

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.08.2018

CORAM

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.1878 of 2018
and
C.M.P.No.14484 of 2018

M/s.Reliance General Insurance Co. Ltd.,
Motor Third Party Claims,
No.66, Haddows Road,
Nungambakkam, Chennai - 34. Appellant/2nd Respondent

...Vs...

1.M.Padmavathi

2.M.Narasaiah

3.Jabir

....Respondents/Petitioners &
1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award and Decree dated 23.1.2018 made in MCOP. No.4279 of 2015 on the file of the Motor Accident Claims Tribunal, III Court of Small Causes, Chennai.

For Appellant : Mr.S.Arun Kumar

J U D G M E N T

[Judgment of the Court was made by ABDUL QUDDHOSE, J.]

The instant appeal has been filed by the Insurance Company challenging the Award dated 23.01.2018 passed by the Motor Accident Claims Tribunal, third Court of Small Causes, Chennai in M.C.O.P No.4279 of 2015. In the instant appeal, the Appellant insurance Company has disputed its liability and also has questioned the quantum of compensation awarded to the first and second respondents by the Tribunal.

The brief facts leading to the filing of the instant appeal are as follows.

2. One M.Yeswanth died on 22.01.2015 as a result of the accident caused by a lorry bearing registration No.KL10-AG-3756 insured with the Appellant. The deceased Yeswanth was a pillion rider in the Motor Cycle bearing registration No.AP26-N-4684 and the lorry came from behind and dashed against the Motor Cycle resulting in the death of Yeswanth on the spot. The dependents of the deceased Yeswanth preferred a claim before the Motor Accident Claims Tribunal, Small Causes Court-III, Chennai in MCOP. No.4279 of 2015 seeking compensation of Rs.15,00,000/- for the death of Yeswanth. The Motor Accident Claims Tribunal by its Award dated 23.01.2018 in MCOP.No.4279 of 2015 directed the appellant to pay the respondents 1 and 2 a sum of Rs,16,85,000/- together with interest from the date of claim till the date of realisation and also awarded costs.

3. Aggrieved by the Award dated 23.01.2018 passed by the Motor Accident Claims Tribunal in MCOP. No.4279 of 2015, the Insurance Company has preferred this Appeal.

4. Heard Mr.S.Arun Kumar, learned counsel for the Appellant.

5. The learned counsel for the Appellant contended that

a) The Tribunal erred in relying on the interested testimony PW1 and PW2 to come to an erroneous conclusion against the driver of the lorry.

b) The Tribunal failed to take note of the fact that the deceased did not wear helmet at the time of accident. According to the learned counsel for the Appellant, the deceased would not have sustained fatal injuries, if he had wore a helmet.

c) The deceased was a college student and therefore, the Tribunal erred in assuming Rs.10,000/- as probable future income of the deceased.

d) The Tribunal erred in awarding future prospects at 50% and applied 17 years multiplier without considering the fact that the deceased had he been alive would not have contributed 100% of his earnings to his parents.

e) The Tribunal also erred in awarding interest on the amount awarded under the head future prospects, which income may or may not be earned and not a loss on the date of occurrence.

f) The Tribunal ought not to have applied 15 years multiplier following the Judgment of the Hon'ble Supreme Court reported in 2013 (1) TNMAC 481.

6. We have examined the impugned award. On a perusal of the Award, the respondents 1 and 2 who are the claimants have examined the second respondent as PW2 along with one eye witness Narasimhulu who was examined as PW1 before the Tribunal and 16 documents were filed by the respondents 1 and 2 before the Tribunal which were marked as Exs. P1 to P16. The documents

included copy of First Information Report Ex.P1, copy of Translated First Information Report from Telugu to English Ex.P2, Copy of Postmortem Certificate Ex.P3, Copy of M.V.Report Ex.P4, Copy of Charge Sheet Ex.P5 in support of their claim. The respondents 1 and 2 have also filed tenth standard Mark Sheet of the deceased which was marked as Ex.P7 to prove the age of the deceased. The age, educational background and other related particulars of the deceased given in the claim statement were not disputed by the Appellant before the Tribunal.

7. The Tribunal has relied upon the Judgment of Madras High Court in the case of N.Kandasamy & Others vs. G.R.Sampath & Others reported in 2017 ACJ P.1604 for assessing the monthly salary of the deceased at Rs.10,000/- per month. The Tribunal has also applied the principles laid down in Sarla Verma and others vs. Delhi Transport Corporation and another reported in 2009 (2) TNMAC 1 (SC) for awarding the loss of future prospects at Rs.15,000/- to the Respondents 1 and 2. Since the dependents of the deceased are 3 in number, the Tribunal applying the dictum laid down in Sarla Verma's case referred to supra and the deceased being a bachelor, the Tribunal has rightly deducted 50% towards expenses that may be incurred for maintaining himself, if he had been alive and the annual contribution of the deceased was rightly assessed by the Tribunal at Rs.90,000/-. The Tribunal has also applied the correct multiplier of 18 as per the dictum of Sarla Verma's case and has rightly assessed the loss of dependency at Rs.16,20,000/- under the impugned award.

8. The Tribunal has also rightly assessed the loss of love and affection and has awarded Rs.25,000/- to each of the respondents 1 and 2 being the mother and father of the deceased and a total sum of Rs.50,000/- was awarded under this head. The funeral expenses at Rs.15,000/- was also rightly awarded by the Tribunal following the Sarla Verma's case.

9. Insofar as negligence is concerned, the Tribunal has given a clear finding that the accident occurred only due to the rash and negligent driving by the driver of the lorry bearing registration No. KL10 AG 3756 insured with the appellant. The Tribunal has come to the said conclusion only after examining the First Information Report, Postmortem Report and Charge Sheet which were marked as Ex. P1, Ex .P3 and Ex. P5 before the Tribunal.

10. The impugned award passed by the Tribunal is a reasoned and well considered award and does not suffer from any infirmity. Accordingly, there is no merit in the instant appeal and the appeal is dismissed in the admission itself.

11. Accordingly if not already deposited, the appellant is directed to deposit the Award amount passed by the Tribunal to the credit of MCOP. No.4279 of 2015 on the file of the Motor Accident Claims Tribunal, III Court of Small Causes, Chennai together with interest. On such deposit being made, the respondents 1 and 2 are permitted to withdraw the amount lying to the credit of MCOP. No.4279 of 2015 on the file of the Motor Accident Claims Tribunal, III Court of Small Causes, Chennai with accrued interest by filing an appropriate application. Consequently, connected miscellaneous petition is closed. However, there shall be no order as to costs.

Sd/--

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1.The Motor Accident Claims Tribunal,
III Court of Small Causes, Chennai

2.The Record Clerk,
VR Section, High Court,
Chennai.

+1cc to Mr.K.Suryanarayanan, Advocate SR.NO.57607

+1cc to Mr.S.Arun Kumar, Advocate SR.NO.58140

SR. (co)
sm:25.9.2018

C.M.A.No.1878 of 2018 &
C.M.P.No.14484 of 2018

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