

IN THE JUDICATE OF MADRAS HIGH COURT

DATE : 14.07.2017

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THE HON'BLE MR.JUSTICE R.SUBBIAH

and

THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

C.M.A.No.263 of 2016

and

C.M.P.Nos.2153 of 2016

Reliance General Insurance Company Ltd.,
having office at 570, Naigaum Cross Road,
Next to Royal Industrial Estate,
Wadala (W), Mumbai-31. ... appellant/3rd Respondent

Vs.

1.C.Sharmila

2.M.Revathi

3.V.Murugesan

... Respondents 1 & 3/
Petitioner

4.E.Ragunathan

5.S.Chithra

... Respondents 4 & 5/
Respondents 1 & 2

Appeal has been filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 07.07.2015 in M.C.O.P.No.372 of 2012 passed by the Motor Accidents Claims Tribunal, Special District Judge, Erode.

For Appellant

: Mr.S.Arunkumar

For Respondents

: Mr.M.Guruprasad (For R1 to R3)

* * * * *

JUDGMENT

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

This Appeal has been filed by the Insurance Company challenging the award dated 07.07.2015 passed by the Motor Accidents Claims Tribunal in M.C.O.P.No.372 of 2012 which was filed by the respondents 1 to 3 herein.

2.The respondents 1 to 3 herein are the claimants before the Trial Court and they are wife, mother and father of the deceased M.Rajasudhan, who had died in a motor accident that had occurred on 10.12.2011 at 12.10 pm, involving the lorry bearing Registration No.TN-18-E-3675 owned by the 5th respondent herein and insured with the appellant-Insurance Company.

3.The case of the claimants before the Tribunal is that on 10.12.2011 at 12.10 pm, while the said Rajasudhan (deceased) was travelling in a motor-cycle as pillion rider, bearing Registration No.TN-07-BH-0903, driven by his friend Karthik Babu, from East to West on the left side of the Velacherry Main Road at Tambaram MCC College, a lorry bearing Registration No.TN-18-E-3675 came in a rash and negligent manner without blowing horn, in a high speed, and dashed behind the said motor-cycle. In the said accident, the said Rajasudhan lost balance and fell down from the two-wheeler and died on the spot due to head injury.

4.It is further case of the claimants that at the time of accident, the said Rajasudhan (deceased) was working as a Consultant (Software Engineer) in Cap Gemini India Private Ltd., Techno Park, Mahindra World City, Chengalpet and earning a sum of Rs.57,772/- as monthly salary. According to the claimants, the said Rajasudhan was having a chance to go abroad and in that even, he would have earned more than Rs.3 lakhs per month. Thus, the claimants calculated the total loss of income and made a claim before the Tribunal for total compensation of Rs.1 crore.

5.Before the Tribunal, the Insurance Company has filed a counter stating that at the time of accident, the deceased was travelling as a pillion rider in the motor-cycle, carrying a domestic gas cylinder in front of him. Two-wheeler is meant only for travelling of two persons, as rider and pillion rider, and not for carrying cylinder or any other goods. If two persons are travelling in a motorcycle along with cylinder, undoubtedly such action of the individuals would become illegal and unauthorized. Since the said Rajasudhan (deceased) was travelling in the motorcycle along with gas cylinder, he was sitting in such a cramped manner that the rider of the motorcycle was almost sitting on the petrol tank, as such the rider of the motorcycle had no chance to control the two wheeler. According to the Insurance Company, the rider of the two-wheeler was not in a position to control the vehicle, which resulted in the accident; therefore, it is incorrect to state that the accident had occurred only due to the negligent act of the driver of the lorry insured with the appellant/Insurance Company. With regard to the quantum of compensation, the Insurance Company denied the income earned by the deceased; thus, they sought for dismissal of the claim petition.

6. In order to prove their claim, on the side of the claimants, the 1st claimant/wife examined herself as P.W.1, besides examining two officers of the Cap Gemini India Private Ltd, as P.W.2 & P.W.3 and an eye-witness to the occurrence as P.W.4 and fifty four documents were marked as Ex.P.1 to Ex.P.54. On the side of the Insurance Company, neither oral nor documentary evidence was adduced.

