



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 27.11.2020

Pronounced on: 01.12.2020

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CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Civil Miscellaneous Appeal No.1536 of 2015

1.Malarvizhi
W/o late Sekar

2.Minor Monisha
D/o late Sekar

3.Minor Arvinth
S/o.late Sekar

(Minors rep by mother Malarvizhi)

4.Meenatchi
W/o late Mariappan

... Appellants

Vs

S.M.Kathirvel
S/o.Muthusamy Gounder

2.National Insurance Company Ltd.,
Branch II, 1272-1273, Palaniyappa Complex,
Mettur Road, Erode.

3.Murugesan
S/o.Nagappan

4.United India Insurance Company Limited,
No.146-M, Kumar Complex,
Tiruchengode.

... Respondents

Prayer:- This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 22.01.2015 made in M.C.O.P.No.70 of 2012 on the file of MACT/Principal District Court at Namakkal.



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For Appellants : Mr.Ma.P.Thangavel

For Respondents : Mr.J.Chandran for R2
: Mrs.I.Malar for R4
: Given up for R1 & R3

J U D G M E N T

(The case has been heard through video conference)

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

2. On 08.11.2011, Sekar aged about 34 years while travelling on the pillion in the motor cycle Bajaj Platinum bearing registration No: TN 34/F-2782 along the Sengodampalayam Road, near Gurusamy Thirumana Mandapam, was hit by a TATA lorry bearing registration No: TN 33/5870. Sekar sustained multiple injuries and died on the way to the hospital. His wife, mother and two minor children filed claim petition M.C.O.P.No.70 of 2012 on the file of Motor Accidents Claims Tribunal, Namakkal, claiming that the deceased was hale and healthy earning Rs.8,000/- per month as helper in a Textile Manufacturing Unit at Tiruppur with bright future prospects, due to his sudden demise the family has lost his physical and monetary support, a sum of Rs.15,00,000/- was sought as compensation.

3. The Insurance Company resisted the claim on the ground of liability as well the quantum of compensation claimed. The Insurance Company denied liability on the ground that the accident occurred due to the negligence of the motor cycle rider who carried two persons on the pillion without any valid driving license. There is violation of the Motor Vehicles rules and policy condition which dis entitle the claimants seeking compensation against the insurer. That apart, the income of the deceased and the dependency on him by the claimants was also disputed.

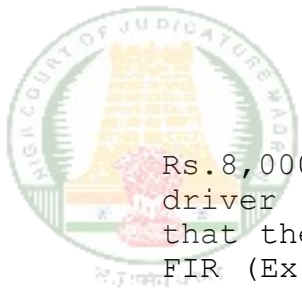
4. Before the Tribunal, by the claimants PW-1 to PW-3 and Ex.P-1 to Ex.P-13 and by the respondents Ex.R-1 to Ex.R-3 were relied. The Tribunal on considering the evidence awarded compensation of Rs.7,93,000/- payable by the owner of the lorry and its insurer. The owner of the two wheeler and its insurer were exonerated.



5. In this appeal seeking enhancement, the learned counsel for the appellants/claimants submitted that, the Tribunal erred in not accepting the evidence of PW-2, the employer of the deceased and the salary certificate of the deceased marked as Ex.P-8 and Ex.P-11 to Ex.P-13 document relate to Prithvi Impex Banian Company in which the deceased was employed. The notional fixation of income at Rs.6,000/- instead of Rs.8,000/- is contrary to the evidence and judgments rendered by Courts in similar cases. Further the learned counsel also contended that, the omission to add future prospect and the deduction of 1/3rd towards personal income, when the deceased left behind four dependants is wrong and contrary to legal preposition settled by Hon'ble Supreme court in its judgments.

6. The learned counsel for the Insurance Company while conceding the fact that no additional compensation awarded for future prospect, submitted that the Tribunal is right in fixing the notional income of the deceased as Rs.6,000/- per month, since the PW-2 did not produce the attendance register or Provident Fund details of the deceased to prove that the deceased was employed under him. The salary certificate and the details of the Prithvi Impex like its registration certificate (Ex.P-11), Form B issued by Commercial Tax Department (Ex.P-12) and the income tax receipt (Ex.P-12) are not proof for employment or income of the deceased. Further, the learned counsel for the 2nd respondent/Insurance Company also submitted that, the Tribunal ought to taken note of the fact that the accident occurred when three persons were travelling in the two wheeler at the time of accident. Ex.R-1 to Ex.R-3 the notice to the two wheeler driver to produce his driving license if any, the postal receipt and acknowledge card prove the fact that the two wheeler driver had no valid driving license. The deceased was one among the three persons travelling in the two wheeler. Since there was policy violation and contributory negligence, the award ought to have been reduced proportionately and right of pay and recovery ought to have been given to the insurance company in view of policy violation. The learned counsel submitted that, though no appeal or cross appeal filed in this regard, Court shall take notice about that pass appropriate order.

