

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.03.2016

CORAM:

THE HONOURABLE MR. JUSTICE R.SUDHAKAR

AND

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

Civil Miscellaneous Appeal No.2831 of 2015

Reliance General Insurance Company Ltd.,
at 3rd Floor, Sakthi Super Market Building,
No.408, Perundurai Road, Erode - 638 011
& I Floor, Gee Jay Arcade,
141/71, T.V.Samy Road (West),
R.S.Puram (Post), Coimbatore - 641 002. ... Appellant

vs.

1. V.Avudaithai
2. V.Sumathy
3. V.Selvakumar
4. P.Munusamy
5. S.P.Marudhachalam ... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 23.04.2015 passed in M.C.O.P.No.261 of 2013 on the file of the Motor Accidents Claims Tribunal, Special Subordinate Judge, Coimbatore.

For Appellant : Mr.S.Arunkumar

For Respondents 1 to 3 : Mr.K.Govi Ganesan

सत्यमेव जयते
J U D G M E N T

(Judgment of the Court delivered by S.VAIDYANATHAN,J.)

Challenging the judgment and decree dated 23.04.2015 passed by the Motor Accidents Claims Tribunal, Special Subordinate Judge, Coimbatore, in M.C.O.P.No.261 of 2013, mainly on the question of quantum, the Insurance Company has come up with this appeal.

2. This is a case of fatal. On 27.10.2012, at 3.30 a.m., when the deceased Mahendran was proceeding from his house towards Sinniyampalayam in his motor cycle bearing Registration

No.TN-37-BR-2412, on Avinashi road from west to east, near R.G.Pudur junction, a Lorry bearing Registration No.TN-52-5289 came behind his motor cycle in a rash and negligent manner and dashed on the motor cycle, due to which, the deceased Mahendran sustained head injuries and other multiple grievous injuries all over his body and succumbed to his injuries, despite treatment given in CMC Hospital, Coimbatore.

3. According to the claimants, who are the mother, brother and sister of the deceased, at the time of accident, the deceased was aged 24 years and was working as a Canteen/House Keeping Incharge with an annual income of Rs.3,40,000/-. They filed a claim petition under Section 166(1)(C) of the Motor Vehicles Act, before the Motor Accidents Claims Tribunal, Coimbatore, claiming a sum of Rs.46,00,000/- as compensation for the death of the deceased. The appellant/Insurance Company resisted the said claim petition, mainly contending that the driver of the offending vehicle, i.e. the Lorry did not have a valid and effective driving licence at the time of accident.

4. Before the Tribunal, on the side of the claimants, three witnesses were examined. The mother of the deceased, viz. Mrs.V.Avudaithai was examined as P.W.1; an eye-witness to the accident, one Mr.S.Venkateshwaran, was examined as P.W.2; one Mr.Gengaraj was examined as P.W.3 and Exhibits P1 to P24 were marked in support of their claim. Details of the Exhibits would run thus:

Ex.P1	Certified Xerox copy of F.I.R., dated 27.10.2012
Ex.P2	Notary certified xerox copy of MVI Report of the vehicle bearing Regn.No.TN-37-BR-2412, dated 21.10.2012
Ex.P3	Notary certified xerox copy of MVI Report of the vehicle bearing Regn.No.TN-52-5289, dated 30.10.2012
Ex.P4	Notary certified xerox copy of Certificate of Registration of the vehicle bearing Regn.No.TN-37-BR-2412, dated 24.06.2011
Ex.P5	Notary certified xerox copy of Certificate of registration of the vehicle bearing Regn.No.TN-52-5289, dated 07.08.2013
Ex.P6	Notary certified xerox copy of Insurance Policy of the vehicle bearing Regn.No.TN-37-BR-2412

Ex.P7	Notary certified xerox copy of Insurance Policy of the vehicle bearing Regn.No.TN-52-5289
Ex.P8	Notary xerox copy of Driving Licence of the 1 st respondent
Ex.P9	Notary certified xerox copy of Post-mortem Certificate, dated 27.10.2012
Ex.P10	Notary certified xerox copy of Legal Heir certificate, dated 09.01.2013
Ex.P11	Passport of deceased
Ex.P12	Transport Bill, dated 27.10.2012
Ex.P13	Industrial School Certificate of the deceased
Ex.P14	Pay Slip for the period from January 2010 to March 2010 of the deceased given by Quality Hotel Sabari Classic, Navalur, Chennai 603 103.
Ex.P15	ESI Corporation Temporary Identity Card of the deceased given by Sabari Inn Pvt. Ltd., Quality Hotel Sabari Classic, Navalur, Chennai 603 103.
Ex.P16	Certificate of E.S.I. Corporation contributor of the deceased given by Sabari Inn Pvt. Ltd., Quality Hotel Sabari Classic, Navalur, Chennai 603 103, dated 10.03.2010
Ex.P17	Pay Slips of the deceased for the period from January 2012 to June 2012
Ex.P18	Letter under RTI Act from Inspector of Police, TIW East, Coimbatore, dated 05.12.2012
Ex.P19	Reply letter under RTI Act from Commissioner of Police, Coimbatore City, dated 07.12.2012
Ex.P20	Requisition Letter under RTI Act with Postal Receipt and A/D Card, dated 21.11.2012
Ex.P21	Returned Copy Application, dated 23.04.2014
Ex.P22	Authorisation letter of P.W.3 given by Pharmazell (India) Private Ltd., Tambaram, Chennai 600 045, dated 29.10.2014

Ex.P23	True copy of Interview letter sent to the deceased through Pharmazell (India) Pvt. Ltd., Tambaram, Chennai 600 045, dated 09.09.2012
Ex.P24	True copy of Appointment Order letter sent to the deceased issued by Pharmazell (India) Private Ltd., Tambaram, Chennai 600 045, dated 16.10.2012

On the side of the Insurance Company, no witness was examined and no document was marked.

