IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.02.2023

CORAM :
THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

C.M.A.No.1670 of 2017

1.K.Latha
2.G.Kalyanaraman … Appellants / Petitioners

Vs.

1.K.Neelamegam

2.TATA AIG General Insurance Co. Ltd.,
Regional Office,
Commander in Chief Road,
Egmore, Chennai – 600 105. … Respondents / Respondents

This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 11.11.2016 made in MACT.O.P.No.6979 of 2014, on the file of the II Small Causes Court, (Motor Accidents Claims Tribunal) Chennai.

For Appellants : Mr.N.Mahendran
for Mr.N.M.Muthurajan

For Respondent 1 : Exparte in the Tribunal itself.

For Respondent 2 : M/s.Harini
for Mr.M.Vijayaraghavan

JUDGMENT

This Civil Miscellaneous Appeal No.1670 of 2017 has been filed to enhance the compensation amount awarded in the judgment and decree dated 11.11.2016 made in MACT.O.P.No.6979 of 2014 on the file of the II Small Causes Court (Motor Accidents Claims Tribunal), Chennai with interest and cost by allowing this Civil Miscellaneous Appeal.

2. The facts of the case in a nutshell:

On 05.09.2014 at about 22.15 hours, the deceased was travelling as pillion rider in Motor cycle bearing Registration No.TN-11-J-5352 from Tambaram to Saidapet along GST road, south to north direction. When he was proceeding near the Ponds powder company signal point, Pallavaram, the Lorry bearing Registration No.TN-28-E-9292 which was driven in a rash and negligent manner, came from behind and hit against the motor cycle, in which the deceased namely, K.Rahul was thrown out from the motor cycle and sustained severe head injuries and died on the spot.

Hence, the appellants herein, being the legal heirs of the deceased filed a claim petition before the Tribunal claiming a compensation of Rs.40,00,000/-, however, the Tribunal has awarded only a sum of Rs.19,05,000/-. Aggrieved by the above said compensation, the present Appeal has been preferred by the appellants.

3. The learned counsel for the appellants submitted that the deceased was a 3rd year engineering student and the Tribunal has taken the income of the deceased as Rs.10,000/- per month which is very less for an engineering student that too who was studying a specialised course viz., B.E. Petroleum and Offshore Engineering at AMET University, East Coast Road, Kanathur, Chennai. He further relied upon the judgment rendered by the Hon'ble Apex Court in **Civil Appeal No.7180 of 2022,** in the case of ***S.Vasanthi & Anr Vs. M/s.Adhiparasakthi Engg. College and another***, in which the compensation was ordered to be paid to the account of the deceased after working out the same by enhancing the monthly income of the deceased as Rs.30,000/-. He mainly contented that the loss of pecuniary benefits was arrived at Rs.16,20,000/- by taking into consideration the income of the

deceased as Rs.10,000/- per month, which is very less and the same is unjust, unreasonable and improper, since the deceased was a final year engineering student, who studied a specialised course as stated supra and was expected to earn more than Rs.75,000/- per month after finishing the course. Hence, he prayed for enhancement of the compensation, by considering the income of the deceased as atleast Rs.20,000/-.

4. Per contra, learned counsel appearing for the 2nd respondent/Insurance company has submitted that the accident took place in the year 2014 and there is no valid documents or evidences to prove the income of the deceased. Hence, a sum of Rs.12,000/- can be taken into consideration as the monthly income of the deceased and not more than that. He further relied upon the decision rendered by the Hon'ble Madurai Bench of this Court in C.M.A.(MD) Nos.488, 814 of 2019 and C.M.P.(MD) No.10597 of 2019 in C.M.A.(MD) No.814 of 2019 in the case of the ***P.Ramalingam and Ors. Vs. The Tamil Nadu State Transport Corporation and Ors.*** in which the notional income, future prospects have been decided by applying the principles laid down by the Hon'ble Apex Court in the case of ***Sarla Verma and others Vs. Delhi Transport***

Corporation and another followed by ***National Insurance Company Ltd., Vs. Pranay Sethi.***

5. Heard learned counsel appearing for the appellants as well as the 2nd respondent and perused the materials available on record.

