

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 09.10.2018

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and
THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY
CMA.No.1185 of 2015
and CMP.No. 1 of 2015 &
Cross.Obj.No.87 of 2015

CMA.No.1185 of 2015

Reliance General Insurance Company Ltd.,
Rais Tower, 2nd floor, Plot no.2504,
2nd Avenue Road,
Anna Nagar, Chennai - 40. ... Appellant/
2nd respondent

Vs

1.Selvi
2.Anuradha
3.A.Arun Karikalan
4.A.Arul Srinivasan
5.S.K.Singaram ... Respondents 1 to 5
/Petitioners

6.K.Arunachalam ... Respondent No.6
/1st respondent

Cross Objection No.87 of 2015

1.Selvi
2.Anuradha
3.A.Arun Karikalan
4.A.Arul Srinivasan
5.S.K.Singaram ... Cross objectors

Vs

1.Reliance General Insurance Company Ltd.,
Rais Tower, 2nd floor, Plot no.2504,
2nd Avenue Road,
Anna Nagar, Chennai - 40.

2.K.Arunchalam ... Respondents

COMMON PRAYER : Civil Miscellaneous Appeal & Cross Objection filed against the judgment and decree dated 18.09.2014, made in M.C.O.P.No.2439 of 2011 on the file of the Motor Accident Claims Tribunal, V Court of Small Causes, Chennai.

For Appellant
in CMA/Insurance Company : Mr.S.Arun Kumar

For Petitioners/claimants
Cross Objectors : Mr.K.Suryanarayanan for R1 to R5
R6 set exparte before the Tribunal

C O M M O N J U D G M E N T

(KRISHNAN RAMASAMY, J)

The appellant/Insurance Company has preferred the present appeal in CMA.No.1185 of 2015 and claimants have filed Cross Objection No.87 of 2015 against the order of Motor Accident Claims Tribunal, Vth Court of Small Causes, Chennai in MCOP No.2439 of 2011 dated 18.09.2014.

2. Heard Mr.S.Arun Kumar, the learned counsel appearing for the appellant/Insurance company and Mr.K.Suryanarayanan, the learned counsel appearing for the claimants/cross objectors.

3. The brief facts of the case are as follows:-

On 08.05.2011 at 7:30 hrs the deceased Anbalagan was riding his Honda Activa bearing Reg.No.TN-09-AU-3942 in Bajanai Koil & Swamy Colony Junction, Nandambakkam, Chennai proceeding from East to West direction. At that time a Honda City Car bearing Reg.No.TN-07-AY-2526 was proceeding from South to North direction in a rash and negligent manner and hit against the deceased bike and thereby the deceased was thrown out and sustained multiple injuries. Immediately he was admitted in the Apollo hospital and died on 12.05.2011. Mount Police registered a criminal case in Crime No.849 of 2011 against the driver of the Honda City Car.

4. Per contra the 2nd respondent/Insurance company filed its counter statement stating that the accident occurred due to the rash and negligent driving of the car driver bearing Reg.No.TN-07-AY-2526 and they have also denied that the car was insured with the second respondent. Therefore this respondent is not liable to indemnify the 1st respondent/owner. Hence this petition should be dismissed.

5. The Tribunal after considering pleadings and evidences both oral and documentary came to the conclusion that the accident occurred due to the negligent driving of the driver of the Car bearing Registration No.TN-07-AY-2526 and further stated that the car driver drove the vehicle with licence and also car was insured with the appellant/2nd respondent.

6. The Tribunal awarded a sum of Rs.64,32,000/- as compensation to the claimants against the claim amount of Rs.1,50,00,000/-. Aggrieved over the said findings and award, the appellant/Insurance Company has come forward with CMA.No.1185 of 2015. Being not satisfied with the quantum of the award, the claimants filed Cross Obj.No.87 of 2015.

7. Since there is no challenge on the issue of negligence this Court accepts the findings of the

Tribunal. Therefore, we uphold the findings of the Tribunal on the issue of fixing the negligence on the part of the car driver bearing Reg.No.TN-07-AY-2526.

8. Though, the learned counsel for the appellant/2nd respondent/Insurance company contended that the 1st respondent/driver did not have valid driving license and not insured the vehicle with them, the said statements were not proved. Therefore the contention of the 2nd respondent/Insurance Company was rejected by the Tribunal and came to the conclusion that the Insurance Company is responsible to pay the compensation. We also concur with the finding of the Tribunal.

9. PW1 deposed that her husband (Anbalagan) died on 12.05.2011 inspite of sufficient treatment at Chennai Apollo Hospital. Ex.P.3 Post mortem report, Ex.P.4 Death certificate and Ex.P.5 legal heir certificate were marked through PW1. The 1st petitioner is the wife of the deceased, 2nd to 4th petitioners are sons and daughter of the deceased and 5th petitioner is the father of the deceased. Post mortem certificate clearly states that the death was due to the injuries sustained by him in the road traffic accident.

10. On behalf of the claimants, PW3 (Gopi) Assistant Administrative Officer in LIC of India, deposed that the deceased was working as a Development Officer in LIC, Poonamallee branch and was given additional post of [Senior Business Associate] and was earning Rs.49,165.98/-. He further deposed that the deceased was getting incentive bonus of Rs.18,00,000/- p.a., and additional Rs.30,000/- p.m and for his post he will retire at the age of 60 years which would have been on 31.12.2015. Ex.P.7 to Ex.P.11 were marked through PW3. At the time of death, the age of the deceased was 55 years 4 months. Therefore the deceased was having 56 months more for his retirement.

