

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.06.2017

CORAM:

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

C.M.A.NO.1224 OF 2016
AND CMP NO.9248 OF 2016

Royal Sundaram Alliance Insurance Co. Ltd.,
Bus Plaza, 3rd Floor, 5G, Lawsons Road,
Contonment,
Trichy - 1. Appellant

Versus

1.Gomathi
2.Minor Thirunavukkarasu
(2nd respondent minor is rep. by his
natural guardian and n.f. mother
Gomathi)
3.Dhanavalli
4.Sasikala
5.S.Ganeshkumar Respondents

PRAYER: Appeal filed under Section 173 of Motor Vehicles Act,
1988, against the judgment and decree dated 07.01.2016 made in
MCOP No.329 of 2012, on the file of Motor Accidents
Claims Tribunal (Principal District Court) Perambalur.

For Appellant : Mr.S.Manohar
For Respondents : Mr.T.Gopinath
1 to 4

J U D G M E N T

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

Challenging the award of compensation dated 07.01.2016,
passed in M.C.O.P.No.329 of 2012, by the Motor Accident Claims
Tribunal (Principal District Judge) Perambalur, the insurance
company preferred the above appeal.

2. On 30.01.2012, at about 08.30 p.m., while the deceased viz., Sasikumar was standing in the extreme eastern side of the mud road at Siruvachur Bus Stop, on the NH-45 road, an Innova Car bearing Registration No.TN49-S-4900, belonging to the fifth respondent herein, and insured with the appellant / insurance company, was driven by its driver, in a rash and negligent manner, at hectic and uncontrollable speed, without blowing horn and without obeying the rules of the road, suddenly dashed against the deceased, in which incident, the deceased was thrown away and sustained multiple grievous injuries all over the body, particularly in head and fracture in left leg. Immediately, he was taken to the Government Hospital, Perambalur, where first aid treatment was given and thereafter, he was admitted at ABC Hospital, Trichy and treated as an inpatient. He died on 24.03.2012 consequent to the injuries caused in the accident. A case was registered in Crime No.78 of 2012 under Sections 279, 338 and 304(A) IPC on the file of Perambalur Police Station.

3. Based on the above facts, the respondents 1 to 4 / claimants have filed a claim petition before the Tribunal seeking compensation of Rs.15,00,000/-.

4. The appellant / insurance company filed a counter affidavit before the Tribunal denying the manner of accident. It was stated that due to the negligence of the deceased, who had suddenly attempted to cross the road, without minding the traffic rules and invited the accident himself. Therefore, they are not liable to pay any compensation.

5. Before the Tribunal, three witnesses were examined on the side of the claimants and Exs.P1 to P18 were marked. Two witnesses were examined and Ex.R1 was marked on the side of the respondents.

6. The learned counsel for the appellant / insurance company would vehemently contend that the road in which the accident had happened, is a National Highway and the deceased recklessly crossed the road unmindful of the heavy traffic. In support of his contention, he would rely on the rough sketch marked as Ex.R1 and the evidence of R.W.1 - Driver.

7. From the perusal of Ex.R1 - rough sketch and the evidence of claimants as well as R.W.1 and also the contents of Ex.P1 - First Information Report, we could see that the deceased should have also exercised care while crossing the road, which has heavy vehicle traffic. But, in the case on hand, it is seen that the offending vehicle also driven in a rash and negligent manner, as there was a crossing in between the National Highway.

From the evidence, both oral and documentary, we could deduce that both the deceased as well as the driver of the offending vehicle were negligent. Accordingly, we come to the conclusion that since the deceased also has contributed to the accident, by his careless crossing of the road, the extent of negligence is fixed in the ratio of 75 : 25 i.e., 75% on the driver of the Car and 25% on the deceased.

