IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.12.2018

CORAM

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.NOs.2152 & 2613 of 2010
and
M.P.No.1 of 2010

C.M.A.NO.2152 OF 2010
The Branch Manager,
ICICI Lombard General Insurance Co. ltd.,
Gowly Brown Road,
Coimbatore ...Appellant/R2

Vs.

1. Sellammal
2. Rajendran .. RR1 & 2/Petitioners

3. S.Palaniammal .. R3/R1
(R3 set exparte in the Lower Court)

C.M.A.NO.2613 OF 2010
1. Sellammal
2. Rajendran ...Appellants/Petitioners

Vs.

1. S.Palaniammal
(R1-Given up) .. R1/R1

2. The Branch Manager,
ICICI Lombard General Insurance Co. ltd.,
Gowly Brown Road,
Coimbatore. .. R2/R2

Prayer in C.M.A.NO.2152 OF 2010:-

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988, against the Judgment and Decree dated 22.01.2010 made in M.C.O.P No.113 of 2008 on the file of the Motor Accident Claims Tribunal, (Subordinate Judge) at Sankagiri.

For Appellant : Mrs.R.Srividhya

For Respondents : Mr.C.Kulanthaivel for R1 & R2
R3 set Exparte.

Prayer in C.M.A. NO. 2613 OF 2010:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicle Act 1988, praying to set aside the order made in M.C.O.P No.113 of 2008 dated 22.01.2010 on the file of the Motor Accident Claims Tribunal cum Sub Court, Sankagiri.

For Appellants : Mr.C.Kulanthaivel

For Respondents : R1 - Given up
Mrs.R.Srividhya for R2.

COMMON JUDGMENT

Civil Miscellaneous Appeal No.2152 of 2010 is filed by the ICICI Lombard General Insurance Co. ltd., questioning the quantum of compensation and also the order dated 22.01.2010 passed by the Subordinate Judge, Motor Accident Claims Tribunal in M.C.O.P No.113 of 2008 fixing the negligence on the part of the bus driver bearing Registration No.TN34T3510 belonging to one Mrs.S.Palaniammal, the third respondent herein.

2. C.M.A No.2613 of 2010 is filed by the claimants in M.C.O.P. No.113 of 2008 seeking enhancement of compensation.

3. For the sake of convenience, the parties are referred as per their ranking in the Tribunal.

4.The brief facts of the case of the appellants/claimants is as follows:

On 07.12.2007, the deceased Palaniappan was riding his two wheeler bearing Registration No.TN28 W6879 on Pallipalayam-Tiruchengode road. At about 10.45 hours, a speeding bus bearing Registration No. TN34 D 3510 belonging to the third respondent, hit the two wheeler, as a result of which, Palaniappan died on the spot. According to the claimants, the rash and negligent driving of the driver of the bus was the cause of the accident and that since the said bus was insured with the second respondent ICICI Lombard General Insurance Co. ltd., both of them are jointly and severally liable to pay compensation to them.

5. The first respondent, the owner of the bus bearing Registration No. TN34 D 3510, remained absent before the

Tribunal and he was set exparte. The second respondent contested the Claim Petition by filing a counter. The Subordinate Judge, Sankagiri, after analysing the evidence of record, awarded a compensation of Rs.3,75,000/- to the claimants.

6. Mrs.Srividhya, learned counsel appearing for ICICI Lombard General Insurance Co. ltd., would contend that, when the deceased Palaniappan also contributed to the accident, the Tribunal was wrong in fixing the negligence only on the part of the driver of the bus. A perusal of the records shown that the claimants have examined the eye witnesses to the occurrence, who have clearly deposed that the driver of the bus bearing Registration No. TN34 D 3510 drove the bus rashly and negligently. In fact, the owner of the bus remained absent and was set exparte before the Trial Court and the Insurance Company did not adduce any acceptable evidence to show that the rider of the two wheeler (deceased Palaniappan) was also equally responsible for the accident. Therefore, I hold that the accident took place only due to rash and negligent driving of the driver of the bus bearing Registration No. TN34 D 3510.

7. Another contention of Mrs.R.Srividhya, learned counsel appearing for the Insurance Co., is that the Trial Court, while fixing the annual income of the deceased, had failed to deduct the family pension received by the wife of the deceased and awarded an exorbitant amount of Rs.3,75,000/- with interest at the rate of 7.5% to the claimants.

