

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 22.07.2015

CORAM

THE HON'BLE MR.JUSTICE V.RAMASUBRAMANIAN
AND
THE HON'BLE MR.JUSTICE T.MATHIVANAN

C.M.A.No.2958 of 2014
and
M.P.Nos.1 of 2014 and 2 of 2015

M/s. Reliance General Insurance Co. Ltd.
No.6, Reliance House
6th Floor, Haddows Road
Chennai-6.Appellant/2nd Respondent

vs.

1.Tmt.K.Meena
2.C.K.Manikandan
3.K.Suresh Kumar
4.K.Gokulraman
5.Tmt.C.Seriammal
6.ThirunavukkarasuRespondents/Petitioners &
(R4 Declared Major & R1 3rd Respondent
Discharges from Guardianship
vide order of court Dt.:30/01/2015
made in M.P.1/2015 in C.M.A. 2958/14)

Prayer: Challenge is made, in this Civil Miscellaneous Appeal
filed under section 173 of M.U.Act.1988 to the award, dated
20.9.2013 and made in the Motor Accident Claim Petition in
M.C.O.P.No.4641 of 2010 on the file of the Motor Accident Claims
Tribunal, (VI Court of Small Causes), Chennai.

For appellant : M/s.M.B.Gopalan
For respondents: Mr.K. Varadha Kamaraj
1 to 3 & 5

JUDGMENT

(Judgment of the Court delivered by T. MATHIVANAN, J.)

The Insurance Company, who is the second respondent in
the claim petition in M.C.O.P.No.4641 of 2010, has filed this
civil miscellaneous appeal challenging the award, dated 20.9.2013
and made in M.C.O.P.No.4641 of 2010 on the file of the Motor
Accident Claims Tribunal (6th Court of Small Causes), Chennai.

2. The first respondent is the wife of the deceased
Kannaiyan, whereas the respondents 2 to 4 are their children
and 5th respondent is the mother of the deceased.

3. After passing of the award, the fourth respondent had attained majority and therefore, on an application in M.P.No.1 of 2015, he was declared as major in pursuant to the order of this Court, dated 30.1.2015 and in consequence thereof, the first respondent being his mother and guardian was discharged from the guardianship.

4. Heard Mr. M.B. Gopalan, learned counsel appearing for the appellant/Insurance Company and Mr.K. Varadha Kamaraj, learned counsel appearing for the respondents 1 to 5.

5. As it is revealed from the records, the respondents 1 to 5 being the wife, children and mother of the deceased Kannaiyan had moved the Motor Accident Claims Tribunal (sixth court of Small Causes), Chennai, with a claim petition in M.C.O.P.No.4641 of 2010 claiming a sum of Rs.20,00,000/- towards the loss of the death of the deceased Kannaiyan in a road traffic Accident said to have been taken place on 14.11.2010 at 8.45 p.m. at E.C.R. Road, Ahmed Nagar, Puthupattinam, Kalpakkam, involving a lorry bearing Registration No.TN-31-E-2396 belonging to the sixth respondent herein, who is the third respondent in the claim petition.

6. On account of the accident, the deceased had succumbed to injuries instantaneously on the spot.

7. The appellant/Insurance Company had contested the claim petition.

8. In order to substantiate their respective cases, the first respondent/claimant being the wife of the deceased had examined herself as P.W.1 and besides this, two more witnesses were examined on their part. During the course of their examination Exs.P.1 to P.9 were marked. On the other hand, neither oral nor documentary evidence was adduced on behalf of the respondents.

9. On evaluating the evidences both oral and documentary, the claims Tribunal had proceeded to award a sum of Rs.22,21,370/- in toto, as against the claim of Rs.20.00 lakhs.

10. In so far as this appeal is concerned, Mr.M.B. Gopalan, learned counsel appearing for the appellant/Insurance Company has restricted his argument only with regard to quantum.

11. It is apparent from the records that the deceased was aged about 47 years at the time of the accident. From Exs.P.8 and P.9, it is understood that the deceased was working as a Senior Conductor in Tamil Nadu State Transport Corporation at Villupuram Division and thereby, earned a sum of Rs.13,195.50 per month.

12. It is also revealed that he was getting totally a sum of Rs.960/- per month towards his daily batta. P.W.3 one Ravikumar, who was authorised by the Transport Corporation through Ex. P.7, had spoken to all the above facts.

13. Having regard to the details of pay particulars available in Ex.P.8 and P.9, the claims Tribunal had determined his monthly income at Rs.14,155/-.

