

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 05..11..2020

CORAM

THE HON-BLE MR.JUSTICE V.BHARATHIDASAN

Civil Miscellaneous Appeal No.1579 of 2020

- 1.P.Sasikala W/o Late Ponnusamy
- 2.Minor P.Vinoth S/o Late Ponnusamy
- 3.Minor P.Vignesh S/o Late Ponnusamy

Minors represented by next friend
and natural guardian their mother the 1st Appellant herein
All are residing at No.104 S S Puram, Ottery,
Chennai-600 012.

... Appellants

-Versus-

- 1.H.Naveed
- 2.United India Insurance Co. Ltd.,
Third Party Hub, Silingi Building,
No.135, Greams Road,
Chennai 600 006.

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the
Motor Vehicles Act, against the order and decree dated
17.12.2019 made in M.C.O.P.No.6383 of 2018 by the Motor
Accidents Claims Tribunal (Chief Judge, Court of Small Causes),
Chennai.

For Appellant :Mr.S.Ravikumar

For Respondents :Mr.J.Chandran for R2
No Appearance for R1

JUDGEMENT

Not being satisfied with the award passed by the Motor
Accidents Claims Tribunal (Chief Judge, Court of Small Causes),
Chennai, the claimants are before this court with the present
Civil Miscellaneous Appeal.

2. It is a case of fatal accident. The 1st appellant is the
wife and the appellants 2 and 3 are the minor sons of the
deceased one Ponnusamy. According to the claimants, on

16.05.2018 at about 08.15 p.m. while he was crossing the Brickline Road in front of Solai Amman temple at S.S.Puram, Ottery in Chennai, a motor cycle bearing registration number TN 05 BJ 7873, ridden by the 1st respondent in a rash and negligent manner dashed against the deceased in which he sustained serious head injuries besides multiple injuries all over the body. He was immediately admitted at Kilpauk Government Medical College and Hospital. Subsequently, he succumbed to the injuries on 20.05.2018. At the time of accident, he was 35 years old. He was a tricycle loadman and earning a sum of Rs.750 per day. He was the sole bread winner of the family. Therefore, the claimants filed the claim petition claiming compensation of Rs.40,00,000/- for the losses sustained due to the death of Ponnusamy.

3. The 1st respondent who is the owner of the vehicle had remained absent before the tribunal and therefore, he was set ex parte. The 2nd respondent insurance company contested the claim petition inter alia contending that the accident was taken place only due to the negligence of the deceased and hence, he being the tortfeasor is not entitled for any compensation from the respondents. It is further contended by the 2nd respondent that the motor cycle was not involved in the accident. Further, there was an inordinate delay in lodging the complaint before the police which creates suspicion in involvement of the motor cycle in the occurrence.

4. Before the tribunal, in order to prove his case, the appellants examined the 1st petitioner as P.W.1 and one Appan Raj, who is stated to be an eye-witness as P.W.2 and marked Exs.P.1 to P.9. To disprove the case of the claimants, on the side of the respondents, though none was examined, Exs.R.1 to R.3 were marked. On considering the available materials, the tribunal has come to a conclusion that the accident was taken place due to the rash and negligent riding of the two wheeler of the 1st respondent. On the date of accident, the two wheeler was insured with the 2nd respondent. Therefore, both the respondents are liable to pay compensation. So far as the quantum is concerned, the tribunal fixed the monthly income of the deceased at Rs.12,000/- and after deducting 1/3rd of the income towards his personal expenses had he been alive, arrived at Rs.14,40,000/- as loss of dependency. The tribunal further awarded a sum of Rs.15,000/- towards funeral expenses, another sum of Rs.60,000/- towards loss of love and affection to the appellants 1 to 3 and a further sum of Rs.30,000/- towards loss of consortium to the 1st appellant and in all awarded a sum of Rs.15,45,000/- as compensation with interest @ 7.5%. Aggrieved by the inadequacy of the compensation awarded by the tribunal, the claimants are before this court with the present appeal.

