

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.09.2016

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G. RAMESH
and
THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

C.M.A.Nos.2592 of 2015 & 2673 of 2013
& M.P.No.1 of 2015 in CMA No.2592/2015
& M.P.Nos.1 and 2 of 2013 in CMA No.2673 of 2013

C.M.A.No.2592 of 2015:

1. S.Sasikala
2. S.Aravind
3. S.Vaishanavi ...Appellants/ Petitioner

Vs.

1.Raja Manickam
2. National Insurance Company
Office at No.1631/1B
1st floor, Salem Bhavani Main Road
Sangagiri
Salem ...Respondents/ Respondents

C.M.A.NO.2673 of 2013:

M/s.National Insurance Company Co.Ltd.,
No.1631/1B, 1st floor,
Salem Bhavani Main Road
Sankari - 637 301 ..Appellant/ Respondent II

Vs.

1. S.Sasikala
2. S.Aravind
3. S.Vaishanavi ...Respondents 1 to 3/ Petitioners 1 to 3
4.Raja Manickam ... 4th Respondent/ 1st Respondent

Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 27.3.2012 made in MCOP.No.564 of 2010 on the file of Motor Accidents Claims Tribunal cum Additional District Sessions Court (Fast Track Court NO.II), Coimbatore.

For Appellants
in CMA no.2592/2015

and for respondents 1 to 3
in CMA No.2673/2013 : Mrs.P.Bagyalakshmi

For Appellants
in CMA no.2673/2013
and for 2nd respondent
in CMA No.2592/2015 : Mr.J.Chandran

For 1st respondent
in CMA no.2592/2015
and for 4th respondent
in CMA No.2673/2013 : ex-parte

COMMON JUDGMENT

(Judgment of the Court was delivered by HULUVADI G. RAMESH,J.)

Challenging the Award dated 27.03.2012 passed by the Motor Accidents Claims Tribunal, F.T.C.No.II Coimbatore, in M.C.O.P.No.564 of 2010, the claimants viz., S.Sasikala, S.Aravind and S.Vaishnavi and the National Insurance Company Ltd., are before this Court.

2. The brief facts of the case is as follows:-

(i) This is a case of fatal accident.

(ii) On 28.03.2009, at about 11.30 a.m., when the deceased was riding his motor cycle bearing Reg.No.TN 37 J 3763, a lorry bearing Reg.NO.TN 52 7034 came in a rash and negligent manner and hit against the motor cycle, due to which, the deceased suffered head injuries and injuries all over the body. Immediately, he was taken to CMC Hospital, Coimbatore, however, on account of head injuries, he died.

(iii) The wife, Sasikala, and children Vaishnavi and Aravind, went before the Motor Accident Claims Tribunal, claiming compensation in a sum of Rs.25,00,000/-. To sustain their claim, the claimants examined P.Ws.1 to 3 and marked Exs.P.1 to P.16. On the side of the Insurance company, one Rajamanickam was examined and Ex.D.1 was also marked.

(iv) The Tribunal, after considering the oral and documentary evidence adduced, awarded compensation in a sum of Rs.4,18,000/- as follows:-

- | | | |
|----------------------|---|---------------|
| • Loss of Income | - | Rs.2,52,000/- |
| • Transport expenses | - | Rs. 5,000/- |
| • Funeral expenses | - | Rs. 10,000/- |

• Damage to clothings	-	Rs. 1,000/-
• Pain and suffering &		
• Loss of love and affection	-	Rs.1,00,000/-
• Loss of consortium	-	Rs. 50,000/-
Total -		Rs.4,18,000/-

The said compensation awarded is under challenge before this Court, with the Insurance Company seeking reduction and the claimants seeking enhancement.

3. The learned counsel appearing for the Insurance company submits that the Tribunal's finding as regards the cause of the accident itself is not acceptable and the deceased only caused the accident and therefore, the finding in that regard is erroneous. The learned counsel sought to contend that the finding given by the Tribunal should be reappreciated and the compensation is liable to be reduced to the extent of 50% and for the cause of the death, the deceased himself is responsible and the liability imposed on the Insurance Company on the aspect of negligence is not sustainable.

4. On the other hand, the learned counsel appearing for the claimants submits that the deceased was earning Rs.40,000/- per month as gross income by holding agricultural fertile lands and therefore, the income arrived by the Tribunal as Rs.4,500/- per month, is very low. Learned counsel, in this regard, placed reliance on the decisions of the Supreme Court in the following cases:-

(i) Reshma Kumari and others Vs. Madan Mohan and another (2013) 9 SCC 65.

(ii) Rajesh and others Vs. Rajbir Singh and others (2013) 9 SCC 54.

Learned counsel appearing for the claimants further submits that in case of self-employed persons with fixed wages, the actual income of the deceased must be enhanced for the purpose of computation of compensation.

5. Heard the counsel appearing for the respective parties. We have gone through the findings rendered by the Motor Accident Claims Tribunal, with regard to factum of negligence. It

appears that though the deceased was riding his motor cycle in a rash and negligent manner, it appears that the offending vehicle viz., lorry bearing Reg.No.TN 52 7034 was parked on the wrong side and therefore, there is no scope for interference in the findings rendered by the Tribunal, as regards negligence. There is no merit for consideration in respect of the appeal filed by the Insurance Company.

6. Insofar as the compensation awarded by the Tribunal is concerned, taking into account that the deceased would have earned Rs.15,000/- per month towards agricultural operations in his fertile land at Coimbatore and also taking into consideration that the wife and children are dependants of the deceased, the calculation towards loss of income could be arrived as below:-

Rs.15,000 - (1/3 of Rs.15,000/-) = Rs.10,000/-

Rs.10,000 x 12 = Rs.1,20,000/-

Considering the age of the deceased at the time of the accident as 64 years, the multiplier to be adopted is 7. Accordingly, the pecuniary loss would be Rs.1,20,000 x 7= Rs.8,40,000/-.

7. Accordingly, the compensation awarded by the Tribunal is modified as follows:-

(a) Towards pecuniary loss - Rs.8,40,000/-

(b) Towards other conventional heads
including consortium - Rs.1,00,000/-

Total compensation - Rs.9,40,000/-.

8. The total compensation of Rs.9,40,000/- shall carry interest at 7.5% per annum from the date of claim petition till the date of deposit.

9. The compensation amount now modified is apportioned as follows:-

(i) Widow/first respondent - Rs.6,00,000/-

(ii) Children (respondents 2 and 3) - Rs.1,70,000/- each.

10. It is submitted that pursuant to the deposit made by the Insurance Company earlier as per the interim order passed by

this court, in M.P.No.1 of 2013 in CMA No.2673 of 2013 dated 20.8.2013, the claimants are said to have withdrawn 1,50,000/-.

11. In view of the above, the Insurance Company is directed to deposit the balance amount as modified by this court above, with proportionate interest within a period of 3 months from the date of receipt of a copy of this order. On such deposit being made, the claimants are entitled to withdraw their balance share along with accrued interest on making out appropriate application before the Tribunal.

12. With the above modification, the Civil Miscellaneous Appeal No.2592 of 2015, filed by the claimants is allowed in part. C.M.A.No.2673 of 2013 filed by the Insurance Company is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

nvsri

To

Motor Accidents Claims Tribunal cum
Additional District Sessions Court
(Fast Track Court NO.II), Coimbatore.

1 cc to M/s.P. Bagyalakshmi, Advocate, Sr. 52898

C.M.A.Nos.2592 of 2015
& 2673 of 2013

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