7. The Tribunal, after analysing the entire evidence, has come to the conclusion that the accident has occurred due to the rash and negligent driving of the driver of the lorry, which was insured with the appellant/Insurance Company. By coming to a such conclusion, the Tribunal has calculated compensation amount and awarded a sum of Rs.67,93,724/- as compensation. Aggrieved over the same, the Insurance Company has come forward with the present appeal.

8. The learned counsel for the appellant/Insurance Company submitted that at the time of accident, the said Rajasudhan (deceased) was travelling as pillion rider in the two-wheeler carrying a domestic gas cylinder in front of him. Since he was travelling as pillion rider along with gas cylinder, the rider of the two-wheeler was not in a position to control the vehicle. Therefore, there is negligence on the part of the said Rajasudhan (deceased) also. Under such circumstances, the Tribunal ought to have deducted 50% amount towards contributory negligence. But, without doing so, the Tribunal has fixed the entire liability on the driver of the lorry.

9. That apart, the learned counsel for the appellant/Insurance Company submitted that the Tribunal has passed an award for an exorbitant sum of Rs.67,58,724/- under the head of loss of dependency; therefore, the same needs proper reduction.

10. On the other hand, the learned counsel for the respondents 1 to 3 / claimants made detailed submission by supporting the award passed by the Tribunal; thus, they sought for dismissal of the appeal.

11. Keeping in the view the submissions made on either side, We have carefully gone through the entire materials available on record and We find that though it is the case of the Insurance Company that the accident had occurred only due to the negligent act of the rider of the two-wheeler and not due to the rash and negligent driving of the driver of the lorry, the Insurance Company has not chosen to examine the driver of the lorry as a witness to defend their case. Moreover, the evidence on record would show that on completion of investigation, Police has also filed charge-sheet only as against the driver of the lorry.

12.However, from a perusal of the materials on record, We find that at the time of accident, the said Rajasudhan (deceased) was travelling in the two-wheeler as pillion rider carrying a domestic gas cylinder in front of him. As contended by the learned counsel for the appellant/Insurance Company, two-wheeler is meant only for travelling of two persons. Since the said Rajasudhan (deceased) was travelling in the two-wheeler with a gas cylinder, We find some force in the submission made by the learned counsel for the Insurance Company that the rider of the two-wheeler was not in a position to control the vehicle. Hence, considering the said act of the deceased person, We are of the opinion that 10% negligence could be fixed on the part of the deceased person.

13.So far as the quantum of compensation is concerned, by placing reliance on the decision of the Hon'ble Supreme Court in the case of Sarla verma and others Vs. Delhi Transport Corporation (2009 - 5 L W 561) and by placing reliance on Income Tax return and salary slips, viz.Ex.P.39, Ex.P.36, Ex.P.40, Ex.P.44 & Ex.P.46, has come to the conclusion that the deceased was earning a sum of Rs. 54,172/- as monthly income. Thereafter, by adding 10% as future prospects has arrived at a sum of Rs.59,589/- as total monthly income. Thereafter, the Tribunal has deducted 1/3 portion towards personal expenditure and after deducting, tax, education cess and professional tax, the Tribunal has arrived at a sum of Rs.3,97,572/-. Thereafter, by applying the multiplier 17, the Tribunal has arrived at a sum of Rs.67,58,724/- as total loss of dependency. The calculation made by the Tribunal to arrive at the total loss of dependency cannot be said to be incorrect. In our opinion, 10% amount has to be deducted towards contributory negligence on the part of the deceased person. If 10% amount is deducted towards contributory negligence, the total amount comes to Rs.60,82,852/- [67,58,724 - 6,75,872.4 = 60,82,851.6 (rounded off to 60,82,852/-)], which could be awarded as Loss of Dependency.

