IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **17.11.2023**

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

and

THE HONOURABLE MR.JUSTICE N.SENTHILKUMAR

Civil Miscellaneous Appeal No.2271 of 2021

1. Mrs.Muthulakshmi

2. Ms.Vishnupriya

3. Jeganath ... Appellants

Vs

1. K.Gunasekar

(Since R1 remained exparte before the
Tribunal is presence may be dispensed with)

2. ICICI Lombard General Insurance Company Limited,
Arihant Plaza No.84 and 85,
I Floor, Wall Tax Road, Parrys Corner,
Chennai 600 003. ... Respondents

Prayer: This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to enhance the award against the judgment and decree dated 30.07.2020 and made in MACT. OP. No.6498 of 2018 on the file of the Motor Accident Claims Tribunal, Chief Judge, Court of Small Causes, Chennai.

For Appellants : Mr. F.Terry Chella Raja

For Respondents : Mr.Sivakollappan, for R2

R1 *Ex parte* before the Tribunal

JUDGMENT

The Claimants who are the wife and children of one Balasubramani, who died in a Motor Accident that occurred on 20.01.2018 are the appellants. Challenge is to the award of the Tribunal granting a sum of R.25,47,000/- as compensation, as against the claim of Rs.1,45,00,000/-.

2. According to the claimants, when the deceased was riding his scooter bearing Registration No.TN-14-J-4023 along with his wife, the first claimant, as a pillion rider form Sittlapakkam to Royapettah on Ottiyambakkam Main Road from south to north on the extreme left side of the road, a Maruti Swift Car bearing Registration No.TN-14-C-7651, driven by its driver in a rash and negligent manner in the same direction came from behind and hit the Scooter. As a result of the impact, the deceased was thrown off the vehicle and suffered multiple injuries. The wife/the first claimant also suffered certain minor injuries and both of them were taken to the Gleneagles Global Health City Hospital, Perumabakkam, and the deceased was treated as inpatient for almost 100 days from 20.01.2018 to 21.04.2018.

3. The medical expenses alone ran to about Rs.50,00,000/-, unable to bear the mounting medical expenses and the consequent debts, the deceased was shifted to VHM Hospitals, at Saligramam, Chennai, wherein he was treated for about 20 days between 22.04.2018 to 10.05.2018 at a cost of around Rs.5,00,000/-. Despite huge expenses and efforts of the Doctors, Balasubramani died on 10.05.2018.

4. Terming the negligence on the part of the driver of the Car as the cause of the accident and contending that the deceased was earning about Rs.50,000/- per month from his Provision Store Business and from doing Real Estate Business, the claimants sought for compensation as aforesaid including the medical expenses which ran up to Rs.50,00,000/-.

5. The claim was resisted by the Insurance Company contending that the accident did not occur in the manner suggested by the claimants and the deceased also contributed to the accident because he was carrying a huge vessel and lost balance. It was also the contention of the Insurance Company that the age and income particulars have been manipulated, so as to support the exaggerated claim for Rs.1,45,00,000/-.

6. At trial before the Tribunal, the first claimant was examined as P.W.1 and one R.Rajesh, an employee of the Gleneagles Global Health City

Hospital, was examined as P.W.2 and one Karthikeyan, an employee of VHM Hospitals, was examined as P.W.3. The second petitioner was examined as P.W.4. The copy of the FIR, the Accident Register and the Discharge summary were marked as Exs. P1 to P3. The Hospital Bills and other Medical Records as well as documents to establish the fact that the deceased was in fact carrying on a Provision Store business were marked as Exs. P4 to P37. The summary of the Bills issued by the two hospitals viz. Gleneagles Global Health City Hospital and VHM Hospitals were filed as Exs.P33 and P35, employees from those Hospitals were examined to prove the bills. Ex.P32 was marked to show that the insurance cover under the Medi claim scheme of Rs.3,00,000/- was paid by the Insurance Company. The Insurance Company did not let in either oral or documentary evidence.

7. On the evidence available, going by the FIR and the Accident Register, the Tribunal concluded that the accident occurred due to the rash and negligent driving of the car driver. The absence of any contra evidence on the side of the Insurance Company was taken note of the Tribunal in coming to the conclusion that the accident occurred due to the rash and negligent driving of the driver of the car.

