

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 28.02.2017

CORAM:

**THE HON'BLE MR. JUSTICE S. MANIKUMAR
AND
THE HON'BLE MR. JUSTICE M.GOVINDARAJ**

C.M.A. No.1015 of 2017

The Branch Manager
Reliance General Insurance Company Ltd
Shri Lakshmi Complex, First Floor
Bharathi Street, Omalur Main Road
Swarnapuri, Salem - 636 004

... Appellants

Vs.

1.Gnanavalli
2.Minor Brindha
3.Chandrasekar
4.Savathriamma
(Minor represented by N.F. Mother Gnanavalli)
5.T.Suresh
6.N.Thangavel

...Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree, dated 30.01.2015 made in MCOP No.820/2013, on the file of Motor Accident Claims Tribunal (Special District Court), Krishnagiri.

For Appellant : Mr.S.Arun Kumar

For Respondents : Mr.S.P.Yuvaraj

JUDGMENT
(Made by **S.MANIKUMAR, J.**)

In the accident, which occurred on 14.08.2011, involving a motorcycle bearing Registration No.KA-01 FE-1313 and a lorry bearing Registration No.TN-34 D-4204, Manjunath, a 27 years old man, Manjunath and sole breadwinner of the respondents 1 to 4, died. A case in Crime No.132/2011 has been registered on the file of Kuppam Police Station, Chittoor District under Section 304-A of IPC, against the driver of the lorry bearing Registration No.TN-34 D-4204, insured with the appellant herein/Reliance General Insurance Company Ltd. Legal representatives of the deceased Manjunath, filed MCOP No.820 of 2013 on the file of Motor Accident Claims Tribunal (Special District Court for Motor Accident Claims Cases), Krishnagiri, claiming a compensation of Rs.25,00,000/- under various heads.

2. Appellant herein/Reliance General Insurance Company Ltd, opposed the claim, denied the manner of accident and the negligence attributed to the driver of the lorry bearing Registration No.TN-34 D-4204.

3. On evaluation of pleadings and evidence, the Tribunal held that the driver of the lorry bearing Registration No.TN-34 D-4204

was negligent in causing the accident and fixed the liability on the appellant herein, insurer of the offending vehicle.

4. PW1 - wife, in her evidence has deposed that prior to accident, her husband was earning a sum Rs.25,000/- per month by running a mobile shop (sales and service). She further deposed that her husband was also running a Travels. However, no documentary proof was produced to substantiate the same. In the absence of proof of income, the Tribunal took Rs.300/- as wages per day, and determined the monthly income as Rs.9,000/-. The deceased is survived by his wife, minor child and aged parents. Taking note of number of dependents as 4, the Tribunal, deducted 1/4th towards personal and living expenses of the deceased. At the time of accident, the deceased was claimed to be 27 years old. But, as per Ex.P8 - Driving licence, age of the deceased was 26 years. Based on the entry in Ex.P2 - Postmortem certificate, the Tribunal determined the age of the deceased as 27 years. Following the judgment of the Hon'ble Supreme Court in ***Sarla Verma vs. Delhi Transport Corporation*** reported in **2009 (2) TNMAC 1 (SC)**, the Tribunal applied multiplier '17' for persons, in the age group of 26 to 39 years. By the abovesaid method, the Tribunal, computed the loss of contribution to the family as Rs.13,77,000/- (Rs.9,000 x $\frac{3}{4}$ x 12 x 17).

5. In addition to the above, the Tribunal has awarded a sum of Rs.1,00,000/- for loss of consortium to wife; Rs.1,00,000/- each, to the respondents 2 to 4, namely, minor child, father and mother of the deceased respectively, under the head loss of love and affection; Rs.10,000/- for transportation and Rs.25,000/- for funeral expenses. Altogether, the Tribunal has awarded a sum of Rs.18,12,000/- as compensation, with interest @ 7.5% per annum from the date of filing of the claim petition till the date of deposit of award amount and costs.

6. The Tribunal has further held that the appellant herein, and respondents 5 and 6, namely, the insurer, owner and driver of the vehicle, are jointly and severally liable to pay compensation to the legal representatives of the deceased Manjunath. The Tribunal has also directed the appellant herein, and respondents 5 and 6 herein to deposit the award amount, within one month from the date of award, failing which, the appellant herein, and respondents 5 and 6 have been directed to pay interest @ 9% per annum on the award amount.

7. Being aggrieved by the quantum of compensation, appellant herein/Reliance General Insurance Company Ltd, has

preferred the instant appeal on various grounds as set out in the memorandum of grounds of civil miscellaneous appeal.

8. Mr.S.Arun Kumar, learned counsel for the appellant/insurance company stated that the Tribunal, has erred in holding that the driver of the lorry was responsible for the accident, solely on the basis of the testimony of PW2, the Tribunal has erred in fixing the monthly income of the deceased, without any proof of avocation and income. Contending *inter alia* that as per the decision of the Hon'ble Supreme Court, father is not a dependent, learned counsel for the appellant, further submitted that the Tribunal, has erred in awarding an excess compensation of Rs.2,00,000/- to the parents under the head loss of love and affection.

