

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 15.12.2017

CORAM

THE HONOURABLE TMT.JUSTICE S.RAMATHILAGAM

C.M.A.No.417 of 2008

and

M.P. No.1 of 2009

Royal Sundaram Alliance Insurance Co. Ltd.,
KVA Complex,
90-A, Thuriayar Road,
Namakkal.

... Appellant/2nd Respondent

Versus

1. Jeevarathinam
2. Minor Saravanakumar
3. Saraswathy

(Minor Rep. By mother and
NF 1st respondent)

..Respondents 1 to 3/Petitioners 1 to 3

4. R.Easwaramoorthy ... 4th Respondent/1st Respondent

Appeal filed under Section 173 of the Motor Vehicle Act, 1988 against the award made in MCOP No.971 of 2003, dated 12.03.2007, on the file of the Motor Accidents Claims Tribunal, Additional District Court, Fast Track Court No.5, Coimbatore at Tiruppur.

For appellant : Ms.C.Harini
for Mr.Vijayaraghavan

For Respondents : Mr.S.Swaminathan

JUDGMENT

The appellant/ insurance company has filed this appeal as against the award made in MCOP No.971 of 2003, dated 12.03.2007, on the file of Motor Accidents Claims Tribunal, Additional District Court, Fast Track Court No.5, Coimbatore at Tiruppur.

2. The brief facts of the claim petition is that on 08.03.2003 at about 23.30 hours, Cyclist one Nataraj, was proceeding in the National Highways 47. At that time, two wheeler (Suzuki) bearing Registration No.TN40 Y 1696 was driven

by the owner of the vehicle in a rash and negligent manner hit the Cyclist and in the result, the Cyclist /deceased was thrown away and he sustained injuries. Immediately, the injured was taken for treatment to the Government Hospital, Tiruppur, wherein he died. The alleged vehicle belonging to the 4th respondent was insured with the appellant. The legal representatives of the deceased filed the claim petition claiming a sum of Rs.5,00,000/- as compensation. The Tribunal has also awarded a sum of Rs.5,00,000/- as compensation in the following heads :-

Loss of income	:	Rs.3,84,000/-
Loss of Consortium	:	50,000/-
Loss of love and affection to 2 nd petitioner	:	50,000/-
Loss of love and affection to 3 rd petitioner	:	10,000/-
Funeral expenses	:	6,000/-
Total		Rs.5,00,000/-

3. The appellant / insurance company has filed the appeal on the following grounds i) the award passed by the Tribunal on various heads are highly excessive; ii) the Tribunal should have exonerated the insurer instead of being given right of recovery, as the rider of the insured vehicle was the own brother of the offending vehicle; iii) the insurance company further disputed the liability on the ground that the rider was not a holder of valid driving licence viz., he obtained LLR only after the date of accident and therefore the insurance company is not liable and iv) the multiplier adopted by the Tribunal is not proper as per the latest decision. Accordingly, the learned counsel for the appellant prays for modification in compensation awarded by the Tribunal.

4. Heard the learned counsel on both sides and perused the records.

5. On perusal of records, it is seen that the age of the deceased has been taken as 36 by the Tribunal, as per Ex.P.2, Post mortem Certificate. It is proved that the deceased was an employee in M/s.A.P.Stitching Company and the monthly salary has been determined by the Tribunal as Rs.3,000/-. Considering the above, the Tribunal has fixed the annual income of the deceased as Rs.36,000, deducting 1/3rd towards his personal expenses, Rs.24,000/- has been fixed as annual income and adopting multiplier of 16, the loss of income has been arrived at Rs.3,84,000/- . Reliance was placed in the decision

of 2001 A.C.J. Page 843 by the claims Tribunal and by considering the above decision, it emerges from the records that the rider of the vehicle /brother to the owner of the vehicle has no valid licence on the date of the accident. Accordingly, this Court of the view that the appellant - insurer must pay the amount to the claimants and then recover the same from the owner and the award passed by the Tribunal has to be modified as under :-

a) The multiplier to be adopted in the age group of 36 has to be taken as 15 and thus the amount awarded under the head of loss of income is Rs.3,60,000/-

b) A sum of Rs.50,000/- and Rs.10,000/- awarded under the head loss of love and affection to 2nd and 3rd petitioners are diverted to loss of care and support to 2nd and 3rd petitioners respectively.

c) A sum of Rs.6,000/- awarded under the head of funeral expenses seems to be meagre, accordingly it is enhanced to Rs.15,000/-

6. Further, a sum of Rs.5,000/- towards transportation expenses and a sum of Rs.10,000/- towards loss of estate are now awarded and the amount awarded under other head is quite reasonable and hence it is as such.

8. In the result, the award passed by the Tribunal is modified as shown below :-

Loss of income	:	Rs.3,60,000/-
(Rs.24,000/- x 15)		
Loss of Consortium	:	50,000/-
Loss of care and support to		
2 nd petitioner	:	50,000/-
Loss of care and support to		
3 rd petitioner	:	10,000/-
Funeral expenses	:	15,000/-
Transportation expenses	:	5,000/-
Loss to estate	:	10,000/-
Total		Rs.5,00,000/-

8. With these modifications, the appeal stands disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

9. The appellant / Insurance company is directed to deposit the entire award amount along with interest and costs as ordered by the Tribunal, less the amount already deposited, if any

before the Tribunal, within a period of six weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank accounts of the claimants, as per the ratio, fixed by the Tribunal through RTGS within a period of two weeks thereafter.

s/d-
Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

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To

1. The Motor Accidents Claims Tribunal, Additional District Court,
Fast Track Court No.5, Coimbatore at Tiruppur.

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

+1 CC to Mr.N. Vijayaraghavan, Advocate sr 89778.

+1 CC to Mr.S.S. Swaminathan, Advocate sr 90355.

C.M.A.No.417 of 2008

NRL(CO)
SP(24/05/2018)

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