

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.08.2020

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

C.M.A.No.839 of 2016

(Heard through video conferencing)

1.Lekha

2.Hariharan ... Appellants/Petitioners

Both residing at 166, Panchiyamman Kovil Street,
Line Road, Gugai,
Salem now at D.No.85, Periyapatti Road,
S.P.Pudhur, Namakkal.

Vs.

Kannan
S/o. Kandasamy
No.34 - A, Duraisamy Nagar,
Pallapatty, Salem - 9. ... Respondent/Respondent

Prayer:- This Civil Miscellaneous Appeal has been filed under
Section 173 of Motor Vehicles Act, 1988, against the judgment
and decree in MCOP.No.680 of 2014 dated 09.02.2016, on the
file of the Motor Accident Claims Tribunal, Principal District
Judge, Namakkal.

For Appellants : Mr.C.Paraneedharan

For Respondent : Notice served (No Appearance)

JUDGMENT

This civil miscellaneous appeal has been filed by the
claimants for enhancement of award passed by the Motor
Accident Claims Tribunal, Principal District Judge, Namakkal
in M.C.O.P.No.680 of 2014 dated 09.02.2016.

2. Heard the learned counsel for the appellants.
Notice to the respondent served and returned with an
endorsement 'left'. From the Lower Court records, this Court
find that the respondent even before the Tribunal did not
contest. In spite of paper of publication, he remained
exparte.

3. The learned counsel for the appellants submitted that on 01.04.2013, due to the rash and negligent driving of the respondent while driving in his Hero Honda Splender bearing Registration No.TN 29 AF 5826, it dashed against the deceased Rajendran aged about 43 years. He sustained severe injury on his head and was taken to the hospital. He died on 17.04.2013 in the hospital. At the time of his death, he was earning Rs.30,000/- per month as a Supervisor in a Railway Canteen, hence, a sum of Rs.25,00,000/- was sought for compensation.

4. The Hero Honda Splender bearing Registration No.TN 29 AF 5826 was not insured by his owner. The respondent is the owner cum rider of the vehicle which caused the accident due to the rash and negligent driving.

5. Before the Tribunal, the claimants who are the wife and son of the deceased have examined 3 witnesses and marked 7 documents on their side. The Tribunal has held that the accident occurred only due to the rash and negligent driving of the respondent. It has relied upon the F.I.R. (Ex.P1) which was registered against the respondent to hold that the negligence was on the part of the respondent. Taking note of the injuries sustained by the deceased as found in Ex.P.4 - wound certificate and Ex.P.7 - Accident Register, the Tribunal has concluded that in the absence of Post Mortem Certificate, there is no material to show that the death was only due to the injuries sustained in the accident. Further, it has held that the income of the deceased not being proved through documents. Hence, the Tribunal has taken the monthly income of the deceased as Rs.15,000/- and awarded Rs.15,000/- for injuries and pain and suffering. Beside also awarded Rs.1,00,000/- towards the probable medical expenses that could be incurred during the time of treatment.

6. The learned counsel for the appellants would submit that the manner in which the Tribunal has arrived at the compensation, is neither just nor reasonable. The finding of the Tribunal that the death was not due to the accident per se is improper. Even if it so, the award of Rs.15,000/- is meagre for the pain and suffering when the injured has sustained severe fracture in the left temporal bone and being hospitalised for 17 days from the time of accident till his death.

7. The contention of the learned counsel for the appellants appears to be reasonable and acceptable for the reason that the non-filing of the Post Mortem certificate cannot be a ground to hold the death was not due to the accident injury. When the material available cogently connects the accident to the death, compensation ought to have arrived as in the death cases.

8. From the evidence, this Court finds that the accident has taken place on 01.04.2013 at about 10.30 pm when the victim was going in his Bajaj M80 vehicle, the respondent was riding his Hero Honda Splender vehicle and dashed the victim. The victim has sustained severe head injury and was taken to the Salem Government Hospital and consequently, shifted to the private hospital by a name, Neuro Foundation Hospital, for better treatment. From 02.04.2013 to 17.04.2013, he was treated for his injury but succumbed to the injury on 17.04.2013 when there is no other intervening cause for his death and the wound certificate - Ex.P4 reflects (i) undisplaced fracture in left temporal bone; (ii) bleeding in left temporal convexity; (iii) a large sized haemorrhage contusions in bilateral; (iv) Subarachnoid bleed noted along the suture of bilateral temporal parietal lobes bilateral territorial leaflets; (v) Nasal and left ear bleed and (vi) minimal white matter cerebral edema seen bilaterally. It appears that the death should have been occurred only due to these injuries and not otherwise. Therefore, the Tribunal should have applied the multiplier formula for the death of the person and has awarded a fair compensation.

9. In the absence of proof for income, this Court takes Rs.4,500/- as notional monthly income of the deceased. Relying upon the judgment of the Hon'ble Supreme Court in National Insurance Co.Ltd., Vs. Pranay Sethi and others (2017 (2) TN MAC 609 (SC)), this Court fixes 25% as future prospects. At the time of accident, the age of the deceased was 43. So, multiplier 14 is applied. Hence, under the head of loss of dependency, $(4500+1125) \times 2/3 \times 14 \times 12 = 6,30,000/-$. The first appellant is entitled for compensation under the head of loss of consortium to the tune of Rs.40,000/-. The second appellant is entitled for compensation under the head of loss of love and affection Rs.15,000/-. Under the other non-conventional heads, like loss of estate and funeral expenses Rs.15,000/- each is fixed. This Court has modified the award of the Tribunal as under:-

S.No	Under the Heads	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed/ enhanced/ modified/ not granted
1	Loss of Dependency	-	6,30,000/-	granted
2	Pain and suffering	15,0000/-	-	not granted
3	Probable Medical Expenses	1,00,000/-	-	not granted

4	Loss of consortium /first claimant	-	40,000/-	granted
5	Loss of love and affection/s econd claimant	-	15,000/-	granted
6	Loss of Estate	-	15,000/-	granted
7	Funeral Expenses	-	15,000/-	granted
	Total	1,15,000/-	7,15,000/-	enhanced

10. In the result, the Civil Miscellaneous Appeal is allowed and the award passed by the Tribunal is enhanced to Rs.7,15,000/- with 7.5% interest from the date of petition till the date of realisation. No Costs. The respondent is directed to deposit the said enhanced award amount within a period of twelve (12) weeks from the date of receipt of a copy of this judgment. On such deposit being made, the claimants/appellants are entitled to withdraw the said enhanced award amount equally, by filing appropriate petition before the tribunal.

Sd/-

Assistant Registrar(CS-IX)

//True copy//

Sub Assistant Registrar

sni/jbm

To

The Motor Accident Claims Tribunal,
Principal District Judge,
Namakkal.

Copy To

The Section Officer,
VR Section, High Court, Madras - 2 Copies

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