8. On the quantum of loss of dependency, the Tribunal took the monthly income at Rs.15,000/- added 10% towards future prospects, deducted 1/3rd towards personal expenses and arrived at the total loss of dependency at Rs.14,52,000/-. It added a sum of Rs.15,000/- towards Funeral Expenses, Rs.60,000/- towards loss of love and affection at Rs.20,000/- each, and Rs.20,000/- towards loss of consortium. On the Medical expenses, the Tribunal disbelieved the bills produced and however, taking into account the long period of hospitalization concluded that the expenses would be Rs.10,00,000/- and awarded the said sum towards medical expenses. Thus the total compensation arrived at the Tribunal was Rs.25,47,000/- Aggrieved the claimants are on Appeal. The Insurance Company has accepted the award.

9. We have heard Mr.R.Terry Chella Raja, learned counsel appearing for the appellants and Mr.Sivakollappan, learned counsel for the second respondent/Insurance Company.

10. Since the Insurance Company is not disputing the liability and it has accepted the award of the Tribunal, we do not deem it necessary to await service of notice on the owner of the Car.

11. Mr.R.Terry Chella Raja, learned counsel appearing for the appellants would vehemently contend that the Tribunal grievously erred in granting only Rs.10,00,000/- towards medical expenses overlooking Exs. P33 and P35 and the supporting evidence of P.Ws.2 and 3. The learned counsel would submit that the Tribunal, in fact, has misread Ex.P32 in coming to the conclusion that the total medical expenses was only Rs.7,44,660/-, out of which a sum of Rs.3,00,000/- has been sanctioned by way of Medi claim. Faulting the Tribunal for having rejected the Medical Bills as copies, the learned counsel would submit that Exs.P33 and P35 are originals produced by the persons working in the respective Hospitals.

12. He would also point out the total absence of cross-examination of P.Ws.2 and 3 on the genuineness of the Bills produced by them. He would also add that the Tribunal erred in fixing the monthly income at Rs.15,000/- when enough and more documentary evidence is available to show that the deceased was carrying on business in Provisions and the business was also successful. The learned counsel would draw our attention to the documents mainly Exs.P23, P25, P26, P28 to show that the business was very active. Therefore, according to the learned counsel, the Tribunal ought to have taken the monthly income at atleast Rs.50,000/- and awarded compensation for loss of dependency on that basis. The learned counsel would also submit that the Tribunal should have granted some amount towards attender charges, considering the period of hospitalisation which was nearly for 100 days.

13. Contending contra, Mr.Sivakollappan, learned counsel appearing for the Insurance Company would submit that the Tribunal was justified in rejecting their claim on Medical Bills, since it found that most of the medical bills were photo copies. He would also submit that the mere fact that the medical bills are produced cannot be the sole criteria. On the loss of dependency, the learned counsel would submit that the actual turnover of the business and actual profits earned have not been proved by reliable evidence and therefore, the Tribunal was right in assuming an income at Rs.15,000/- per month.

14. We have considered the rival submissions.

15. Let us first deal with the claim based on the Medical Bills. Three sets of documents have been filed. Ex.P5 is a set of bills dated 20.01.2018, evidencing payment of Rs.44,97,180/- to Gleneagles Global Health City Hospital, Ex.P6 is a set of Bills evidencing payment of Rs.4,76,658/- up to 10.05.2018 to VHM Hospitals at Saligramam. There are other documents like X-Rays, Scan Reports, Lab Reports etc., which do not prove any payment. We also have Exs.P32, 33 and 35, Ex.P32 is the copy of the Mediclaim settlement made by the Insurance Company on 24.01.2018 i.e. just four days after the accident; Ex.P33 is a set of Medical Bills amounting to Rs.44,97,180/- issued by Gleneagles Global Health City Hospital; Ex.P35 is a set of Medical Bills for a sum of Rs.2,97,560.80/- issued by VHM Hospitals at Saligramam. While P.W.2 has been examined to prove Ex.P33, P.W.3 has been examined to prove Ex.P35. Both the documents Ex.P33 and P35 are original documents.

16. The Tribunal has unfortunately observed that they are Xerox copies and it had taken into account Ex.P32 which was issued within four days after the accident to come to the conclusion that the total medical expenses was only Rs.7,44,660/-. This failure on the part of the Tribunal has proved to be a costly error and has resulted in denial of actual medical expenses incurred on the deceased. No doubt there are some xerox copies in the set of bills produced as Ex.P6. But a set of bills from the very same hospital has been produced as Ex.P35 which go to show that a sum of Rs.2,97,516/- was paid. Ex.P33 is a set of original medical bills evidencing payment of a sum of Rs.44,97,180/- to Gleneagles Global Health City Hospital. Thus, the total medical expenses, according to Ex.P33 and P35, comes to Rs.47,94,696/-.

