IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.10.2016

CORAM:

THE HONOURABLE MR.JUSTICE **S.MANIKUMAR**
and
THE HONOURABLE MR.JUSTICE **N.ATHINATHAN**

C.M.A.No.1318 of 2016
C.M.P.No.10194 of 2016

M/s.Reliance General Insurance Co. Ltd.,
Chennai. .. Appellant

versus

1. Lakshmi
2. Sathish Babu
3. Praveen (Minor)
(3rd respondent Minor is represented by
Mother and Next Friend, 1st respondent)
4. Dhana Ammal
5. Ravi .. Respondents

Civil Miscellaneous Appeal filed under Section 173 Motor Vehicles Act, 1988 against the award and decree, dated 30.06.2015 made in M.C.O.P.No.5245 of 2012, on the file of the Motor Accidents Claims Tribunal, (II Court of Small Causes), Chennai.

For Appellant : Ms.Harini,
for M/s.M.B.Gopalan Associates

For Respondents 1 to 4 : Mr.F.Terry Chellaraja,
for Mrs.M.Malar

J U D G M E N T

(Judgement of this Court was made by **S.MANIKUMAR, J.**)

Compensation of Rs.23,76,200/-, with interest, at the rate of 7.5% per annum, from the date of claim, till realization, awarded by the Motor Accidents Claims Tribunal, (II Court of Small Causes), Chennai, in M.C.O.P.No.5245 of 2012, dated 30.06.2015, to the legal representatives of the deceased, is the only challenge, in this appeal filed by M/s.Reliance General Insurance Co. Ltd., on the ground that the Tribunal has erred, in fixing the monthly income of the deceased at Rs.22,587.30, and accordingly, awarded a higher compensation.

2. Ms.Harini, learned counsel appearing for the appellant-Insurance Company made submissions.

3. As the challenge to the award, is restricted only to the quantum of compensation, there is no need to advert to the aspects of negligence and liability.

4. Perusal of the award shows that in the accident, which occurred on

05.08.2012, husband of the 1st respondent, aged 53 years, sustained grievous injuries and died on the same day. He was survived by his wife, aged 43 years, two sons, aged 18 and 15 years respectively and mother, aged 75 years. He was stated to be a Technician Grade I, in Southern Railways, Chennai Division and earned Rs.35,000/- per month. Legal representatives of the deceased have claimed compensation for Rs.99,00,000/-.

5. To prove avocation and income of the deceased, PW.1, wife of the deceased, has adduced evidence. She has marked Ex.P5 - Identity Card, Ex.P6 - Salary Slip, Ex.P9 - Service Register and Ex.P10 - Salary details. Added further, one Mr.Dhanasekaran, Senior Clerk, Court Cell, working in the Office of the Senior Divisional Personnel Officer, Southern Railway, Chennai Division, has been examined as PW.2. He has stated that the deceased was appointed as a Kalasi on 16.12.1986 and at the time of accident, the deceased was a Technician Grade I and earned a salary of Rs.33,476/- per month. He has further deposed that had the deceased been alive, he would have earned promotion as a Junior Engineer and earned Rs.5,000/- per month. He has marked Ex.P7 - Authorisation Letter and Ex.P8 - Identity Card.

6. On the basis of the entries in Ex.P2 - Post-Mortem Certificate, Ex.P3

- Death Certificate, Ex.P6 - Salary Slip and Ex.P9 - Service Register, wherein, the date of birth has been mentioned as 01.01.1959 and having regard to the date of accident, ie., on 05.08.2012, the Tribunal has fixed the age as 53 years. Though PW.2 has deposed that at the time of accident, the monthly salary of the deceased was Rs.33,476/-, the Tribunal has taken Rs.25,097/- as the monthly income. The Tribunal has deducted 10% towards income tax and determined the monthly contribution as Rs.22,587.30. Having regard to number of dependants, '4' and as per the principles laid down by the Hon'ble Supreme Court in **Sarla Verma v. Delhi Transport Corporation Ltd.,** reported in **2009 (2) TNMAC 1 (SC),** the Claims Tribunal deducted 1/4th towards personal and living expenses of the deceased.

7. The Tribunal has computed the loss of contribution as Rs.22,36,142.04 (Rs.22,587.30 x 3/4 x 12 x 11). In addition to the above, the Tribunal has awarded Rs.25,000/- towards loss of consortium, Rs.1,00,000/- towards loss of love and affection and Rs.15,000/- for Funeral Expenses. Altogether, the Tribunal has awarded Rs.23,76,142.04 and rounded off to Rs.23,76,200/-, with interest at the rate of 7.5% per annum, from the date of claim, till the date of realisation.

