

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.02.2016

CORAM

THE HONOURABLE MR.JUSTICE R.SUDHAKAR
and
THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

C.M.A.No.382 of 2016
and C.M.P.No.2906 of 2016

Reliance General Insurance Company Ltd.,
Office at 141/71, Thiruvengataswamy Road West,
R.S.Puram, Coimbatore - 641 002.

... Appellant/3rd Respondent

vs.

1. Durgadevi
2. Minor. Bharatraj
3. Sellammal
4. Perumal

....Respondents/Petitioners
1 to 4.

5. R.Gunasekaran
 6. M.Selvaraj
- (R2 Minor Rep by his guardian R1)
-Respondents/R1 & R2 5 & 6

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the award and decree dated 18.03.2015 passed in M.C.O.P.No.412 of 2010 on the file of the Motor Accidents Claims Tribunal (IV Additional District Judge), Bhavani.

For Appellant :Mr.S.Arun Kumar
For Respondents:Mr.Ma.Pa.Thangavel
R1 to R4.

JUDGMENT

(Judgment of the Court was delivered by R.SUDHAKAR,J.)

The Reliance Insurance Company is on appeal challenging the award dated 18.03.2015 passed in M.C.O.P.No.412 of 2010 on the file of the Motor Accidents Claims Tribunal (IV Additional

District Judge), Bhavani.

2. It is a case of fatal accident. On 28.04.2010, at about 5.00 a.m., the deceased, Thangadurai aged 22 years was travelling along with his wife in a Maruthi Omni Van, bearing Registration No.TN 33 M 8539, which driven by the fifth respondent herein. It is stated that near Thulagum Thanlum on the Bangalore to Chennai National Highway Road, the fifth respondent drove the vehicle in a rash and negligent manner, thereby hit the vehicle moving in front of the Maruthi Omni Van. As a result, the deceased Thangadurai died instantaneously on the spot. The claimants, who are wife, aged 25 years, minor son, aged 1 ½ years, mother aged, 63 years and father aged 77 years of the deceased have filed a claim for compensation for a sum of Rs.70,00,000/-. According to the claimants, the deceased was doing business of manufacturing high quality Silver Table and Chairs under the name and style of Bhavani Sangameswara Engineering and was earning a sum of Rs.20,000/- per month.

3. In support of the claim, the wife of the deceased was examined as P.W.1 and one Sreenivasan, who is stated to be the partner of the deceased in the business, was examined as P.W.2, and Ex.P-1 to Ex.P-10 were marked, the details of which are as follows:-

Ex.No.	Date	Details
P1	02.11.2012	Letter received under Right to Information Act along with copy of documents
P2	28.04.2010	True Xerox Copy of First Information Report
P3	28.04.2010	True Xerox Copy of Rough Sketch
P4	28.04.2010	True Xerox Copy of Observation Mahazar
P5	28.04.2010	True Xerox copy of Motor Vehicle Inspector's Report
P6	28.04.2010	True Xerox Copy of Post mortem Certificate
P7	12.08.2010	True Xerox Copy of charge sheet
P8	17.12.2004	True Xerox Copy of partnership agreement deed
P9	01.06.2010	True Xerox Copy of Legal Heir Certificate
P10	12.01.2005	True Xerox Copy of firm registration certificate

On behalf of the Insurance Company, no witnessess were examined and no documents were marked before the Tribunal.

4. The Tribunal based on the oral evidence of the witnesses, the F.I.R. and also taking note of the fact that the fifth respondent was having valid driving licence to drive the Maruthi Omni Van came to conclusion that the fifth respondent herein had driven the vehicle in a rash and negligent manner and was responsible for the accident and consequently liability was fixed on the appellant Insurance Company, since the vehicle was insured with the appellant, to compensate the claimants. On this issue, learned counsel for the appellant has no serious objection with regard to the finding of the Tribunal as no material has been placed to come to a different conclusion from that of the conclusion arrived by the Tribunal.

