



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.08.2017

CORAM:

WEB COPY

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A. (MD) No.605 of 2017

and

C.M.P. (MD) .No.6297 of 2017

M/s. Reliance General Insurance Company Limited,
Tirunelveli. ... Appellant/2nd Respondent

Vs.

1. Mrs.K.Ramalakshmi
2. Mr.T.Kandasamy ... Respondents/Petitioners
3. Mr.Harikrishnan
4. Mrs.R.Minalkodi ... Respondents/Respondents 1&2

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act 1988, against the award and decree dated 28.01.2016 passed in M.C.O.P.No.351 of 2012 on the file of the Motor Accident Claims Tribunal [Principal Subordinate Judge], Tenkasi insofar as liability and quantum of compensation is concerned.

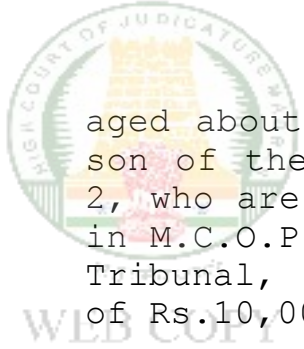
For Appellant : Mr.V.Sakthivel
For Respondents 1&2 : Mr.D.Srinivasa Ragavan
For Respondent 4 : No Appearance

JUDGMENT

The Civil Miscellaneous Appeal has been filed by the appellant/ Reliance General Insurance Company Limited against the judgment and decree dated 28.01.2016 in M.C.O.P.No.351 of 2012 on the file of the Motor Accident Claims Tribunal [Principal Subordinate Judge], Tenkasi.

2. The brief facts of the case is as follows:

It is a case of fatal accident took place on 08.09.2011 at about 09.30 a.m., when the deceased Dharun was playing near Vinayagar Temple and the backside of the house of Muthaya Konar, the third respondent moved backward the car bearing Registration No.IN 78 H 2899 belonging to the fourth respondent and dashed against the deceased Dharun and caused the death. The deceased was



aged about 1 ½ years at the time of accident and he was the only son of the respondents 1 and 2. Therefore, the respondents 1 and 2, who are the father and mother of the deceased, filed a petition in M.C.O.P.No.351 of 2012 on the file of the Motor Accident Claims Tribunal, (Principal Subordinate Judge), Tenkasi, claiming a sum of Rs.10,00,000/- as compensation.

3. Before the Tribunal, on the side of the claimants, two witnesses viz., P.Ws.1 & 2 were examined and three documents viz., Exs.P1 to P3 were marked and on the side of the respondents, one witness viz., R.W.1 was examined and two documents viz., Exs.R1 & R2 were marked.

4. The Tribunal, after considering the pleadings, oral and documentary evidence and arguments of the counsel appearing on either side and also appreciating the evidence on record, held that the accident had occurred only due to the carelessness of the third respondent/driver of the fourth respondent and directed the respondents to pay a sum of Rs.6,25,000/- as compensation with interest at the rate of 7.5%.

5. Against which, the appellant/Reliance General Insurance Company Limited has filed the present appeal by questioning the quantum of compensation.

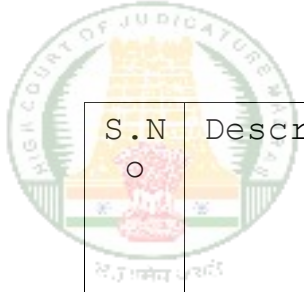
6. The learned counsel for the appellant / Insurance Company would draw the attention of this Court to paragraph - 10 of the order, where the learned Judge relied on the judgment of this Court in **National Insurance Company Limited Vs. R.Vimala** reported in **2015 (2)TNMAC 490 (DB)** and arrived at the compensation. He would further submit that since the deceased is 1 ½ years old child, 50% has to be deducted for his personal expenses. Hence, he seeks interference of this Court to the award passed by the Tribunal.

7. Heard the learned counsel for the appellant/Insurance Company and perused the materials available on record.

8. This Court is of the view that the accident had occurred only due to the carelessness of the third respondent and since the deceased Dharun was 1 ½ years child at the time of accident, this Court determines the notional income per month at Rs.4,500/- and after deducting 50% towards personal expenses of the deceased, the monthly income works out to Rs.2,250/-. If 15 multiplier is adopted, it works out to Rs.2,250 x 12 x 15 = Rs.4,05,000/- for loss of dependency and the other heads are confirmed.

9. In view of the settled position of law, this Court modifies the award of the Tribunal by enhancing the compensation, as under:-

<https://hservices.ecourts.gov.in/hservices>



S.N	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	For loss of dependency	4,50,000	4,05,000	reduced
2.	For love and affection	1,25,000	1,25,000	confirmed
3.	For transportation	10,000	10,000	confirmed
4.	For funeral expenses	25,000	25,000	confirmed
5.	For loss of estate	10,000	10,000	confirmed
6.	For damage to clothes	5,000	5,000	confirmed
6.	Total	6,25,000	5,80,000	By reducing a sum of Rs.5,80,000/-

10. In the result,

(i) This Civil Miscellaneous Appeal is partly allowed, reducing the award of the Tribunal from Rs.6,25,000/- (Rupees Six Lakhs and twenty five thousand only) to a sum of **Rs.5,80,000/-** (Rupees Five Lakhs and Eighty Thousand only) along with interest at the rate of 7.5% per annum from the date of petition till the date of realisation and proportionate costs;

(ii) The appellant is directed to deposit the entire award amount **Rs.5,80,000/-** (Rupees Five Lakhs and Eighty Thousand only) with accrued interests and costs, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the claimants are permitted to withdraw their share as apportioned by the Tribunal with accrued interests and costs without filing any formal permission petition before the Tribunal. No Costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar



To

The Motor Accident Claims Tribunal
[Principal Subordinate Judge],
Tenkasi.

Copy To:-

The Record Keeper,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

+ 1 CC TO Mr.V.SAKTHIVEL, ADVOCATE IN SR No. 72795
+ 1 CC TO Mr.D.SRINIVASA RAGHAVAN, ADVOCATE IN SR No. 72819

AKV

TE/KK/SAR-1 : 11/12/2017 : 4P/5C

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