5. The learned counsel appearing for the appellant submitted that though the tribunal has assessed the income of the petitioner at Rs.12,000/- per month, it did not consider the future prospects of the deceased. That apart, towards loss of love and affection only a sum of Rs.60,000/- has been granted to the appellants whereas the appellants 2 and 3 being minor children are entitled for Rs.40,000/- each towards loss of love and affection. Besides the above, towards loss of consortium only a sum of Rs.30,000/- has been awarded whereas the 1st appellant is entitled for a sum of Rs.40,000/- under this head. Further, the tribunal did not award any amount towards loss of estate. Therefore, the appellants are entitled for enhanced compensation.

6. Per contra, the learned counsel appearing for the 2nd respondent submitted that the deceased was working only as a tricycle loadman and there is no chance of future prospects. He further submitted that towards loss of consortium and love and affection, the tribunal has awarded in all a sum of Rs.90,000/-. Therefore, the learned counsel submitted that on considering the facts and circumstances of the case, the tribunal has awarded a fair and reasonable compensation which does not require any interference at the hands of this court.

7. I have considered the rival submissions carefully.

8. The deceased was working as tricycle loadman. At the time of accident, he was 38 years old. As per the constitution Bench judgement of the Hon-ble Supreme Court in National Insurance Company Limited v. Pranay Sethi (2017) 16 SCC 680 even in case of self employed person, addition of future income on account of future prospects could be added. In the instant case, considering the age of the deceased, if 40% of future prospects is added to the monthly income, monthly dependency after deducting the 1/3rd of income towards the personal expenses of the deceased had he been alive, the loss of dependency would be as follows:-

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Monthly Income of the deceased		Rs. 12,000
Add 40% Future Prospects	:	Rs. 4,800
	:	16,800
Less 1/3 towards Personal Expenses	:	5,600
Loss of Dependency per month	:	11,200
Loss of Dependency per annum	:	Rs. 1,34,400
On applying the multiplier of 15 as per the age of the deceased (38 years) arrived at the total loss of dependency at	:	Rs.20,16,000

9. So far as the other conventional heads are concerned, towards loss of love and affection the appellants are entitled to a sum of Rs.40,000/- each and towards loss of consortium the 1st appellant is entitled to a sum of Rs.40,000/-. Thus, the compensation awarded by the tribunal under the head of loss of dependency, loss of love and affection and loss of consortium alone are required to be modified. Further, the appellants are entitled to a sum of Rs.15,000/- towards loss of estate. Insofar as the amount awarded by the tribunal towards funeral expenses in the considered opinion of this court appears to be just and fair and therefore, the same stands confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:-

Serial Number	Description	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed or enhanced or granted or reduced (Rs.)
1	Loss of Dependency			Enhanced
2	Funeral Expenses			Confirmed
3	Loss of Love and Affection to the appellants			Modified/Enhanced
	*[Rs.40,000 to each to the appellants 2 and 3]			
5	Loss of Consortium to the 1st appellant	30,000	40,000	Enhanced
6		-	15,000	Granted

Serial Number	Description	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed or enhanced or granted or reduced (Rs.)
	Total	15,45,000	21,66,000	Amount enhanced by Rs.6,21,000 /-

In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation of Rs.15,45,000/- awarded by the Tribunal is hereby enhanced to Rs.21,66,000/- together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit. The appellants are directed to pay necessary Court fee, if any, on the enhanced compensation. The 2nd respondent is directed to deposit the award amount directed above along with interest and costs as directed by the tribunal, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. The enhanced compensation shall be proportionately shared among the appellants as per the order of the tribunal. Considering the facts and circumstances of the case, both parties shall bear their own costs in this appeal.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

kmk
To

1.The Chief Judge, Court of Small Causes
(Motor Accidents Claims,
Tribunal), Chennai.

2.The Section Officer,
VR Section, High Court, Madras.

+1cc to Mr.s.Ravikumar, Advocate Sr.35793
+1cc to Mr.J.Chandran, Advocate Sr.36018

C.M.A.No.1579 of 2020

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