5. On consideration of the available oral and documentary evidence, the Tribunal, held that the accident had occurred due to the rash and negligent driving of the driver of the offending vehicle, i.e. Lorry; fixed the liability to compensate the claimants on the owner and insurer of the Lorry and awarded a sum of Rs.30,20,000/- as compensation to the claimants. Details of the award are as follows:

S.No.	Heads	Compensation awarded by the Tribunal
1	Loss of dependency	Rs. 28,90,000/-
2	Loss of love and affection	Rs. 1,00,000/-
3	Funeral expenses	Rs. 25,000/-
4	Loss of estate	Rs. 5,000/-
	Total	Rs. 30,20,000/-

6. Disputing the quantum of compensation awarded by the Tribunal, learned counsel for the appellant/Insurance Company submitted that the Tribunal has erred in fixing a sum of Rs.3,40,000/- as annual income of the deceased.

7. On the other hand, learned counsel appearing for the 1st respondent/claimant submitted that the compensation awarded by the Tribunal is less when compared to the amount sought in the claim petition and prayed for dismissal of the appeal.

8. Heard the learned counsel on either side, gave careful consideration to their submissions and perused the material documents available on record.

9. Admittedly, the deceased was aged 24 years at the time of accident. The only question that needs consideration in this

appeal is the proper determination of income of the deceased. From the records, it is seen that before the accident, the deceased was selected by a Private Company, viz. Pharmazell (India) Private Ltd., Chennai for the post of "Canteen/House Keeping Incharge" with an annual income of Rs.3,40,000/-. In support of the same, the offer of appointment letter of the said Company is marked as Ex.P24. On a perusal of the oral and documentary evidence, it is clear that though the deceased was supposed to join duty in the said Company on or before 01.11.2012, unfortunately, he died in the accident which occurred on 27.10.2012. Had he been alive, definitely, he would have joined duty in the said Company. Hence, relying on Ex.P24, the Tribunal fixed a sum of Rs.3,40,000/- as the annual income of the deceased. Since the deceased was a bachelor at the time of accident, the Tribunal deducted 50% towards his personal expenses and arrived a sum of Rs.1,70,000/- as his yearly contribution to the family, adopted the multiplier of '17' and awarded a sum of Rs.28,90,000/- towards "loss of dependency".

10. As far as fixation of income of the deceased is concerned, this Court is of the view that no deductions have been made from the annual income of the deceased towards perks, allowances and income tax, etc. In such view of the matter, this Court fixes the annual income of the deceased at Rs.3,00,000/-, and after deducting 50% towards his personal expenses, arrives at a sum of Rs.1,50,000/- as his yearly contribution.

11. Coming to the multiplier adopted by the Tribunal, as the deceased was aged 24 years at the time of accident, the correct multiplier to be adopted as per Sarla Verma's case (Sarla Verma (Smt) and others vs. Delhi Transport Corporation and another, (2009) 6 SCC 121) is '18'. Hence, adopting the multiplier of '18' and taking a sum of Rs.1,50,000/- as the annual income of the deceased, the compensation towards "loss of dependency" is worked out to Rs.27,00,000/-. The quantum awarded under the heads "loss of love and affection" and "Funeral expenses" is confirmed. Since enough compensation is awarded towards "loss of dependency", the quantum granted under the head "loss of estate" is struck down. In fine, a sum of Rs.30,20,000/- awarded by the Tribunal as compensation is reduced to a sum of Rs.28,25,000/- (Rupees Twenty Eight Lakhs Twenty Five Thousand only).

12. Taking note of the fact that respondents 2 and 3, who are the sister and brother of the deceased are not entitled to claim dependency, the 1st respondent, who is the mother of the deceased is alone entitled to the revised compensation awarded by this Court. Interest awarded by the Tribunal at 7.5% per

annum from the date of petition till the date of realization along with proportionate costs is confirmed. Break-up details of the revised award are tabulated below:

S.No.	Heads	Compensation awarded by the Tribunal	Revised compensation awarded by this Court
1	Loss of dependency	Rs.28,90,000/-	Rs. 27,00,000/-
2	Loss of love and affection	Rs.1,00,000/-	Rs. 1,00,000/-
3	Funeral expenses	Rs. 25,000/-	Rs. 25,000/-
4	Loss of estate	Rs. 5,000/-	-
	Total	Rs.30,20,000/-	Rs.28,25,000/-

13. The revised compensation awarded by this Court along with interest and proportionate costs shall be deposited by the appellant/Insurance Company to the credit of M.C.O.P.No.261 of 2013, less the amount already deposited within a period of six (6) weeks from the date of receipt of a copy of this order. It is also made clear that the amount awarded by this Court shall be paid to the 1st respondent/1st claimant in the form of a crossed Account Payee Cheque, favouring only the 1st claimant and it should not be issued in favour of any other person/Company.

The Civil Miscellaneous Appeal is partly allowed with the above direction and observation. No costs. Consequently, connected M.P.No.1 of 2015 Is closed.

Sd/-

Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

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To:

The Motor Accidents Claims Tribunal,
Special Subordinate Judge, Coimbatore.

1 cc to Mr.S.Arunkumar, Advocate, sr.17136

1 cc to M/s.K.GoviGanesan, Advocate, sr.16860

C.M.A.No.2831 of 2015

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kra 07.06.2016