8. Though the appellant-Insurance Company has contended that the

Tribunal has erred in fixing the monthly income of the deceased as Rs.22,587.30 for the purpose of computing the loss of contribution to the family of the deceased and consequently, awarded a higher compensation, warranting reduction, this Court is not inclined to accept the said contention, for the reasons that the evidence of PW.1, wife of the deceased, is supported by PW.2, Senior Clerk, Court Cell, working in the Office of the Senior Divisional Personnel Officer, Southern Railway, Chennai Division and corroborated by the documents, such as, Ex.P5 - Identity Card, Ex.P6 - Salary Slip, Ex.P9 - Service Register and Ex.P10 - Salary details.

9. 'Consortium' as per the ***Best v. Samuel Fo***x reported in **1952 AC 716** means, "Duty owned by a wife to her husband and vice versa, companionship, love and affection, comfort, mutual services, sexual intercourse, etc." Consortium is not a pecuniary loss. It is certainly a conventional damage awarded to a widow, who has lost her husband. In **Rajesh and others v. Rajbir Singh and others** reported in **2013(3) CTC 883,** the Hon'ble Apex Court, while observing that at least a sum of Rs.1 Lakh has to be awarded to the widow, for loss of consortium, held as follows:

> "In legal parlance, 'Consortium' is the right of the spouse to

the company, care, help, comfort, guidance, society, solace, affection and sexual relations with his or her mate. That non-pecuniary head of damages has not been properly understood by our Courts. The loss of companionship, love, care and protection, etc., the spouse is entitled to get, has to be compensated appropriately. The concept of non-pecuniary damage for Loss of Consortium is one of the major heads of award of compensation in other parts of the world more particularly in the United States of America, Australia, etc. English Courts have also recognized the right of a spouse to get compensation even during the period of temporary disablement. By Loss of Consortium, the Courts have made an attempt to compensate the loss of spouse's affection, comfort, solace, companionship, society, assistance, protection, care and sexual relations during the future years. Unlike the compensation awarded in other countries and other jurisdictions, since the legal heirs are otherwise adequately compensated for the pecuniary loss, it would not be proper to award a major amount under this head. Hence, we are of the view that it would only be just and reasonable that the Courts award atleast Rupees one lakh for Loss of Consortium."

In the case on hand, the Claims Tribunal has awarded Rs.25,000/- only, towards loss of consortium.

10. Quantum of Compensation of Rs.15,000/- awarded under the head,

funeral expenses, is less. On the aspect of quantum of compensation, under the head, funeral expenses, the Hon'ble Supreme Court in **Rajesh and others Vs. Rajbir Singh and others** reported in **2013(3) CTC 883**, held as follows:

> “21. We may also take judicial notice of the fact that the Tribunals have been quite frugal with regard to award of compensation under the head 'Funeral Expenses'. The 'Price Index', it is a fact has gone up in that regard also. The head 'Funeral Expenses' does not mean the fee paid in the crematorium or fee paid for the use of space in the cemetery. There are many other expenses in connection with funeral and, if the deceased is follower of any particular religion, there are several religious practices and conventions pursuant to death in a family. All those are quite expensive. Therefore, we are of the view that it will be just, fair and equitable, under the head of 'Funeral Expenses', in the absence of evidence to the contrary for higher expenses, to award at least an amount of Rs.25,000/-.”

11. Legal representatives of the deceased, in particular, minor children have lost the love and affection of their father. In **Rajesh v. Rajbir Singh** reported in **2013 (2) TNMAC 55,** the Hon'ble Apex Court has awarded Rs.1,00,000/- each to the legal representatives of the deceased, towards the loss of love and affection. However, in the case on hand, the Claims Tribunal

has awarded only Rs.1,00,000/- towards loss of love and affection to the minor children and aged mother, which is less. There is no award towards transportation and damages to clothes and articles.

12. Quantum of compensation of Rs.23,76,200/-, awarded to the claimants, cannot at any stretch of imagination, be said to be a bonanza or windfall, warranting any reduction. On the contra, it is less under some heads. In the light of our discussion, the Civil Miscellaneous Appeal is dismissed. The appellant-Insurance Company, is directed to deposit the award amount, with proportionate accrued interest and costs, less the statutory deposit, to the credit of M.C.O.P.No.5245 of 2012, on the file of the Motor Accidents Claims Tribunal, (II Court of Small Causes), Chennai, within a period of four weeks from the date of receipt of a copy of this order. On such deposit, the respondents 1, 2 and 4/claimants are permitted to withdraw the same, by making necessary applications, before the Tribunal. The share of the minor shall be deposited in any one of the Nationalised Banks in fixed deposit under the reinvestment scheme initially for a period of three years. The interest accruing on the share of the minor shall be paid to the guardian once in three months, till he attain majority. No costs. Consequently, connected

Miscellaneous Petition is also closed.

(S.M.K., J.) (N.A.N., J.)
03.10.2016

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To

The Motor Accidents Claims Tribunal,
(II Court of Small Causes), Chennai.

S.MANIKUMAR, J.
AND

N.ATHINATHAN, J.

skm

C.M.A.No.1318 of 2016

30.10.2016