take note of the fact that the deceased had no driving license. The owner of the two wheeler which the deceased riding was not arrayed as respondent. The Tribunal erred in accepting Ex A-9 salary certificate which was dated after the death of the victim and not proved through the author of the document or any representative of the employer of the deceased. The veracity of Ex A-9 is highly doubtful. Further, the claimants have not produced any document to show the deceased was a Mechanical Engineering graduate and had skill to earn. Therefore, the Tribunal should have fixed only Rs.6,500/- as

notational income and added 40% to it for future prospects. The compensation of Rs.1,00,000/- for loss of love and affection and Rs.25,000/- each for transport and funeral expenses is also excessive and contrary to the thumb rule laid under ***National Insurance Co.Ltd., Vs. Pranay Sethi and others (2017 (2) TN MAC 609 (SC))*** case.

8.On considering the rival submissions and scrutiny of records, this Court finds that the tribunal has failed to note that the victim had no driving licence to ride a Two wheeler. For no good reason, it has declined to add future prospects. However, while fixing the income of the deceased as Rs.15,000/-, it has failed to note that the claimants had not produced documents to show the victim's educational qualification. The salary certificate Ex A-9 is not a reliable document worth considering.

9.Ex A-9 is in the letter head of Hyundai/SSS Equipments, Construction Equipment India Pvt Ltd., at Rajaji Salai, Chennai, having branch at Salem, Trichy, Krishnagiri, Tirupur and Hosur. It is dated 09/12/2014 signed by authorised signatory of the said Company. In this letter, it is informed

whomsoever it may concern, that R.Saravanan was working in his organisation as Service Engineer in Hosur Branch before his demise on 03/03/2014. He joined the organisation on 15/02/2003 and his last salary and incentive drawn was Rs.15,000/-.

10.Relying upon this certificate, the Tribunal has proceeded to compute the loss of income of the deceased. This Court is of the considered view that Ex A-9 is not the proof of income or skill to earn of the deceased. The claimants ought to have produced the educational certificate of the deceased to prove that he was a qualified Mechanical Engineer capable of earning Rs.15,000/- per month. In the absence of such proof, the income of the 25 years old man with no qualification worth mentioning can only be tentatively fixed somewhere between Rs.6,500/- to Rs.8,000/-. If the income is taken as Rs.8,000/- and 50% is added towards future prospects, it will be only Rs.12,000/- which is Rs.3,000/- less than what the Tribunal has awarded.

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11.In strict sense, the appellants will be entitled only for Rs.12,000 x $\frac{1}{2}$ x 12 x 18 = Rs.12,96,000/ towards loss of income, Rs 80,000/- of loss of filial

consortium for claimants 1 and 2 (parents), Rs.15,000/- for funeral expenses. Totally, Rs 13,91,000/-. Whereas, the Tribunal has erroneously taken Rs.15,000/- as monthly income of the deceased for computing the loss of income and has awarded Rs.1,00,000/- for loss of love and affection and Rs.25,000/- each for transport and funeral expenses and totally awarded a sum of Rs.17,70,000/- which is nearly Rs.3,80,000/- over and above the just compensation. Therefore, without disturbing the award passed by the Tribunal, this court is inclined to dismiss the appeal as devoid of merits. The claimants are permitted to withdraw the award amount, deposited by the Insurer, on application.

12.In the result, the Civil Miscellaneous Appeal is dismissed. No order as to costs.

14.09.2020

jbm

Index: Yes/No

speaking order/non speaking order

To

The Motor Accident Claims Tribunal,
(Special District Court)

7/8

Dharmapuri.

G.JAYACHANDRAN.J.,

jbm



Pre delivery judgment made in
C.M.A.No.1242 of 2016

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