

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.06.2018

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN  
and  
THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY  
C.M.A.Nos.1265 and 1266 of 2018  
and  
C.M.P.No.10197 of 2018

C.M.A.No.1265 of 2018:  
M/s.Reliance General Insurance Co. Ltd.,  
Senthil Nursing Home, II Floor,  
2<sup>nd</sup> Avenue, Rocks Tower,  
Anna Nagar, Chennai. ... Appellant/3<sup>rd</sup> Respondent

Vs

1.Nagalambika  
2.Nandaguruprasad  
3.Nandini ... Respondents 1 to 3/Petitioner  
4.R.Madhan  
5.Eswaramoorthy ... 4<sup>th</sup> and 5<sup>th</sup> Respondents/1st  
Respondent/2<sup>nd</sup> Respondent

PRAYER : Civil Miscellaneous Appeal filed against the Award and Decree dated 18.01.2017 made in M.C.O.P.No.37 of 2011 on the file of the Motor Accident Claims Tribunal, III Additional District and Sessions Judge, Gobichettipalayam.

For Appellant : Mr.S.Arunkumar

For Respondents : Mr.Ma.Pa.Thangavel (R1 to R3)

CMA.No.1266 of 2018:

1.Nagalambika  
2.Nandaguruprasad  
3.Nandhini ... Appellants/Petitioner

Vs

1.R.Madhan

2.J.Easwaramoorthy

3.The Branch Manager,  
Reliance General Insurance Co. Ltd.,  
Having office at: Rocks Towers, 2<sup>nd</sup> Avenue,  
Senthil Nursing Home, 2<sup>nd</sup> Floor,  
Anna Nagar, Chennai. .... Respondents/Respondents

PRAYER : Civil Miscellaneous Appeal filed against the Judgment and Decree dated 18.01.2017 made in M.C.O.P.No.37 of 2011 on the file of the MACT/III-Additional District cum Sessions Court at Gobichettipalayam.

For Appellant : Mr.Ma.P.Thangavel

For Respondents: Mr.S.Arun Kumar (for R3)

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

(Judgment of the Court was delivered by N.KIRUBAKARAN, J)

The appeals have been preferred by the insurance company, as well as claimants. The parties are taken as shown in CMA.No.1265 of 2018 filed by the insurance company. The appeals have been raised against the very same award of Rs.27,73,000/- for the death of one T.M.Lingaraj, aged about 45 years, earning about Rs.28,000/- per month, working as Record Clerk in Oriental Insurance Company Limited, in the accident, which occurred on 23.12.2010, when he was walking on the Karattur Pillaiyar Koil Street near main road and was hit down by mini van from behind, belonging to the 5<sup>th</sup> respondent and insured with the insurance company.

2.Heard Mr.S.Arun Kumar, learned counsel appearing for the insurance company and Mr.Ma.Pa.Thangavel, learned counsel appearing for the claimants.

3.The Tribunal based on evidence of PW2-eyewitness and taking into consideration filing of Ex.P.1-FIR against the 4<sup>th</sup> respondent/driver of the insured vehicle and Ex.P.4-charge sheet against the 4<sup>th</sup> respondent/driver of the insured vehicle and in the absence of any rebuttal evidence on the side of the

insurance company, rightly found that the accident occurred because of the rash and negligent driving of the van. Further, Ex.P.2-rough sketch of the accident spot would reveal that the accident occurred on the left hand side of the road. Therefore, the finding reached by the Tribunal that the driver of the insured vehicle alone is responsible for the accident is confirmed.

4.To show that the victim was working as Record Clerk in Oriental Insurance Company Ltd., Ex.P.9-salary certificate has been marked. Further, PW3, who is the officer from insurance company deposed that the deceased was working as a Record Clerk, earning about a sum of Rs.30,218.76/- and produced Ex.P.9-salary certificate. Based on that the Tribunal rightly determined the monthly income at Rs.30,218.76/- rounded off to Rs.30,220/-. Relying upon the judgment of the Honourable Supreme Court in Sarla Verma & Others .Vs. Delhi Transport Corporation & another, reported in 2009 (2) TNMAC 1 (SC), the Tribunal has added 30% towards future prospects, as the deceased was aged about 47 years as proved by Ex.P.8-driving licence. After adding 30% towards future prospects, the monthly income would be at Rs.39,286/- (Rs.30,220/- + 30% of Rs.30,220/-). The yearly income would be at Rs.4,71,432/- (Rs.39,286/- x 12). In the aforesaid amount standard deduction, which does not attract income tax is Rs.2,00,000/- and if Rs.2,00,000/- is deducted, the taxable income would be at Rs.2,71,432/-. Out of the taxable income, 10% has to be deducted towards income tax. 10% of taxable income comes to Rs.27,143.2/-. After deducting 10% towards income tax, the yearly income would be at Rs.4,44,289/- [Rs.2,00,000/- + (Rs.2,71,432/- - Rs.27,143.2/-)].