14. Since the deceased had died in an unforeseen road traffic accident at his age of 47 leaving behind 11 years of his service, the Tribunal had considered that 30% of his monthly salary could be taken into account for calculating his future prospects.

15. As afore stated, his monthly income was determined at Rs.14,155/- and 30% of his monthly salary towards the loss of future prospects was calculated at Rs.4247/- and that the total income would come to Rs.18,402/-. Accordingly, his annual dependency would be Rs.2,20,824/- (Rs.18,402 x 12). Out of this amount, the income tax to the extent of 10% was deducted by the Tribunal.

16. According to the Tribunal, for the financial assessment year 2010-2011 no tax was levied upto Rs.1,60,000/-. For the remaining Rs.60,824/-, which was the taxable income, 10% of tax would be Rs.6082/-. If this amount, i.e., Rs.6082/- is deducted from the annual dependency of Rs.2,20,824/-, the remaining balance would be Rs.2,14,742/-. This is the exact annual dependency of the family of the deceased.

17. It has to be remembered that at the time of the accident, the deceased was aged about 47 years. Therefore, the Tribunal had selected the multiplier of 13 as per the II Schedule to Section 163-A of the Motor Vehicles Act.

18. In so far as the calculation of multiplier is concerned, the claims Tribunal, had adopted a different method of split multiplier for which no serious objection was raised by the learned counsel appearing for the appellant/Insurance Company at the time of trial.

19. It is significant to note here that in so far as the deceased is concerned, the age of superannuation is 58 years. Since he had died at the age of 47, 11 years of service was left over. The Tribunal had therefore, as per the split multiplier method, multiplied the entire annual dependency of the family at first with 11 years.

20. As observed in the foregoing paragraph, the remaining two (11 + 2 = 13) was multiplied with the 50% of the annual dependency of the family.

21. The calculation of split multiplier has been detailed as under:-

a. After deducting the 10% of income tax from the annual dependency of Rs.2,20,824/-, the remaining balance would be Rs.2,14,742/-. Since the deceased had to maintain his family consisting of five members, the Tribunal had allowed $\frac{1}{4}$ th

deduction towards his personal expenses. Accordingly, the $\frac{3}{4}$ remainder would be Rs.1,61,057/-. Then, the life dependency of the family would be Rs.17,71,627/- (Rs.1,61,057 x 11). For the remaining two years, 50% of the annual income of Rs.2,14,742/- has to be multiplied with 2. Then, the 50% of annual income for two years would be Rs.2,14,742/- (Rs.1,07,371/- x 2). Therefore, the life dependency for 11 years would be Rs.17,71,627/- and for the remaining two years would be Rs.2,14,742/-. In total, the pecuniary loss of the family would come to Rs.19,86,369/-.

22. Apart from this, the Tribunal had awarded a sum of Rs.1,00,000/- towards loss of consortium, in favour of the first respondent, who was 40 years old at the time of her husband's death. The Tribunal had also awarded a sum of Rs.25,000/- towards funeral expenses, a sum of Rs.10000/- towards transport expenses, and a sum of Rs.1,00,000/- towards loss of love and affection.

23. Totally, the Tribunal had awarded a sum of Rs.22,21,369/-, and the same was rounded to Rs.22,21,370/-, which according to our view, it is well within the amplitude of the provisions of the Motor Vehicles Act and therefore, this award does not require our interference excepting to confirm the same.

In the result, the appeal is dismissed confirming the award, dated 20.9.2013 and made in M.C.O.P.No.4641 of 2010. The Insurance Company is directed to deposit the award amount of Rs.22,21,370/- with interest at the rate of 7.5% p.a. from the date of the claim petition till the date of deposit within a period of six weeks from the date of this judgment, if not deposited earlier. On such deposit being made, the respondents 1 to 5 are entitled to withdraw their respective shares as per the directions of the Tribunal. However, there will be no order as to costs. Connected M.Ps. are also dismissed.

Sd/-

Asst.Registrar (CS III)

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Sub Asst. Registrar

rnrb

To

The Motor Accidents Claims Tribunal
(IV Court of Small causes), Chennai.

Copy to:

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

+1 cc to Mr.M.B.Gopalan, Advocate, sr.37232

+1 cc to Mr.K.Varadha Kamaraj, Advocate, sr.36973

C.M.A.No.2958 of 2014 and
M.P.Nos.1 of 2014 and 2 of 2015

mrm(co), kra(25/08)