5. Based on the oral and documentary evidence, the Tribunal granted the following amounts as compensation with interest at 7.5% per annum:-

Sl. No.	Head	Amount granted by the Tribunal
1	Loss of dependency (7500 x 12 x 14)	Rs.14,40,000/-
2	Loss of love and affection	Rs. 2,00,000/-
3	Transport expenses	Rs. 10,000/-
4	Funeral expenses	Rs. 10,000/-
5	Loss of Consortium	Rs. 1,50,000/-
6	For damage to clothing and articles	Rs. 2,000/-
	Total	Rs.18,12,000/-

6. The only serious objection raised is with regard to the grant of compensation towards Loss of dependency, as there is no material to prove that the deceased was doing real estate business. The claimants have admitted that they have started the business of manufacturing silver table and chairs after the death of the deceased Thangadurai. Hence, the Tribunal ought not to have fixed the income at Rs.10,000/- per month.

7. Insofar as the compensation is concerned, the Tribunal considering the evidence of P.W.2, who is stated to be the partner of the deceased in the real estate business fixed the income of the deceased at Rs.10,000/-. It is seen that there is no material to prove that the deceased was doing business at the time of accident. Since there is no material proving the income

of the deceased, we feel that the income fixed by the Tribunal at Rs.10,000/- is marginally on the higher side. Hence, we fix the income at Rs.9,000/- .

8. The Tribunal deducted 1/4 towards personal expenses of the deceased. This appears to be justified. After deducting 1/4 towards personal expenses, the income of the deceased comes to Rs.6,750/-, which can be taken as Rs.7,000/-. Hence, we fix the income of the deceased after deducting personal expenses at Rs.7,000/-.

9. Accordingly, the compensation awarded by the Tribunal stands modified as follows:

Sl. No.	Head	Amount granted by the Tribunal	Amount awarded by this Court
1	Loss of dependency	Rs.14,40,000/-	Rs.13,44,000/-
2	Loss of love and affection	Rs. 2,00,000/-	Rs. 2,00,000/-
3	Transport expenses	Rs. 10,000/-	Rs. 15,000/- (Transport & Funeralexpenditures)
4	Funeral expenses	Rs. 10,000/-	---
5	Loss of Consortium	Rs. 1,50,000/-	Rs. 1,50,000/-
6	For damage to clothing and articles	Rs. 2,000/-	Rs. 2,000/-
	Total	Rs.18,12,000/-	Rs.17,11,000/-

10. There is no serious objection in respect of the other amounts granted or the interest granted at 7.5% per annum.

11. Accordingly, the Civil Miscellaneous Appeal is partly allowed as follows:-

- (i) The award of the Tribunal is reduced to Rs.17,11,000/- from Rs.18,12,000/-.
- (ii) The interest granted by the Tribunal at 7.5% per annum is confirmed.
- (iii) Out of the award amount modified by this Court, the parents of the deceased are entitled to a sum of Rs.2.00 lakhs each and the minor son is entitled to a sum of Rs.4.00 lakh and the wife of the deceased is entitled to

the balance sum.

- (iv) Learned counsel appearing for the appellant insurance company seeks time to deposit the award amount granted by this Court along with accrued interest and costs. The appellant is granted eight weeks time to deposit the said amount.
- (v) On such deposit being made, the major claimants are permitted to withdraw the award amount as ordered and apportioned by this Court.
- (vi) The share of the minor shall be invested in any one of the Nationalised Bank initially for a period of three years and to be renewable thereafter periodically, till he attains majority.
- (vii) Except the above modification, the award of the Tribunal in all other aspects stands confirmed.
- (viii) There will be no order as to costs in this appeal.
- (ix) Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

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To

The Motor Accidents Claims Tribunal
(IV Additional District Judge), Bhavani.

+1 cc to M/s.S.Arunkumar, Advocate, sr.12706

+1 cc to Ma.P.Thangavel, Advocate, sr.12622

C.M.A.No.382 of 2016
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