6. In this case, it can be seen from the contents of the F.I.R which was marked as Ex.P.1., filed against the driver of the 1st respondent's vehicle, by the S13, Chrompet Traffic Investigation, Tambaram, Chennai, who have registered a case in Crime No.652/CH1/2014 under Sections 279, 337 & 304(A) IPC is corroborated by the evidence of P.W.2. Further, Ex.P.4-Charge Sheet and other relevant documents were also marked to prove that the accident was caused by the rash and negligent act of the driver of the first respondent's vehicle. Hence, after analyzing those documents, the Tribunal has held that the rash and negligent act of the driver of the first respondent's vehicle is the cause for the accident, however, it is pertinent to that, no contra evidence has been submitted by the respondents to disprove the same. Furthermore, the driver of the 1st respondent's vehicle has not come to the witness box neither to speak about the manner of the accident

nor about the plea of contributory negligence on the part of the rider of the two wheeler. Therefore, based on the oral and documentary evidences mentioned supra, the Tribunal has rightly arrived at a conclusion that the accident has occurred due to the rash and negligent driving of the driver of the 1st respondent's vehicle and he is responsible for the same.

7. It is the duty of the 2nd respondent / insurance company to establish that the driver of the 1st respondent was not holding valid license and that the lorry bearing Reg.No.TN-28-E-9292 was not insured with them at the time of accident, which occurred on 05.09.2014, and the same was not done so in the present case on hand and absolutely there is no oral or documentary evidence on the side of the 2nd respondent. Hence, in the absence of contra evidence, the Tribunal has rightly held that as the owner and insurer of the vehicle, the 1st and 2nd respondents are jointly and legally liable to pay compensation to the appellants/petitioners therein with interest and cost.

8. With regard to the age of the deceased, in Ex.P.2, Postmortem Certificate, the age of the deceased is mentioned as 20 years, in Ex.P.3-

Death Certificate also, it is mentioned as 20 years. Further, in the Driving license of the deceased, his Date of Birth was mentioned as 16.03.1994 and as the accident took place on 05.09.2014, the age of the deceased was rightly fixed as 20 years by the tribunal. Further, as per the Ex.P.6 Legal Heir Certificate, the appellants herein are the legal heirs of the deceased and they are the two dependents of the deceased.

9. With regard to the income of the deceased, his mother / P.W.1 / 1st appellant has stated that, the deceased was studying B.E. Third year in AMET University, East Coast Road, Kanathur, Chennai and the same was corroborated through Ex.P.7-Course Completion Certificate issued by the Registrar, AMET University stating that the deceased studied B.E. Petroleum and Offshore Engineering course from July 2011 to 2014 and the 1st appellant also filed Ex.P.8-grade report series of the deceased. Hence, on perusal of the above evidences and relevant documents, this Court is of the view that the tribunal is correct in considering the Educational Qualification of the deceased as per Ex.P.7 and Ex.P.8 and held that the deceased was B.E., qualified person.

10. The Tribunal considered the dictum of the rulings reported in ***2015(1) TN MAC 82 (DB) Branch Manager, Oriental Insurance Co Ltd., Vs Gopinath and others*** and ***2014(1)TN MAC 370 (DB), Managing Director, Metropolitan Transport Corporation Ltd. Chennai Vs K.Murugesan 2. M.Navamani*** and the deceased being the B.E. Final year Engineering Student, the Tribunal has taken into consideration the income of the deceased as Rs.10,000/- per month.

11. However, the above sum of Rs.10,000/- arrived at as the income of the deceased is not reasonable and the same cannot be accepted by this Court, for the reason that the deceased was a final year student of a specialized course namely B.E. Petroleum and Offshore Engineering Course, which is a rare course unlike B.E. Civil or Mechanical etc., and there is a bright chance of completing the course and earning substantially as an engineering graduate. Hence, this Court is of the view that Rs.18,000/- per month has to be fixed as notional income of the deceased instead of Rs.10,000/- per month.