17. We must also at this juncture point out that though P.W.2 and P.W.3 have been examined in support of these two documents viz.Exs.P33 and Ex.P35, there has been no suggestion in the cross-examination to the effect that these bills are not genuine. Hence, the Tribunal's conclusion that most of the bills are xerox copies is unfounded and not based on any evidence. We therefore, have no hesitation in concluding that Exs.P33 and P35 can be safely relied upon to assess the medical expenses incurred. Hence we conclude that the medical expenses incurred was to the tune of Rs.47,94,696/- out of which, a sum of Rs.3,00,000/- has been paid by the Insurance Company by way of Mediclaim. Therefore, the claimants would be entitled to a sum of Rs.43,94,696/- towards medical expenses.

18. Now adverting to the loss of dependency, we see some force in the contention of the learned counsel for the appellants, though we are unable to accept his contention that the monthly income was somewhere in the region of Rs.50,000/-. Certain bills have been produced to show that business was carried on by the deceased. Procurement of provisions from wholesale stores have been produced and Ex.P23 is a certificate issued by the Weights and Measures Authority, certifying the weights used in the provision shop belonging to the deceased. This by itself would show that the deceased was running a business in provisions.

19. The Tribunal has taken Rs.15,000/- as the monthly income, we have gone through the bills that have been produced, we find that the deceased has procured goods from the wholesalers for at least Rs.50,000/- very frequently. He also purchased rice from the wholesalers to be sold in retail. Considering the time period during which the accident had taken place and the location of the Provision Store, just on the outskirts of the city, we conclude that it would be reasonable to fix a income of Rs.25,000/- per month. If we are to take the income at Rs.25,000/- per month, we have to add 10% towards future prospects, which would take us to Rs.27,500/- per month. There are three dependants and therefore, we can make a deduction of 1/3rd for the personal expenses of the deceased. Therefore, the monthly loss of dependency would be Rs.18,333/- which we round off to Rs.18,000/-, the multiplier applicable is 11, therefore, the total loss of dependency would be Rs.23,76,000/-.

20. The Tribunal has awarded a sum of Rs.80,000/- towards loss of love and affection and loss of consortium to the three claimants, as per the judgment of the Hon'ble Supreme Court in ***National Insurance Co. Ltd. v. Pranay Sethi,*** reported in ***2017 (16) SCC 680,*** it should be Rs.40,000/- each. Therefore, the award on that head viz. loss of love and affection and loss of consortium should be Rs.1,20,000/- at Rs.40,000/- each for the three claimants.

21. As rightly contended by the learned counsel for the appellants, the Tribunal ought to have awarded certain amount towards attender charges taking into account the long period of hospitalisation. We find a sum of Rs.50,000/- would be reasonable sum. Considering the cost of attenders at the time when the accident took place. So we award a sum of Rs.50,000/- towards attender charges. The award of Rs.15,000/- towards funeral expenses is confirmed and a sum of Rs.15,000/- is awarded towards loss of estate.

22. Thus the modified compensation award is as follows:

Description of the Heads	*Amount (Rs.)*
Towards Loss of Dependency	23,76,000/-
Towards Medical Expenses	43,94,696/-
Towards Loss of Love and affection and loss of consortium	1,20,000/-
Towards Attender charges	50,000/-
Towards Funeral Expenses	15,000/-
Towards Loss of Estate	15,000/-
Total	69,70,696/-

Thus the total compensation works out to Rs.69,70,696/-, which we round off to Rs.69,70,000.

23. In fine the Appeal is **allowed**. The award is modified, the compensation granted is enhanced to Rs.69,70,000/- with interest at 7.5%. The Insurance Company will have 12 weeks time to deposit the enhanced amount with 7.5% interest from the date of petition till date of deposit to the credit of MCOP No.6498 of 2018 on the file of Motor Accident Claims Tribunal, Chief Judge, Court of Small Causes, Chennai. On such deposit, the claimants are permitted to withdraw the enhanced amount along with the amount that is already in deposit in the same proportio as awarded by the Tribunal.

24. While we retain the apportionment made by the Tribunal for its award, we direct that the enhanced compensation awarded by us shall be shared equally between the three claimants. Since an exemption has been obtained, the claimants will pay the Court Fee on the enhanced compensation. We make no order as to costs in the Appeal.

(R.SUBRAMANIAN, J.) (N.SENTHILKUMAR, J.)
17.11.2023

Index: No
Internet: Yes
Speaking order
Neutral Citation: Yes
jv

To

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

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

R.SUBRAMANIAN, J.
and
N.SENTHILKUMAR, J.

jv

Civil Miscellaneous Appeal No.2271 of 2021

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