

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.04.2017

C O R A M

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

C.M.A. NOS.2300 AND 1594 OF 2015
AND

C.M.P. NO.12497 OF 2016

C.M.A. No.2300 of 2015
Reliance General Insurance Company Ltd.
Branch Office
Sri Lakshmi Complex, First Floor
Bharathi Street, Omalur Main Road
Swarnapuri, Salem ... Appellant/2nd Respondent

Vs.

1.Tamilselvi
2.Minor Harish
3.Minor Dharshini
4.Ramayee ... Respondents 1 to 4/Petitioners
5.N.M.Vimalkanth
(Minors R2 and R3 rep. by their
mother Tamil Selvi - R1 ... 5th Respondent/1st Petitioners

Prayer: Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 16.02.2015, passed in M.C.O.P.No.1169 of 2013, by the Motor Accident Claims Tribunal, Additional District Court, Namakkal.

For Appellant : Mr.S.Arunkumar

For Respondents : Mr.Ma.P.Thangavel
for R1 to R4
R5- set Exparte

C.M.A. No.1594 of 2015

1.Tamilselvi
2.Minor Harish
3.Minor Dharshini
4.Ramayee .. Appellants/Petitioners
(Appellants 2 & 3 are represented
by their mother Tamil Selvi/1st Appellant)

Vs.

1. N.M.Vimalkanth
2. Reliance General Insurance Company Ltd.
Branch Office
Sri Lakshmi Complex, First Floor
Bharathi Street, Omalur Main Road
Swarnapuri, Salem .. Respondents/ Respondents

Prayer: Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 16.02.2015, passed in M.C.O.P.No.1169 of 2013, by the Motor Accident Claims Tribunal, Additional District Court, Namakkal.

For Appellant : Mr.Ma.P.Thangavel

For Respondents : Mr.S.Arunkumar for R2
R1- set Exparte

COMMON JUDGMENT

(Made by S.MANIKUMAR, J.)

Being aggrieved by the quantum of compensation of Rs.47,88,000/- awarded to the legal representatives of Thangamani, in M.C.O.P. No.1169/2013 dated 16.02.2015, by the Motor Accident Claims Tribunal (Additional District Judge), Namakkal, Reliance General Insurance Company Limited/appellant herein, has preferred C.M.A. No.2300 of 2015.

2. Not satisfied with the compensation, claimants, have filed C.M.A. No.1594 of 2015, for enhancement of the same. As both the appeals revolve around the quantum of compensation, they are taken up together and disposed of by a common judgment.

3. Short facts leading to the filing of the appeal, are, as follows:

On 10.07.2013, around 3.30 p.m, while Thangamani, sole breadwinner of the claimants, was riding his motorcycle bearing Registration No.TN-28 AE-7238 from south to north, on the left side of Mohanoor - Namakkal Main Road, near Molagaundanpudur Extension Road, another motorcycle bearing Registration No.TN-28 AL-9372, driven in a rash and negligent manner, at a high speed by N.M.Vimalkanth/5th respondent, in the opposite direction, collided with the motorcycle of Thangamani. In the said collision, Thangamani sustained head injuries and died on the spot. The accident was caused solely due to the negligence of the motorcyclist bearing Registration No.TN-28 AL-9372. In this regard, a case in Crime No.306 of 2013, was registered against the motorcyclist of the bike, bearing Registration No.TN-28 AL-9372, on the file of Mohanur Police station for offences under Sections 279 and 304-A IPC.

4. At the time of accident, Thangamani was aged 48 years. According to the claimants, he owned JCB, Tipper lorry and Tractor. He was a road contractor. He was also running a Feed Mill factory and carried on agriculture, in his lands. By the above said avocations, he earned Rs.50,000/- per month. Wife, minor children and mother of Thangamani, have filed the claim petition in M.C.O.P.No.1169 of 2013, on the file of the Motor Accidents Claims Tribunal (Additional District Judge), Namakkal, claiming compensation of Rs.50,00,000/-, for the death of their sole breadwinner.

5. Before the Tribunal, disputing the manner of accident, appellant-Insurance Company has filed counter affidavit. Without prejudice to the above, they also disputed the compensation claimed under various heads.

6. On evaluation of pleadings and evidence, the Tribunal found that the motorcyclist bearing Registration No.TN-28 AL-9372, was negligent in causing the accident and quantified the compensation as Rs.47,88,000/-, with interest, at the rate of 7.5% p.a., from the date of claim, till deposit as hereunder:-

Loss of future earning	... Rs. 45,63,000/-
Loss of consortium	... Rs. 1,00,000/-
Loss of love and affection	... Rs. 1,00,000/-
Funeral Expenses	... Rs. 25,000/-
TOTAL	... Rs. 47,88,000/-

The Tribunal has apportioned compensation amount as follows:

Wife	:	27,88,000/-
Son	:	7,50,000/-
Daughter	:	7,50,000/-
Mother	:	5,00,000/-

7. Being aggrieved by the above quantum of compensation, insurance company has preferred the above appeal, on the ground that the award is excessive and loss of future income arrived at, is without any proof such, as Bank statement, Income Tax returns, profit and loss accounts, and that the Tribunal erred in fixing Rs.39,000/- as monthly income. In addition to the above, the Tribunal has erred in capitalising the loss for 13 years, without any proof.