8. The Tribunal has awarded a sum of Rs.16,91,138/- as compensation, under various heads, which reads as under:

Heads	Amount awarded Rs.
Loss of income to the family (Rs.6,000/- X 12 X 17)	12,24,000.00
Loss of consortium to the wife	50,000.00
Loss of love and affection	50,000.00
Funeral expenses	20,000.00
Medical expenses	3,35,138.00
Transportation charges	10,000.00
Damages to clothes	2,000.00
Total compensation	16,91,138.00

9. The learned counsel appearing for the respondents 1 to 4/ claimants would submit that the Tribunal below has awarded a sum of Rs.50,000/- towards loss of consortium to the wife and Rs.50,000/- in toto towards loss of love and affection to the minor child, mother and sister of the deceased.

10. We consider that the arguments advanced by the learned counsel for the respondents 1 to 4 / claimants has some force.

11. Following the judgment of the Hon'ble Supreme Court in RAJESH VS. RAJBIR SINGH [2013 (9) SCC 54] we increase it by Rs.50,000/- and awarded Rs.1,00,000/- under the head loss of consortium to the wife. In so far as loss of love and affection is concerned, the minor is entitled to get Rs.1,00,000/- and the mother and the sister are given Rs.50,000/- each. Accordingly, a sum of Rs.2,00,000/- is increased under the heads loss of consortium and loss of love and affection.

12. The Tribunal has awarded a sum of Rs.16,91,138/-. However, because of typographical error, it is shown as Rs.17,41,138/-. Due to this error, a sum of Rs.50,000/- is decreed in excess of the amount awarded. As per the original

calculation, Rs.16,91,138/- is the award amount and accordingly, the amount increased now is added to Rs.16,91,138.

13. The compensation now determined by this Court is as under:

Heads	Amount awarded Rs.
Loss of income to the family (Rs.6,000/- X 12 X 17)	12,24,000.00
Loss of consortium to the wife	1,00,000.00
Loss of love and affection to the minor	1,00,000.00
Loss of love and affection to the mother and sister	1,00,000.00
Funeral expenses	20,000.00
Medical expenses	3,35,138.00
Transportation charges	10,000.00
Damages to clothes	2,000.00
Total compensation	18,91,138.00

Thus, on reworking, the award of compensation is arrived at Rs.18,91,138/-. Out of this award amount, 75% shall be payable by the appellant / insurance company, which works out to Rs.14,18,353/-.

14. Record of proceedings shows that when the matter was taken up for admission on 17.06.2016, a direction was issued to the appellant - insurance company to deposit 50% of the award amount. Accordingly, the insurance company has deposited a sum of Rs.10,80,051/-. On reworking, a sum of Rs.3,38,302/- has to be deposited with proportionate interest at the rate of 7.5% per annum and costs, to the credit of M.C.O.P.No.329 of 2012, on the file of Motor Accident Claims Tribunal (Principal District Court) Perambalur.

15. Therefore, the appellant - insurance company is directed to deposit their share of the modified award amount, with interest at the rate of 7.5% per annum, from the date of claim till deposit, after deducting the amount already deposited, to the credit of M.C.O.P.No.329 of 2012, on the file of Motor Accident Claims Tribunal (Principal District Court) Perambalur, within a period of six weeks from the date of receipt of a copy of this order.

16. On such deposit being made, the respondents 1, 3 and 4 / claimants are permitted to withdraw their respective shares, on filing proper applications before the Tribunal.

17. 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, in a reinvestment scheme, till he attains majority. The first respondent / mother is entitled to withdraw interest accrued thereon, for the welfare of the minor. The apportionment given by the Tribunal can be applied for the rest of the amount.

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

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

TK

To

The Motor Accident Claims Tribunal
(Principal District Court)
Perambalur.

Copy to: The Section Officer,
V.R.Section, High Court,
Madras.

+1cc to Mr.Gopinath, Advocate Sr. 40973
+1cc to Mr.Manohar, Advocate Sr. 40725

C.M.A.NO.1224 OF 2016

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