14.That apart, We find that the Tribunal has awarded only a sum of Rs.10,000/- towards loss of consortium to the 1st claimant/wife. Since the 1st claimant/wife has lost her husband at the young age, the amount of Rs.10,000/- awarded by the Tribunal for loss of consortium is hereby enhanced to a sum of Rs.1,00,000/-. The Tribunal has not awarded any amount for the loss of love and affection to the claimants 2 & 3/parents. Hence, a sum of Rs.1,00,000/- is hereby awarded for the loss of love and affection to the claimants 1 & 2/parents. As the sum of Rs.10,000/- awarded by the Tribunal for funeral expenses appears to be on the lower side, the same is hereby enhanced to Rs.20,000/-. Except these modifications, the award passed by the Tribunal is hereby confirmed. Accordingly, the total compensation amount of Rs.67,93,724/- awarded by the

Tribunal is hereby modified and reduced to a sum of Rs.63,17,852/-. The breakup details of the modified compensation amount are as follows_

Loss of Dependency	- Rs.60,82,852/-
Loss of Consortium	- Rs. 1,00,000/-
Loss of Love and Affection to claimants 2 & 3/parents	- Rs. 1,00,000/-
Funeral expenses	- Rs. 20,000/-
Transportation	- Rs. 5,000/-
Loss of Estate	- Rs. 10,000/-
Total	<u>Rs.63,17,852/-</u>

15.In the result, the appeal is partly allowed and the total compensation amount of Rs.67,93,724/- awarded by the Tribunal is hereby modified and reduced to a sum of Rs.63,17,852/-. It is represented that the entire award amount, as ordered by the Tribunal, has already been deposited by the appellant. Out of the total compensation amount of Rs.63,17,852/-, the 1st claimant/wife is entitled to withdraw Rs.50,00,000/- (Rupees Fifty lakhs) with proportionate interest and the balance award amount shall be equally withdrawn by the claimants 2 & 3/parents, with proportionate interest. The Insurance Company is entitled to withdraw the balance amount, if any more than that of the modified compensation amount.

Consequently, connected Miscellaneous Petition is closed.
No costs.

Sd/-

Assistant Registrar(CS VIII)

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Sub Assistant Registrar

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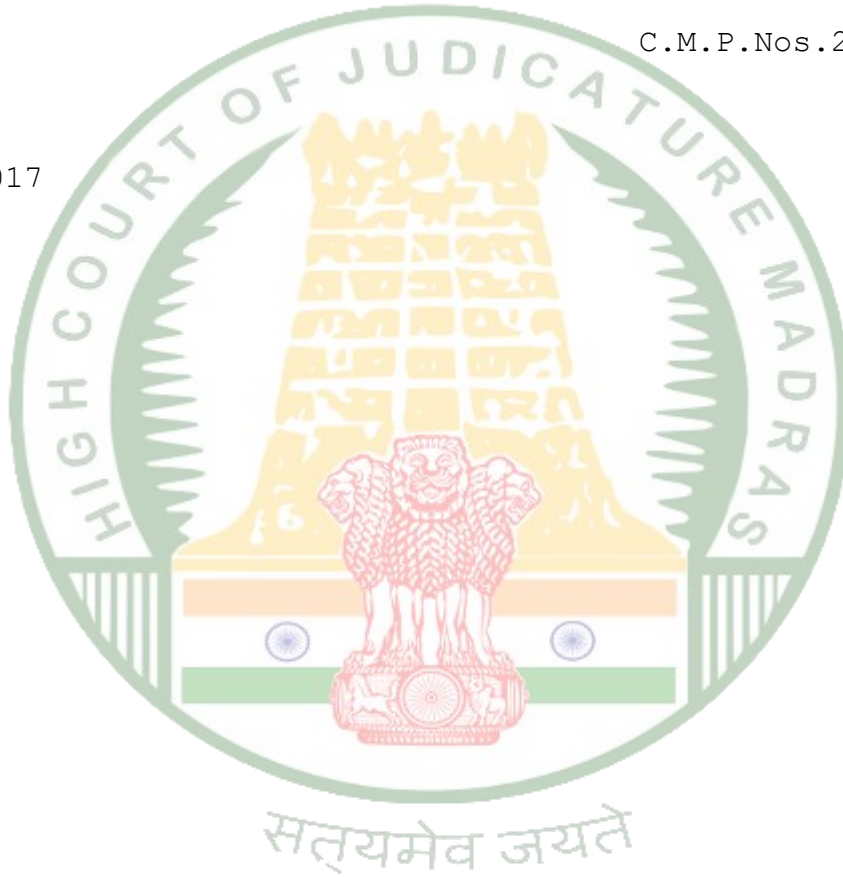
To,

The Motor Accidents Claims Tribunal
(Special District Judge), Erode.

+1 cc to Mr.M.Guruprasad Advocate sr 50219

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and
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