7. Ex.P-1 the FIR and the deposition of PW-2 Kalimuthu who gave the complaint proves that the accident occurred when one Nishanth riding the two wheeler carrying the deceased and one Kalidoss on the pillion. Ex.P-8 the salary certificate and the deposition of PW-3 Manimaran speaks about the fact that the deceased was employed as Helper in the production division in the PW-3 company a year before the accident and was paid



Rs.8,000/-pm. The Tribunal though had held that the two wheeler driver had no valid driving license, taking note of the fact that the criminal case was filed against the lorry driver as per FIR (Ex.P-1) and Charge sheet (Ex.P-5) held, the offending lorry owner and its insurer of the lorry are jointly and severely liable to pay the compensation.

8. Regarding the loss of earning, the Tribunal has fixed the income of the deceased as Rs.6,000/- since Ex.P-8 is not supported by any other document like salary disbursement register or register for employing labourer to the company. PW-3 admits in his deposition that those registers are maintained by him, but not produced.

9. On assessment of evidence in the light of rival submissions made in this appeal, this Court finds that the Tribunal failed to consider the contribution of the two wheeler rider who without driving license carrying two persons in the pillion contrary to law. At the same time, though Ex.P-8 salary certificate not been duly supported by any documentary evidence except the ocular evidence of PW-3, the future prospect of the deceased ought to have taken note and the deduction towards personal expenditure should have been only $1/4^{\text{th}}$ and not $1/3^{\text{rd}}$. After the decision of the constitutional bench judgment in Pranay's Sethi case, the formula for compensation has been substantially structured and the claimants are entitled for just and fair compensation as per the guideline laid by the Hon'ble Supreme Court in the Pranay's Sethi judgment.

10. The loss of income is assessed fixing the notional income of the deceased as Rs.6,500/-. Since the deceased died at the age of 34 years, Rs 2,600/- is added towards expected future prospect. $1/4^{\text{th}}$ of it is deducted towards the personal expenditure and multiplicand 16 is adopted to arrive at the total loss of financial dependency. The first claimant is entitled for consortium of Rs.40,000/-. The claimants 2 to 4 are entitled for compensation of Rs.20,000/- each for loss of love and affection. In addition Rs.15,000/- for funeral expenses and Rs.15,000/- for loss of estate is awarded.

11. Accordingly, the award of the Tribunal impugned in this appeal is modified as below:-



14. The entitlement of the compensation of Rs.14,40,400/- among the claimants/appellants shall be as under:

(i) The first claimant (wife) is entitled for Rs.4,40,400/- with proportionate interest.

(ii) The second and third claimants (children) are entitled for Rs.4,00,000/ each with proportionate interest.

(iii) The fourth claimant (mother) is entitled for Rs.2,00,000/- with proportionate interest.

15. The second and fourth respondents are directed to deposit their respective share of compensation within a period of eight weeks from the date of receipt of copy of this the judgment. On such deposit the claimants are entitled to withdraw the same on appropriate petitions. If any amount already deposited by the respondents and withdrawn by the claimants, same may be given due credit.

16. By order dated 07.07.2015 in C.M.P.No.1 of 2015, this Court exempted the appellants from paying Court fees with an undertaking that they will pay the same at the time of final disposal of this appeal. Accordingly, the appellants are directed to pay the deficit Court fees, if any within eight weeks from today.

17. With the above modification and directions, this Civil Miscellaneous Appeal is partly allowed. No order as to costs.

Sd/-
Assistant Registrar (CS-V)

//True copy//

Sub Assistant Registrar

rpl

To

1. The Motor Accident Claims Tribunal,
Principal District Court, Namakkal.



+1cc to Mr.Ma.P.Thangavel, Advocate SR.No.38594

+1cc to Mr.J.Chandran, Advocate SR.No.38454

C.M.A.No.1536 of 2015

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VSN II (CO)

GMV (27/06/2022)