8. Not satisfied with the quantum of compensation awarded to the claimants, the claimants have come forward with C.M.A.No.1594 of 2015 for enhancement. Both the appeals are taken up for joint disposal.

9. We have considered the rival claims of both sides and perused the materials available on record.

10. The main contention of the appellant/insurance company is that the Tribunal, in the absence of documents, such as Bank statement, Income Tax returns, profit and loss accounts, erred in fixing the monthly income of the deceased as Rs.39,000/-. In the documentary evidence marked as Exs.P1 to P12, we do not find any bank statement, income-tax returns, etc. of the deceased Thangamani. Exs.P6 to P8 are Registration certificates of JCB, Tipper lorry and tractor respectively in the name of the deceased. PW3 - Karuppannan and PW4 - Anbazhagan, have adduced evidence to the effect they were working as drivers with Thangamani and they had received Rs.15,000/- and Rs.20,000/- respectively, as salary per month. As rightly pointed out by the learned counsel for the appellant/insurance company, the Tribunal erred in fixing the monthly income of the deceased as Rs.39,000/-. In the present economic and living standards and considering the place of living, fixing a sum of Rs.15,000/- per month, as salary would be reasonable, as the claimants have not produced any documentary proof for higher income.

11. At the time of accident, the deceased was aged 48 years. Following the judgment of the Hon'ble Supreme Court in Reshma Kumari and others vs. Madan Mohan and another reported in 2013 (1) TN MAC 481 (SC), the Tribunal has added 30% of the income towards future prospects, which does not call for any interference. Thus for the purpose of computing loss of earning, Rs.19,500/- is fixed as the monthly salary of the deceased.

12. Deceased is survived by wife, two minor children and mother. The Tribunal has rightly deducted 1/4th of the income towards personal and living expenses of the deceased. After deduction of the 1/4th share, the net income, for the purpose of calculating the loss of contribution to the family is fixed as Rs.14,625/-. Following the said judgment, the Tribunal has selected multiplier 13. Loss of contribution to the family is worked out as Rs.22,81,500/- (Rs.14,625/- x 12 x 13).

13. In addition to the above, following the decision of the Hon'ble Apex Court in Rajesh and others vs. Rajbir Singh and others reported in 2013-3-L.W.737, the Tribunal, has awarded a sum of Rs.1,00,000/- as consortium to wife, Rs.25,000/- towards funeral expenses and Rs.1,00,000/- each under the head loss of love and affection to the children. The same does not call for any interference. However, the Tribunal has failed to award any compensation, under the head loss of love and affection, to the mother of the deceased. Hence we deem it fit to award a sum of Rs.50,000/- to the mother of the deceased under the head loss of love and affection.

14. In addition to the above, we also award a sum of Rs.30,000/- under the head loss of estate to the children, Rs.11,500/- towards transportation and Rs.2,000/- towards conventional damages, as, the Tribunal has failed to award compensation for the aforesaid heads.

15. After re-working, compensation due and payable to the claimants, is worked out to Rs.27,00,000/- as under:

Loss of contribution to family	: Rs. 22,81,500/-
Loss of consortium to wife	: Rs. 1,00,000/-
Loss of love and affection to children @ Rs.1,00,000/- each	: Rs. 2,00,000/-
Loss of love and affection to mother of the deceased	: Rs. 50,000/-
Funeral Expenses	: Rs. 25,000/-
Loss of Estate	: Rs. 30,000/-
Transportation	: Rs. 11,500/-
Conventional damages	: Rs. 2,000/-
Total	: Rs. 27,00,000/-

16. In view of modification, the apportionment shall be as follows:

Wife	: 10,00,000/-
Son	: 7,00,000/-
Daughter	: 7,00,000/-
Mother	: 3,00,000/-

17. Compensation awarded by the Tribunal is Rs.47,88,000/-. On appeal, compensation now determined by this court is Rs.27,00,000/-. The reduction will be Rs.20,88,000/-. Therefore, the award passed by the Tribunal is modified and reduced.

18. Accordingly, the Civil Miscellaneous Appeal filed by the appellant/Insurance company is allowed and the appeal filed by the claimants, is dismissed.

19. Learned counsel for the appellant/insurance company submitted that the insurance company has deposited a sum of Rs.30,00,000/- with interest to the credit of M.C.O.P. No.1169 of 2013 on the file of the Motor Accident Claims Tribunal (Additional District Court), Namakkal. Taking note of the deposit, insurance company is entitled for refund, if there is any excess amount. Shortage, if any is directed to be deposited. On such deposit, the 1st and 4th claimants are entitled to withdraw their share by filing appropriate application.

20. We further direct that the shares of the minor, shall be deposited in a Nationalised Bank under reinvestment scheme, proximate to the residence of the first claimant, in the name of the minor children and she can withdraw the accrued interest once in three months for the welfare of the children. No costs in the appeal. Consequently, the connected civil miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

asr

To

1. The Additional District Judge,
The Motor Accident Claims Tribunal,
Namakkal.
2. The Section Officer,
VR Section, High Court, Madras.

+1cc to Mr.Ma.P.Thangavel, Advocate, S.R.No.19936

C.M.A.Nos.2300 and 1594 of 2015

VGI(CO)
CS/12/10/17