11. As per income tax returns filed by the deceased for the financial year 2010-2011 the income of the deceased was shown as Rs.49,165.98. Therefore, we have decided to take the said income as income of the deceased without including the incentives which the deceased was receiving along with the salary. Since the Tribunal has not added any amount towards future prospects, we fix 15% towards future prospects based on the Hon'ble Apex Court judgment in the case of National Insurance Company Limited Vs. Pranay Sethi reported in 2017-13 SCALE 12, in which the Hon'ble Apex Court has held that if the deceased was having either self employment or fixed salary and between the age 50 to 60 years, 15% of the monthly income to be added as future prospects. Considering the age of the deceased and his retirement by following the judgment in the case of Sarla Verma and others Vs. Delhi Transport Corporation and another reported in 2009 ACJ 1298 SC, for the age group between 55 to 60 years old, the multiplier to be adopted is '9' and the Tribunal also rightly applied the same. We also concur with the findings of the Tribunal in this regard and the calculation is as follows:-

Rs.49165.98 p.m. plus 15% adding towards future prospects which will amount to Rs.7375/-. Loss of income along with future prospects will be Rs.56,540 p.m. x 12 = 6,78,480. From the said amount we deduct a sum of Rs.65,698/- towards income tax. After deducting income tax, the loss of income to the family of the deceased per annum will be Rs.6,12,784/-. By applying multiplier [9] the total loss of income will be a sum of Rs.55,15,056/-. Since there are five dependants (2 sons and one daughter married) we deduct 1/3rd from the total income of the deceased towards his personal expenses which will be a sum of Rs.18,38,352/-. After deducting 1/3rd, the loss of dependency will be a sum of Rs.36,76,704/-.

12. We have taken the incentives received by the deceased which will remain available for a period of 56 months, if the deceased was alive. This is also loss to the family of the deceased. Therefore this Court intends to award separately towards loss of incentives for 56 months. After retirement no incentives will be provided to the deceased. Therefore, this Court restricts this benefit for the

dependants for the purpose of calculation of loss of compensation only for 56 months.

Calculation is as follows:-

The Tribunal has fixed the total income of the deceased per month along with incentives, after taking the average income of three years is Rs.1,15,166/- p.m. 15% future prospects will be a sum of Rs.17,275/-. The total loss of income, incentives along with future prospects will be a sum of Rs.1,32,444/-. From this amount we deduct a sum of Rs.56,540/- towards salary income of the deceased along with future prospects. After deducting the said amount the net loss towards incentives for the dependants will be Rs.75,904/- (132444-56540) from this we deduct 1/3rd towards his personal expenses which will be a sum of Rs.25,300/-. After deducting the said amount the actual loss of dependency on the incentives of the deceased is Rs.50,604/-p.m (75904 - 25300). Therefore the total loss of incentives $50604 \times 56 = \text{Rs.}28,33,824/-$. The total loss of dependency will be a sum of Rs.36,76,704 towards the loss of salary + compensation towards loss of incentives Rs.28,33,824 for 56 months. Total loss of dependency will be a sum of Rs.65,10,528/-

13. The Tribunal awarded Rs.40,000/- towards loss of consortium, Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses and the same are confirmed.

14. The tribunal awarded Rs.2,00,000/- towards loss of love and affection and the same is reduced to Rs.1,00,000/-.[Rs.25,000/- each to the claimants 2, 3 and 4 and 5].

15. Hence the total compensation payable to the claimants is as hereunder.

Head

Amount

Loss of dependency

Rs.65,10,528/-

Loss of consortium

Rs.40,000/-

Loss of estate

Rs.15,000/-

Funeral expenses

Rs.15,000/-

Love and affection to the 2nd, 3rd, 4th and 5th claimants (Rs.25,000/- each)

Rs.1,00,000/-

Total

66,80,528/-

16. The Insurance Company is directed to deposit the entire amount awarded by this Court, along with interest and costs before the Tribunal within a period of six weeks from the date of receipt of a copy of this order, after deducting the amount already deposited, if any. On such deposit being made, the Tribunal shall transfer the amount to the claimants bank account through NEFT or RTGS within a period of one week thereon. The interest awarded by the Tribunal at the rate of 7.5% per annum is unaltered and the apportionment shall be as ordered by this Court. The claimants/cross objectors are directed to pay the requisite court fee if any, within a period of two weeks from the date of receipt of a copy of this order.

17. The total amount of compensation shall be shared by the claimants 1 to 5 in the following manner:-

N. KIRUBAKARAN,J,

and
KRISHNAN RAMASAMY.J,
dpq

Wife / 1st claimant Rs.30,00,000/-
Daughter / 2nd claimant Rs.10,00,000/-
Son /3rd claimant Rs.10,00,000/-
Son / 4th claimant Rs.10,00,000/-
Father / 5th claimant Rs.6,80,528/-

18. Accordingly, CMA.No.1185 of 2015 is dismissed. Cross.Obj.No.87 of 2015 is partly allowed by enhancing the award of the Tribunal from Rs.64,32,000/- to Rs.66,80,528/- with interest and costs. Consequently, connected miscellaneous petitions are closed. No costs.

(NKKJ) (KRJ)

09.10.2018

Internet : Yes/No
Index : Yes/No
Speaking order/Non-Speaking order
dpq

To
The Motor Accident Claims Tribunal,
V Court of Small Causes, Chennai.

CMA.No.1185 of 2015
and CMP.No. 1 of 2015 &
Cross.Obj.No.87 of 2015