5.The size of the family is 3 and therefore, 1/3<sup>rd</sup> has to be deducted towards personal expenses, which was rightly adopted by the Tribunal. After deducting 1/3<sup>rd</sup> towards personal expenses the yearly income would be at Rs.2,96,192/-

6.As per Ex.P.8-driving licence, the date of birth of the deceased was 10.03.1964 and therefore, on the date of the accident, the age of the deceased was 46 years 9 months and 13 days, which the Tribunal has wrongly calculated at 47, since the completed age only has to be taken and it is 46 only. In any event, it does not make any difference in applying appropriate multiplier (ie) "13". Therefore, the total loss of income would be at Rs.38,50,504/- (Rs.2,96,192/- x 13).

#### 7.Loss of consortium:

The Tribunal has awarded a sum of Rs.2,00,000/- under this head. The same is reduced to Rs.40,000/- as per the Constitution Bench's judgment of the Honourable Apex Court in

National Insurance Company Limited V. Pranay Sethi and others, reported in 2017 (2) TN MAC 609 (SC).

8. Loss of love and affection:

The Tribunal has awarded a sum of Rs.2,00,000/-, to the children/claimants 2 and 3. The same is reduced to Rs.1,00,000/- together.

9. Funeral expenses:

A sum of Rs.10,000/- was awarded by the Tribunal towards funeral expenses. As per the Constitution Bench's judgment in Pranay Sethi's case, the same is reduced to Rs.15,000/-

10. Loss of estate:

No amount was awarded by the Tribunal towards loss of estate. As per the Constitution Bench's judgment in Pranay Sethi's case, a sum of Rs.15,000/- is awarded under this head.

11. Transportation:

The Tribunal has awarded a sum of Rs.5,000/- under this head. The same is enhanced to Rs.10,000/-.

| Head                       | Amount (Rs.) |
|----------------------------|--------------|
| Total loss of income       | 3850504      |
| Loss of consortium         | 40000        |
| Loss of love and affection | 100000       |
| Funeral expenses           | 15000        |
| Loss of estate             | 15000        |
| Transportation             | 10000        |
|                            | 4030504      |

12. Hence, the total compensation payable in this case is Rs.40,30,504/- rounded off to Rs.40,30,000/-

13. The interest awarded by the Tribunal at the rate of 7.5% per annum is confirmed. Out of the award amount, the 1<sup>st</sup> claimant/wife of the deceased is entitled to Rs.20,00,000/- and 2<sup>nd</sup> and 3<sup>rd</sup> claimants/children of the deceased are entitled to get Rs.10,15,000/- each.

14. The claimants are directed to pay the additional court fee, if any, within a period of two weeks from the date of receipt of a copy of this order, failing which, the enhancement made by this Court shall be automatically deleted. The necessity to include the above clause is only to see that the additional

court fee is paid promptly, as many complaints are received from the registry stating that the claimants' counsel are not paying the additional court fee for the enhanced award amount and thereby delaying the copy being made ready, which prevented the insurance company or transport corporation to receive the order copy, so that they could file an appeal or to act upon the order passed by this Court. On payment of such additional court fee, the registry is directed to note/make entry about the payment of court fee in the Decree itself.

15.The Insurance company is directed to deposit the entire award amount as per the modified award passed by this Court, 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 is directed to transfer the respective shares of claimants along with proportionate interest and costs to their respective bank accounts through RTGS within a period of one week thereon.

16.Accordingly, C.M.A.No.1265 of 2018 is modified and disposed of, enhancing the award of the Tribunal from Rs.27,73,000/- to Rs.40,30,000/- with interest. C.M.A.No.1266 of 2018 is partly allowed. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

The III Additional District and Sessions Judge,  
Motor Accident Claims Tribunal,  
Gobichettipalayam.

Copy to

The Section Officer,  
VR Section, High Court, Madras.

+1cc to M/S.S.Arunkumar, Advocate Sr.38851

+1cc to M/S.Ma.P.Thangavel, Advocate Sr.38903

C.M.A.Nos.1265 and 1266 of 2018

mp[co]

srg 13/11/2018