8. Per contra, the learned counsel appearing for the claimants contended that the deceased was a retired Government Servant receiving pension at Rs.5,600/- per month. He relied on the decision of the Hon'ble Supreme Court in Reliance General Insurance Co. Ltd., Vs. Shashi Sharma reported in 2016(2) TN MAC 721 (SC), wherein it has been held that the benefits extended to the dependent of the deceased Government Employee including the family pension, life insurance, Provident Fund, etc., cannot be allowed to be deducted. The said Supreme Court decision was followed by this Court in Manager, New India Assurance Co. Ltd., Vs. A.Rajarika Ignatius Rukha & others reported in 2017(1) TN MAC 758 and in paragraph No.3 of the above judgment, it has been held thus:

> 3. Though Mr.P.Athimoolapandian, learned counsel for the appellant - Insurance Company would contend that the Tribunal failed to deduct the pension amount drawn by the widow of the deceased, a perusal of the Award of the Tribunal would show that the Tribunal erroneously deducted a sum of Rs.3,295/- (Rupees Three Thousand Two Hundred and Ninety Five only) being the pension amount received by the widow of the deceased and it is a settled law that the

benefit is a Statutory benefit and she is entitled to the same and it need not be deducted from the compensation to be awarded under the Motor Vehicles Act, 1988, as per the Judgment of the Supreme Court in Reliance General Insurance Co. Ltd., Vs. Shashi Sharma, 2016(2) TN MAC 721 (SC) and therefore, the same is set aside.

Therefore, no amount can be deducted towards the family pension and the Tribunal is right in taking up the entire pension as a part of income earned by the deceased.

9. Mr.C.Kulanthaivel, learned counsel for the claimants contended that apart from the pension, the deceased Palaniappan owns 12 acres of land and from that he was earning a sum of Rs.2,00,000/- per annum. He would further contend that when the deceased Palaniappan had raised sugarcane crops in his lands and supplied the harvest to a sugar factory, as evidenced by Exs.P14 to P20, the Tribunal has fixed only a sum of Rs.1,00,000/- per annum as the income of the deceased, especially, when it is contended that the deceased was earning Rs.2,00,000/- per year. Relying on the decision of a Division Bench of this High Court in New India Assurance Company Ltd., Vs.Kalaivani and others reported in 2010 (2) TN MAC 528 (DB), he would contend that even though the said agricultural land of 12 acres is still available with the claimants, yet in regard to the managerial expertise, business acumen and other things were available to his family, namely, the claimants 1 and 2 and therefore, a sum of Rs.1,00,000/- should be added towards the loss of agricultural income. A perusal of the documents filed by the claimants clearly goes to show that the deceased would have earned a sum of Rs.1,00,000/- from his agricultural operations. In the facts and the circumstances, a sum of Rs.1,67,200/- (5,600 x 12 +1,00,000) is fixed as the income of the deceased. Since there are two dependents, 1/3 is deducted towards the personal expenses of the deceased. The age of the deceased was 63 years on the date of accident and therefore, multiplier 7 is adopted as per the decision of the Honourable Supreme Court in Sarla Varma & others vs. Delhi Transport Corporation & another. Thus, the loss of dependency would be Rs.1,11,466 X 7 = Rs.7,80,262/-. Apart from this amount, the claimants are entitled to a sum of Rs.40,000/- towards the loss of consortium and Rs.15,000/- towards the funeral expenses and Rs.15,000/- towards loss of estate of the deceased. Thus, the claimants are entitled for a sum of Rs.8,50,262/- (Rupees Eight Lakhs Fifty Thousand Two Hundred and Sixty Two only) which shall carry interest at the rate of 7.5% per annum from the date of filing of the claim petition till the date of deposit.

10. in the result, the appeal filed by ICICI Lombard General Insurance Co. ltd. in C.M.A. No.2152 of 2010 is dismissed. No costs. The appeal filed in C.M.A. No.2613 of 2010 by the claimants is partly allowed and the quantum of compensation awarded by the Tribunal is enhanced to Rs.8,50,262/- from Rs.3,75,000/-. ICICI Lombard General Insurance Co. Ltd., is directed to pay the enhanced compensation amount together with interest at the rate of 7.5% per annum from the date of filing of the claim petition till the date of deposit, less the amount already deposited by them, within a period of four weeks from the date of receipt of copy of this order and on such deposit being made, the claimants are entitled to withdraw the same after following due procedure. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

bga

To

1. The Subordinate Judge,
   Sankagiri

2. The Section Officer,
   VR Section, High Court,
   Madras-104 (2 copies)

+1cc to Mrs.R.Srividhya, Advocate, S.R.No.85780
+1cc to Mr.C.Kulanthaivel, Advocate, S.R.No.84914

C.M.A.NOs.2152 & 2613 of 2010
and
M.P.No.1 of 2010

EV(CO)
CS/20/02/2019