

In the High Court of Judicature at Madras

Dated : 22.6.2015

Coram :

The Honourable Mr.Justice V.RAMASUBRAMANIAN

and

The Honourable Mr.Justice T.MATHIVANAN

Civil Miscellaneous Appeal No.142 of 2015 and M.P.No.1 of 2015

M/s.Reliance General Insurance
Co.Ltd., Chennai-40.

...Appellant

Vs

1.G.Subashini
2.V.Aryan (minor)
R2 - minor rep.by mother & next
friend - first respondent

3.R.S.Santhanam
4.S.Sundaravelli

5.D.Sekar

...Respondents

APPEAL under Section 173 of the Motor Vehicles Act, 1988 against the order dated 14.8.2014 made in M.C.O.P.No.831 of 2012 on the file of the Motor Accidents Claims Tribunal (Chief Court of Small Causes), Chennai.

For Appellant : Mr.M.B.Gopalan
For Respondents 1 to 4 : Mr.M.K.Asokan

JUDGMENT WAS DELIVERED BY V.RAMASUBRAMANIAN,J

This appeal by the Insurance Company arises out of an award of the Motor Accidents Claims Tribunal.

2. Heard Mr.N.Vijayaraghavan, learned counsel for the appellant and Mr.M.K.Asokan, learned counsel for the respondents 1 to 4.

3. In a road traffic accident that happened on 9.11.2011, one Mr.R.S. Venkatesh - the husband of the first respondent, the father of the second respondent and the son of the respondents 3 and 4, died. Therefore, the wife, the minor son and the parents of the deceased filed M.C.O.P.No.831 of 2012 on the file of the Motor Accidents Claims Tribunal (Chief Judge of the Small Causes Court), Chennai claiming compensation. By an award passed on 14.8.2014, the Tribunal granted a compensation of Rs.65,01,975/-. As against the said award, the Insurance Company is on appeal.

4. The fact that the deceased was aged 37 years at the time of death and the fact that he was employed as a Team Leader in an Information and Technology company were not in dispute. His monthly salary was claimed to be Rs.40,500/-. The respondents 1 to 4/claimants produced the salary slip from the company for the months of August, September and October 2011 along with the appointment order as Ex.P.8. Form-16 of the deceased was also filed as Ex.P.11. This showed that the deceased was earning a total salary of Rs.43,298/- per month. After deducting the night shift allowance of Rs.2,850/-, the Tribunal fixed the monthly income of the deceased at Rs.40,500/-. This cannot be taken exception to by the learned counsel for the appellant. After deducting 10% towards income tax, the Tribunal fixed 30% towards future prospects. By doing so, the Tribunal arrived at the

income at Rs.47,385/-.

5. The grievance of the appellant is that the addition of 30% towards future prospects is not in accordance with law and that the issue has already been referred to a Larger Bench of the Supreme Court.

6. It is true that the question of addition of 30% towards future prospects has been referred to a Larger Bench of the Supreme Court. But, even after such a reference, a Three Member Bench of the Supreme Court confirmed an award in Civil Appeal No.4497 of 2015 dated 15.5.2015 in ***Munna Lal Jain Vs. Vipin Kumar Sharma*** approving the addition of 30% towards future prospects. Therefore, we are of the considered view that the Tribunal was right in adding 30% towards future prospects despite the pendency of the issue before the Larger Bench. It is needless to point out that a mere reference to a Larger Bench does not erase the effect of the earlier pronouncement. In the case on hand, there is a later pronouncement of a Three Member Bench and hence, the Tribunal cannot be found fault with for adding 30% towards future prospects.

7. After arriving the pay at Rs.47,385/-, the Tribunal deducted 1/4th of the said amount towards personal expenses and fixed the annual income at Rs.4,26,468/-.

8. The grievance of the appellant is that the income tax ought to have been deducted at 15% instead of 10%. If this had been done, the monthly

income, after deduction of tax, would have been Rs.34,425/-. On the said amount, even if 30% is added towards future prospects and 1/4th is deducted towards personal expenses, the annual income would come to Rs.4,02,768/-.

9. On the above contention, we are in agreement with the learned counsel for the appellant. Income tax ought to have been deducted at 15% instead of 10%. Therefore, even if addition of 30% towards future prospects and the deduction of 1/4th towards personal expenses is allowed, the annual income would come to only Rs.4,02,768/- instead of Rs.4,26,428/-.

10. If the annual income had been taken as Rs.4,02,768/-, the compensation for loss of dependency, after applying the multiplier of 15, would come to Rs.60,41,520/- instead of Rs.63,96,976/-.

11. In so far as the loss of love and affection is concerned, the Tribunal has been very conservative and awarded only Rs.40,000/-. The deceased was an Ex-Airman and he left behind a minor son. Both of his parents are alive. Therefore, the Tribunal ought to have awarded at least Rs.50,000/- for the minor son and Rs.50,000/- for the parents towards loss of love and affection.

12. In so far as loss of consortium is concerned, the Tribunal has awarded only Rs.25,000/-. The Tribunal ought to have awarded Rs.1,00,000/-, since the first respondent was aged only about 32 years at

the time of death of her husband.

13. The fixation of Rs.25,000/- towards funeral expenses does not call for any interference. But, the fixation of Rs.10,000/- towards loss of estate, should be modified to Rs.25,000/- and the fixation of cost of transportation of Rs.5,000/- should be modified as Rs.25,000/-. If so done, the total compensation payable would come to Rs.63,16,520/-, whose break-up will be as follows :

<i>Monthly Income</i>	<i>Rs.40,500/-</i>
<i>Income Tax Deduction (15%)</i>	<i>Rs.34,425/-</i>
<i>Future Prospects (30%)</i>	<i>Rs.44,753/-</i>
<i>Deduction (1/4)</i>	<i>Rs.33,564/-</i>
<i>Annual Income</i>	<i>Rs.4,02,768/-</i>
<i>Loss of Dependency Multiplier (15)</i>	<i>Rs.60,41,520/-</i>
<i>Love and Affection</i>	<i>Rs.50,000/- (minor son)</i> <i>Rs.50,000/- (parents)</i>
<i>Consortium</i>	<i>Rs.1,00,000/-</i>
<i>Estate</i>	<i>Rs.25,000/-</i>
<i>Funeral Expenses</i>	<i>Rs.25,000/-</i>
<i>Transportation</i>	<i>Rs.25,000/-</i>
<i>Total</i>	<i>Rs.63,16,520/-</i>

14. In view of the above, the appeal is allowed and the award of the Tribunal is modified fixing the total amount of compensation payable at Rs.63,16,520/- (Rupees sixty three lakhs sixteen thousand five hundred and

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RS
twenty only). This amount shall be paid in the same proportion, in which, the Tribunal has ordered the respondents 1 to 4 to take it. It is stated that a sum of Rs.54,00,000/- has already been deposited. The appellant is directed to deposit the balance amount before the Tribunal below within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the respondents 1, 3 and 4 are permitted to withdraw their respective shares. The minor's share shall be invested in a nationalised bank in fixed deposit and the investment shall be renewed from time to time till the minor attains majority. No costs. Consequently, the above MP is closed.

22.6.2015

Internet : Yes

To
The Registrar, Small Causes Court, Chennai.

CMA(NPD)No.142 of 2015
AND MP.No.1 of 2015