

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.06.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
AND
THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.NO.1116 OF 2016

AND CMP NO.8359 OF 2016

M/s.Reliance General Insurance Company Limited
Rep. by its Branch Manager
Branch Office at No.141/71,
T.V.Swamy Road,
West R.S.Puram,
Coimbatore. Appellant/3rd Respondent

Versus

1.A.Selvakumar
2.S.V.Nivetha (Minor)

(2nd respondent minor rep. by
father and NF 1st respondent)

3.P.Shanmugavel

4.M/s.Viswanathan & Sons
No.1/6, Parameswaran Pillai Lay - Out,
P.N.Palayam,
Coimbatore.

5.M/s.Iffco Tokio General Insurance Company Limited
Rep. by its Branch Manager
Branch at Thulasi Chambers
3rd Floor, No.195, T.V.Swamy Road,
West R.S.Puram,
Coimbatore. Respondents /Petitioners
1 and 2 & RR1,2 & 4

PRAYER: Appeal filed under Section 173 of Motor Vehicles Act,
1988, against the judgment and decree dated 16.07.2015 passed in
MCOP No.220 of 2010 by the Motor Accidents Claims Tribunal,
Subordinate Court, Pollachi.

For Appellant : Mr.M.B.Raghavan
For Respondents : Mr.Ma.P.Thangavel
1 and 2
For Respondent 5 : Ms.K.Saraswathi for
Mr.C.R.Krishnaoorthy

J U D G M E N T

(JUDGMENT OF THE COURT WAS MADE BY M.GOVINDARAJ, J.)

This Civil Miscellaneous Appeal has been preferred by the appellant / Insurance Company challenging the quantum of compensation.

2. The case of the claimants is that the deceased Vithyalakshmi is the wife of the first petitioner / first respondent and mother of the second petitioner / second respondent. On 03.06.2010, the deceased was riding two wheeler carrying the second petitioner / second respondent as pillion rider. While they were proceeding towards North on Pollachi - Palghat Road, the offending vehicle insured with the appellant / insurance company bearing Registration No.TN38-AW-0016 was driven in a rash and negligent manner and hit the two wheeler from behind. In the accident, the rider of the two wheeler died on the spot and the second petitioner / second respondent has suffered grievous injuries. On the basis of the same, the husband and daughter of the deceased, laid a claim petition for compensation of a sum of Rs.28,90,000/-, which was restricted to Rs.20,00,000/-.

3. The appellant / insurance company denied liability on the ground that the driver of the offending vehicle was acquitted by the Criminal Court.

4. In order to prove their claim, the claimants have examined four eye-witnesses and marked 16 documents as Exs.A1 to A16. On the side of the respondents, no witnesses were examined and no documents were marked.

5. The Tribunal, on the basis of the deposition of the eye-witnesses as well as Ex.A1 - First Information Report, Ex.A5 - charge sheet, Exs.A3 and A4 - Motor Vehicle Inspector's reports, has held that the accident was caused due to the rash and negligent driving of the driver of the offending vehicle. Even though the appellant raises the issue of liability on the basis of acquitted of the driver by the Criminal Court, no evidence was adduced in support of their claim. They have also

not marked any document to prove the same. In the absence of any material evidence, it cannot be said that the finding of the tribunal is erroneous. Ex.A11 is the driving license. Ex.A14 is the salary certificate of the deceased. Ex.A15 is the service register of the deceased. On the basis of the same, the Tribunal has come to a conclusion that the claimant is entitled to a compensation of Rs.24,35,760/- towards loss of estate; Rs.1,00,000/- towards loss of consortium to the first petitioner/first respondent; Rs.1,00,000/- towards loss of love and affection to the second petitioner/second respondent; Rs.10,000/- towards transportation and Rs.25,000/- towards funeral expenses, totaling to a sum of Rs.26,60,760/-. There is no dispute as to the coverage of insurance. Since the offending vehicle is insured with the appellant / insurance company, they were held liable to pay the compensation.

6. The learned counsel appearing for the appellant would vehemently contend that 1/2 share should have been deducted instead of 1/3rd deducted by the Tribunal towards personal and living expenses.

7. Admittedly, the deceased is the wife of the first petitioner/ first respondent and mother of the second petitioner/second respondent. The Tribunal has rightly deducted 1/3rd towards personal and living expenses and there is no infirmity in that. On the other hand, the compensation is based on the salary certificate issued by the employer and the employment status is clearly proved by production of identity card, service register etc. Therefore, we do not find any discrepancy in the award passed by the Tribunal. Moreover, the insurance company does not question their liability. In the event of proof of accident and when negligence and liability of the appellant is not disputed, they cannot sustain the present appeal.

8. It is submitted that 50% of the award amount has already been deposited before the Tribunal. Therefore, a direction is issued to the appellant / insurance company to deposit the balance amount of compensation, along with interest at the rate of 7.5% per annum, from the date of claim till deposit, to the credit of M.C.O.P.No.220 of 2010 on the file of Motor Accident Claims Tribunal (Subordinate Court) Pollachi, within a period of four weeks from the date of receipt of a copy of this order.

9. On such deposit being made, the first respondent/claimant is permitted to withdraw his share, on filing proper application before the Tribunal. In so far as the share apportioned to the minor is concerned, the same should be deposited in favour of the minor viz., second respondent, in a

Nationalised Bank, proximate to the residence of the first respondent, in a reinvestment scheme, till she attains majority. The first respondent / father is entitled to withdraw interest accrued thereon, once in three months, for the welfare of the minor.

10. The Civil Miscellaneous Appeal is disposed of with the above observation and direction. No costs. Consequently, connected civil miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

TK

To

The Motor Accidents Claims Tribunal
(Subordinate Court)
Pollachi.

Copy to

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

+1cc to M/S.M.B.Gopalan Associates, Advocate Sr.40533
+1cc to Mr.Ma.P.Thangavel, Advocate Sr.40419
+1cc to Mr.C.R.Krishnamoorthy, Advocate Sr.40494

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srg 26/11/2018