12. However, it is pertinent to note that, the decision of the Hon'ble

Apex Court in C.M.A.No.7180 of 2022 (stated supra), which was pressed into service by the learned counsel for the appellants is not applicable in the present case on hand for the reasons that, in the above case, the deceased had already completed the Engineering course and was doing MBA course and two of his classmates were gainfully employed in reputed companies and were drawing a monthly income of approximately Rs.40,000/-. However, in the case on hand, the deceased has not completed the course and he was only a 3rd year student. Hence, this Court comes to the conclusion and fixes the monthly income of the deceased as Rs.18,000/-, which will be the correct one.

13. In regard to the Future prospects, the same cannot be ruled out and by applying the principles laid down by the Hon'ble Apex Court in the case of ***Sarla Verma & others Vs Delhi Transport Corporation and another,*** reported in ***MANU/SC/0606/2009 : 2009(6) SCC 121*** followed by the case of ***National Insurance Company Limited Vs. Pranay Sethi and others*** reported in ***MANU/SC/1366/2017 : 2017(16) SCC 680,*** the loss of income is arrived at as follows:

Sl.No	***Heads***	***Calculation (Rs.)***
1.	Notional Income	18,000/-
2.	Future Prospects	50% to be added to income = 18,000/- + 9,000/- = **27,000/-**
3.	Deductions	50% to be deducted from the future prospects towards personal expense= **13,500/-**
4.	Take home salary	**13,500/-**

Hence, the take home salary of the deceased is arrived at Rs.13,500/-. Moreover, the victim died at an early age of 20 years, therefore, the tribunal has rightly decided the multiplier of the age of the deceased as 18.

1. Pecuniary Loss: The monthly income of the deceased or calculating the pecuniary loss would be Rs.13,500 * 12 * 18 = Rs.29,16,000/-.

2. Love and Affection: The compensation awarded by the Tribunal as Rs.1,00,000/- each to both the dependents is reduced to Rs.40,000/- each and totally they are entitled for Rs.80,000/-.

3. Loss of Estate: Due to the sudden demise of the deceased at the age of 20 years, the family has lost its only bread winner and accordingly, a sum of Rs.60,000/- has been awarded by the Tribunal and the same is correct and reasonable and it does not warrants any interference of this Court.

4. Funeral Expenses: The Tribunal after careful consideration of the fee paid in crematorium, use of space in cemetery and the expenses on several religious practices, has rightly awarded a sum of Rs.25,000/- and this Court finds the same as reasonable and does not warrants any interference of this Court.

Hence, the total compensation of Rs.19,05,000/- awarded by the Tribunal is modified to Rs.30,81,000/- and the details of the same are as follows:

Head	***Compensation awarded by the Tribunal (Rs.)***	***Compensation enhanced / reduced by this Court (Rs.)***
Pecuniary Loss	16,20,000/-	29,16,000/-
Love and Affection	2,00,000/-	80,000/-
Loss of Estate	60,000/-	60,000/-
Funeral Expenses	25,000/-	25,000/-
Total	**19,05,000/-**	**30,81,000/-**

14. In fine, this Appeal is partly allowed. The respondent Insurance company is directed to deposit the aforesaid modified compensation amount with interest and costs, less the amount already deposited, if any within a period of four weeks from the date of receipt of a copy of this Judgment to the credit of the MACT.O.P.No.6979 of 2014 on the file of the II Small Causes Court (Motor Accidents Claims Tribunal), Chennai. The appellants

are directed pay the necessary Court fee for the enhanced compensation amount as determined by this Court. Further, the appellants are permitted to withdraw the amount now determined by this Court along with the interest, less the amount if any already withdrawn, by making necessary application before the Tribunal. No Costs.

07.02.2023

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Index : Yes/No
Speaking Order : Yes/No

J.SATHYA NARAYANA PRASAD, J.

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To:

1.The Motor Accidents Claims Tribunal,
II Small Causes Court,
Chennai.

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

C.M.A.No.1670 of 2017

07.02.2023