



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.12.2017

CORAM :

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A. (MD) No.496 of 2016

and

CMA (MD) No.1351 of 2015

Reliance General Insurance Co. Ltd,
No.10/4,4, 2nd Floor,
Daka Plaza, South Bye Pass Road,
Vannarpet, Tirunelveli - 627 003.

... Appellant in CMA(MD) No.1351 of 2015
... 2nd respondent in CMA(MD) No.496 of 2016

Vs.

1.Parvathy

2.Minor M.Ramalakshmi

3.Minor M.Ramya

4.Minor M.Chella Perumal @ Perumal

5.Minor M.Chinnadurai

6.Minor M.Pensy Rani

(Minors 2 to 6 herein are rep.by
their mother and next friend,
1st respondent)

... 1 to 6th respondents in CMA(MD) No.
1351 of 2015 & Appellants in
CMA(MD) No.496 of 2016

7.N.Chithirai Selvan ... 7th respondent in CMA(MD) No.1351 of 2015 &
1st respondent in CMA(MD) No.496 of 2016

8.Thamizh Selvi ... 8th respondent in CMA(MD) No.1351 of 2015 &
3rd respondent in CMA(MD) No.496 of 2016

Common Prayer: Civil Miscellaneous Appeals are filed under
Section 173 of Motor Vehicles Act, 1988, against the judgment and
decree dated 13.04.2015 made in MCOP.No.286 of 2013 on the file of
the Motor Accidents Claims Tribunal, (Principal District Court),
Tuticorin.



For Appellant in
CMA(MD)No.1351 of 2015
& for R2 in CMA(MD)No.496/2016

: Mrs.K.R.Shivashankari for
Mr.S.Srinivasaraghavan

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For R1 to R6 in CMA(MD)No.
1351 of 2015 & for Appellants
in CMA(MD)No.496 of 2016

: Mr.Siva Thilakar

For R7 in CMA(MD)No.
1351 of 2015 & for R1
in CMA(MD)No.496 of 2016

: Mr.R.Rathinavel

For R3 in
CMA(MD)No.496 of 2016 &
R8 in CMA(MD)No.1351 of 2015

: No Appearance

COMMON JUDGMENT

Heard the learned counsel on either side.

2.One Maharajan, son of Perumal was riding his bicycle on 27.06.2013 at about 20.00 hrs in Kurumbur-Nallur main road. A lorry bearing registration No.TN 69 AA 2399 belonging to one Chithirai Selvan and insured with the Reliance General Insurance Co. Ltd coming from the opposite direction dashed against him. In the resulting accident, the said Maharajan died. His brother lodged a complaint in Cr.No.99 of 2013 on the file of Kurumbur Police Station. The wife and children of the deceased Maharajan filed MCOP.No.286 of 2013 on the file of Motor Accidents Claims Tribunal, Principal District Court, Tuticorin claiming compensation.

3.The insurance company filed its counter affidavit. In Paragraph No.4 of the counter affidavit, a plea was taken to the effect that the deceased had driven the bicycle in a zigzag manner due to the influence of alcohol and fell in front of the lorry. The Tribunal however awarded a sum of Rs.13,12,000/- as compensation by award dated 13.04.2015. Contending that the contributory negligence must be fixed on the deceased, the insurance company has filed CMA(MD)No.1351 of 2015. The claimants have filed CMA(MD)No.496 of 2016 seeking enhancement of compensation.

4.The deceased was working as a Carpenter. Even though Ex.P10 salary certificate was filed to show that the deceased was earning a sum of Rs.15,000/-, the same was not accepted by the Tribunal. Because the salary certificate was issued only by the Sangam in which the deceased was a member. But the Tribunal has fixed the monthly income of the deceased at Rs.4,500/-. This is incorrect. The accident took place in the year 2013. Therefore, even in the absence of income proof, the monthly income of the deceased ought to



have taken as Rs.6,500/-. The deceased was aged about 46 years. Therefore, the multiplier will be 13. Since the deceased aged about 46 years, 25 % future prospects will have to be added. The deceased had six dependents. Therefore, the deduction can only be one fourth.

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5.Hence, the pecuniary loss to the family can be quantified at Rs.9,50,664/- (6094x12x13). A sum of Rs.2,40,000/- can be awarded towards loss of consortium to the wife and loss of love and affection for the children. A sum of Rs.30,000/- can be awarded towards loss of estate and funeral expenses. Thus, the total compensation payable to the claimants comes to Rs.12,20,664/-.

6.Now, the question is as to whether the claimants should suffer deduction on account of fastening of contributory negligence. It is beyond dispute that a specific pleading was made in the counter filed by the insurance company that the deceased was under the influence of alcohol at the time of accident and had driven the bicycle in a zigzag manner. It is also proved through the Postmortem report (Ex.P2) Therefore, contributory negligence will have to be necessarily fastened on the deceased.

7.In this case, the lorry driver was examined as a witness by the insurance company. The case of the lorry driver is that the deceased was riding his bicycle in a zigzag manner. The deceased was not driving a two wheeler but a bicycle. If the lorry driver had time to watch that the deceased was driving the bicycle in a zigzag manner, he definitely would have had the time to avoid the accident also. This shows that the lorry driver had driven the lorry in a rash and negligent manner. Therefore, the primary blame for the accident must fall on the lorry driver alone. At the same time, as already pointed out, some blame must fall on the deceased. Therefore, I fix 15% contributory negligence on the deceased. After deducting 15% of the compensation amount, the compensation payable to the claimants will be Rs.10,37,564/-.

8.The award dated 13.04.2015 made in MCOP.No.286 of 2013 on the file of the Motor Accidents Claims Tribunal, Principal District Court, Tuticorin is modified.

9.The appellant insurance company is directed to deposit a sum of Rs.10,37,564/- with interest at the rate of 7.5% per annum, from the date of petition till the date of realization and costs, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the claimant/first appellant in CMA(MD) No.496 of 2016 & first respondent in CMA(MD)No.1351 of 2015 is permitted to withdraw her share as apportioned by the Tribunal, by filing proper application, less the amount already withdrawn by her. The share of the minor claimants shall be deposited in any of the nationalised bank and their mother ie., first appellant in CMA(MD) No.496 of 2016 is entitled to get the interest once in three months directly from the bank.



10. In the result, CMA(MD)No.1351 of 2015 is partly allowed.
CMA(MD)No.496 of 2016 filed by the claimants is dismissed.
No costs.

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Sd/-

Assistant Registrar(CS-I)

Sub Assistant Registrar

To

The Motor Accidents Claims Tribunal,
Principal District Court, Tuticorin.

Copy to:

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

+1CC to Mr.S.Srinivasa Raghavan, Advocate, SR.No. 90776
+1CC to Mr.A.Thiruvadikumar, Advocate, SR.No. 91000
+1CC to Mr.S.Sivathilakar, Advocate, SR.No. 90728

C.M.A. (MD) No.496 of 2016
and
CMA (MD) No.1351 of 2015
04.12.2017

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SDS/SV MMS/SAR 4/02.01.2018/4P/6C