

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.06.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

and

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.No.1728 of 2017

1. Chitra Raman
2. Minor Lithilan Raj
3. Thenmani
4. Pethyarajan

... Appellants

[minor 2nd appellant rep. by his mother and next friend Chitra Raman, the 1st appellant.]

vs.

1. K.Sekar
2. Cholamandalam General Ins.Co.Ltd.,
No.1, Village Road,
Nungambakkam,
Chennai - 6

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Decree and Judgment dated 27.06.2014 in M.C.O.P.No.272 of 2011, passed by the Motor Accidents Claims Tribunal, (III Additional District Court), Tiruvallur at Poonamallee.

For Appellants : Mr.Um.Ravichandran
For Respondents : Mr.M.B.Gopalan (for R2)

J U D G M E N T

[Order of the Court was made by S.MANIKUMAR, J.]

In the accident, which occurred on 28.08.2010, involving a motorcycle bearing Regn.No.TN-58-M-8070 and a lorry bearing Regn.No.TN22-BZ-6321, owned by 1st respondent herein, and insured with M/s.Cholamandalam General Insurance Company Limited, a software

engineer, aged about 36 years died. Wife, then aged about 23 years, minors son, aged about 2 months and parents aged about, 51 and 63 years respectively, joined together and filed MCOP No.272 of 2011, on the file of the MACT [III Additional District Court], Tiruvallur at Poonamallee, claiming compensation of Rs.40 Lakhs, under various heads.

2. Though M/s.Cholamandalam General Insurance Company Limited, defended the claim on various grounds, on evaluation of pleadings and evidence, the tribunal held that the driver of the lorry bearing Regn.No.TN22 BZ 6321, insured with Cholamandalam General Insurance Company Limited, was negligent in causing the accident.

3. On the basis of Ex.P11, BE Degree certificate, Ex.P13, Income Tax returns, Ex.P14, authorisation letter given to PW3, Manager of Adroitee Engineering For "U" Private Limited, who had deposed that the deceased was a Technical Leader, in the abovesaid company, till his death on 28.08.2010, Ex.P15, appointment letter, Ex.P16, Salary slip, Ex.P17, name transfer of company, Ex.P18, Identity card of PW3, and gross salary of Rs.32,000/-, shown in Ex.P16, Salary Slip, and after deducting 10% towards income tax, the tribunal determined the net income as Rs.28,800/-. Deceased was aged 36 years, and following a decision of the Hon'ble Supreme Court in ***Sarla Verma and Others Vs. Delhi Transport***

Corporation, reported in 2009 (2) TNMAC (1) SC, the tribunal, added 40% under the head future prospects. Thereafter, deducted 1/4 towards the personal and living expenses of the deceased and computed the loss of contribution as Rs.58,06,080/- [rounded of the same to Rs.58,06,000/-].

4. In addition to the above, the tribunal awarded Rs.1,00,000/- to the widow under the head loss of consortium, Rs.50,000/- under the head loss of love and affection to the minor and Rs.5,000/- each to the parents/appellants 3 and 4 respectively. On the basis of Ex.P12, medical bills, the tribunal awarded Rs.70,425/- under the head medical expenses. Further, a sum of Rs.5,000/- for Transportation and Rs.5,000/- for funeral expenses, respectively, has been awarded. The tribunal arrived at a total compensation of Rs.60,46,425/-, under the following heads.

Compensation for loss of revenue	: Rs.58,06,000/-
Loss of consortium to the wife	: Rs. 1,00,000/-
Loss of love and affection to the minor son	: Rs. 50,000/-
Loss of love and affection to parents	: Rs. 10,000/-
Loss of medical expenses	: Rs. 70,425/-
Loss of Transport expenses	: Rs. 5,000/-
Funeral expenses	: <u>Rs. 5,000/-</u>
Total	: <u>Rs.60,46,425/-</u>

5. Though the abovesaid sum was arrived at, having regard to the compensation claimed, i.e., Rs.40 Lakhs, the tribunal ordered Rs.40 Lakhs to be deposited by M/s.Cholamandalam General Insurance Company Limited.

6. Not satisfied with the quantum of compensation, legal representatives have filed the instant appeal on the basis of the judgment in **Nagappa v. Gurudayal Singh & Ors.**, reported in 2003 ACJ (12) SC.

7. Earlier when M.P.No.1 of 2015, filed to amend the claim amount from Rs.40 Lakhs to Rs.70 Lakhs, came up for hearing, this Court ordered Mr.M.B.Gopalan, learned counsel for M/s.Cholamandalam General Insurance Company Limited, to take notice and to revert.

8. On this day, when the matter came up for further hearing Mr.Um.Ravichandran, learned counsel for the legal representatives of the deceased / appellants and Mr.M.B.Gopalan, learned counsel appearing for M/s.Cholamandalam General Insurance Company Limited, submitted that, after deliberations and negotiations, parties to the lis have arrived at a full and final settlement of enhancement of Rs.15,00,000/-, as full quit, without interest on the enhanced amount. Submission is placed on record.

9. Mr.Um.Ravichandran, learned counsel for the legal representatives of the deceased submitted that on the enhanced compensation of Rs.15,00,000/- (full quit), the said sum can be apportioned as hereunder.

Wife/1st appellant	: Rs. 6,00,000/-
Minor Son/ 2nd appellant	: Rs. 6,00,000/-
Parents/ 3 & 4th appellants	
(Rs.1,50,000/- each)	: Rs. 3,00,000/-
	: <u>Rs.15,00,000/-</u>

Submission of Mr.Um.Ravichandran, learned counsel for the appellants/legal representatives is placed on record.

10. In view of the consensus arrived at between the parties and the submission of Mr.Um.Ravichandran, the Civil Miscellaneous Appeal is allowed in part. No costs.

11. M/s.Cholamandalam General Insurance Company Limited, 2nd respondent herein, is permitted to make payments directly to the parties i.e, to wife and to the parents separately, by way of ECS, which the claimants shall furnish to the Registry, by filing necessary memos, or direct payment by the Insurance Company, after proper verification of identity, within a period of four weeks from the date of receipt of a copy of this order.

12. Share apportioned to the minor/respondent No.2, shall be in the bank deposit till he attains majority. Interest accruing on the share of the minor shall be paid to the 1st respondent/mother of the minor, once in three months, till he attains majority. On attainment of majority, he shall file necessary applications for withdrawal.

[S.M.K., J.] [M.G.R.,J.]
14.06.2017

Index: Yes/No
Internet: Yes/No
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S.MANIKUMAR, J.
AND
M.GOVINDARAJ, J.

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To
The Motor Accidents Claims Tribunal,
(III Additional District Court), Tiruvallur at Poonamallee.

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