9. Per contra, learned counsel for the contesting respondents/claimants, submitted that, the Tribunal, after evaluating the oral and documentary evidence, has awarded, just and reasonable compensation to the legal representatives of the deceased Manjunath, and that the same cannot be said to be a bonanza or windfall, warranting any reduction.

10. Heard the learned counsel for the parties and perused the materials available on record.

11. PW1, wife of the deceased, has deposed that the accident occurred solely due to the negligence of the driver of the lorry bearing Registration Number TN-34 D-4204. When a suggestion was put to her, by the learned counsel for the insurance company that the deceased was negligent in causing the accident, she has denied the same. PW2, eyewitness to the accident, has deposed that he saw the accident. He has stated that he has not preferred any complaint to the police. He has further deposed that the father of the deceased, namely, the third respondent herein, has preferred the complaint. When a suggestion was put to him that he has not witnessed the accident and he adduced false evidence, to help the legal representatives of the deceased, to receive compensation for the death of Manjunath, he has denied emphatically the same and from the perusal of the material on record, it could be deduced that nothing has been elicited, from the evidence of PWs.1 and 2, to substantiate the claim of the appellant herein. Hence from the evidence of PWs.1 and 2, it is clear that the accident occurred solely due to the negligence of the driver of the lorry bearing Registration No.TN-34 D-4204.

12. After evaluation of oral and documentary evidence, the Tribunal assessed the avocation, monthly income of the deceased and computed the loss of contribution to the family by following the

decision of the Hon'ble Supreme Court in ***Sarla Varma vs. Delhi Transport Corporation and another*** reported in **2009 (2) TNMAC 1 (SC)**. Material on record discloses that, at the time of accident, the deceased was 27 years. But the Tribunal has not considered any addition towards future prospects, ignoring the decision of the Hon'ble Apex Court in ***Santhosh Devi v. National Insurance Co.Ltd.,*** reported in **2012 AIR SCW 2892** and ***Rajesh and Others v. Rajbir Singh and Others,*** reported in **2013 (9) SCC 54**. As per the above decision, if 50% of the income is added under the head future prospects, then the monthly income of the deceased for the purpose of computing loss of contribution to the family would be Rs.13,450/-. Since, no appeal or cross objection has been filed by the legal representatives of the deceased/claimants, we are not inclined to add any amount.

13. Though learned counsel for the appellant, has further contended that the Tribunal, has erred in awarding excess compensation of Rs.2,00,000/- to the parents under the head, loss of love and affection, as the Hon'ble Supreme Court held that father is not a dependent, this court is not inclined to accept the said contention for the reason that as per Section 166 of the Motor Vehicles Act, 1988, all legal representatives are entitled to seek for compensation. A Hon'ble Division Bench of this court, has taken a

view that, as per the decisions of the Hon'ble Supreme Court, no words can be added or deleted from a section. Legal representatives cannot be substituted with the word 'dependents'. Having regard to the said view, we are not inclined to accept the contention of the learned counsel for the appellant herein/insurance company. Compensation awarded under other heads are not opposed and hence the same are confirmed.

14. In the light of the above discussion, we are of the view that the quantum of compensation of Rs.18,12,000/-, with interest @ 7.5% per annum from the date of claim till deposit and costs, awarded to the legal representatives of the deceased Manjunath/respondents 1 to 4 herein/claimants, cannot be said to be a bonanza or windfall, warranting any reduction.

15. Civil Miscellaneous Appeal is dismissed. The appellant-Insurance Company, is directed to deposit the award amount, with proportionate accrued interest and costs, less the statutory deposit, to the credit of M.C.O.P.No.820 of 2013, on the file of the Motor Accidents Claims Tribunal (Special District Court for Motor Accident Claims Cases), Krishnagiri, within a period of four weeks from the date of receipt of a copy of this order. On such deposit, the respondents 1, 3 and 4/claimants are permitted to withdraw the

same, by making necessary applications, before the Tribunal. The Tribunal is further directed to disburse the compensation amount, only after due verification and identity of the claimants/respondents herein. Share of the minor, namely Minor Brindha/2nd respondent, directed to be deposited in any one of the Nationalised Banks under reinvestment scheme, proximate to the residence of the first respondent/mother of the minor child and renewable thereafter. Respondent No.1/mother of the minor child is permitted to withdraw interest once in three months, till the minor attains majority. No costs. Consequently, connected Miscellaneous Petition is also closed.

(S.M.K., J.) (M.G.R., J.)
28.02.2017

Index : Yes/No
Internet : Yes/No
asr

To

The Motor Accident Claims Tribunal
(Special District Court), Krishnagiri.

S. MANIKUMAR, J.
AND
M.GOVINDARAJ, J.

asr

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