

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN  
and  
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CMA.No.1998 of 2018 & CMP No.15547 of 2018  
and CMA No.2170 of 2018

M/s.Reliance General Insurance Co. Ltd.,  
Zonal Office, Commercial Claims,  
6<sup>th</sup> Floor, No.6, Haddows Road,  
Chennai 6.

... Appellant in CMA 1998/2018  
& 2<sup>nd</sup> Respondent in CMA 2170/2018

-vs-

1. J.Saraswathy
2. K.G.Janakiraman
3. J.Vijayakumar
4. J.Manikandan

... Respondents 1 to 4 in CMA 1998/18  
& Appellants in CMA

2170/2018

5. Venkatesan ... 5<sup>th</sup> Respondent in CMA 1998/18  
1<sup>st</sup> Respondent in CMA 2170/2018

Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree dated 18.01.2018 made in MCOP. No.6737 of 2015, on the file of the Motor Accidents Claims Tribunal, Chief Court of Small Causes, Chennai.

For Appellant in CMA 1998/2018 : Mr.S.Arun Kumar  
& 2<sup>nd</sup> Respondent in CMA 2170/2018

For Respondents 1 to 4 in CMA 1998/18 : Mr. K.Varadhakamaraj  
& Appellants in CMA 2170/2018

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

[Judgment of the Court delivered by R.SUBRAMANIAN,J.]

The challenge in these Appeals is to the award of the Motor Accident Claims Tribunal, Chennai (Chief Judge, Court of Small Causes, Chennai). The Claim Petition in MCOP No.6737 of 2015 was filed by the parents and the brothers of one Balaji, who died in a motor accident that occurred on 21.07.2015.

2. According to the claimants, the deceased Balaji was riding a Motor Cycle, bearing Registration No.TN 01 AU 3589 from Chengalpattu to Chennai. When he was nearing Karanai Pudhucherry Junction and waiting for signal to take U turn, a Milk Lorry, bearing Registration No.TN 01 AP 7799, owned by one Venkatesan, who is the 5<sup>th</sup> respondent in CMA No.1998/18 and the 1<sup>st</sup> respondent in CMA No.2170 of 2018, driven by its driver in a rash and negligent manner and came from behind and dashed against the two wheeler. As a result of the impact the rider of the two wheeler was thrown off the Vehicle, suffered head injuries and died on the spot. Contending that the accident occurred only due to the rash and negligent driving of the driver of the lorry and that the deceased was student of Hotel Management and he also working as a Pizza delivery boy earning about Rs.12,000/- per month, the claimants sought for a compensation of Rs.50,00,000/-.

3. The Claim Petition was resisted by the Insurance Company contending that it was the negligence on the part of the deceased who was riding a motor cycle which caused the accident. The Insurance Company also denied the particulars relating to age, educational qualification and the income of the deceased.

4. The Tribunal on consideration of the evidence on record particularly, the FIR and the evidence of P.W.2 an eyewitness which was not discredited in cross-examination, found that the accident occurred due to the rash and negligent driving of the lorry, bearing Registration No.TN 01 AP 7799. The insurer of the lorry, the appellant in CMA No.1998 of 2018 was found liable to pay the compensation.

5. On the quantum, the Tribunal found that there was no proper documentary evidence relating to the income of the deceased. The Tribunal disbelieved Ex.P16, a Salary Certificate that was issued by the alleged employer, showing that the deceased was drawing a salary of Rs.10,921/- per month. The Tribunal, however, took the notional income at Rs.9,000/- per month, since it found that the deceased was pursuing final year Diploma in Hotel Management. Adding 40% towards future prospects, the Tribunal arrived at the monthly income for the purpose of deciding the loss of dependency at Rs.12,600/-. Deducting 50% of the income towards personal expenses, the Tribunal arrived at the loss of dependency at Rs.6,300/- per month. Adopting a multiplier of 18, the Tribunal arrived at the pecuniary loss at Rs.13,60,800/-. The Tribunal awarded Rs.15,000/- for loss of estate and Rs.15,000/- for funeral expenses. Thus, the Tribunal awarded a sum of Rs.13,90,800/- as compensation with interest at 7.5% per annum. The compensation was apportioned equally between the claimants 1 and 2 who are the parents. The Claim Petition

was dismissed with reference to claimants 3 and 4, who are the brothers of the deceased.

6. Aggrieved by the award, the Insurance Company has come up with the Appeal CMA No.1998 of 2018, while the claimants had come forward with the Appeal in CMA No.2170 of 2018.

7. We have heard Mr.S.Arun Kumar, learned counsel appearing for the appellant in CMA No.1998 of 2018 and the 2<sup>nd</sup> respondent in CMA No.2170 of 2018 and Mr.K.Varadha Kamaraj, learned counsel appearing for the Respondents 1 to 4 in CMA 1998 of 2018 and the appellants in CMA No.2170 of 2018. The owner of the lorry who figures as the 1<sup>st</sup> respondent in CMA No.2170 of 2018 and 5<sup>th</sup> respondent in CMA 1998/18 remained ex-parte before the Tribunal and hence notice to him is dispensed with.

8. Mr.S.Arun Kumar, learned counsel appearing for the Insurance Company would attempt to argue that there was some negligence on the part of the deceased who was admittedly riding a two wheeler at the time of the accident. But, we find that no evidence has been adduced by the Insurance Company to prove absence of negligence on the part of the driver of the lorry. As rightly pointed out by Mr.Varadha Kamaraj, the evidence of P.W.2, the eyewitness, has not been shown to be untrustworthy. The FIR filed at the earliest point of time also shows that the accident occurred due to the negligence of the driver of the lorry. We are, therefore, unable to countenance the contention, raised by Mr.Arun Kumar on the question of negligence.

9. On quantum, Mr.S.Arun Kumar would contend that the fixation of Rs.9,000/- as monthly income is on the higher side. The accident had occurred in the year 2015, admittedly the deceased was a final year student in Hotel Management. Considering the cost of living and the pay that the deceased would have received on successful completion of the course, we find that fixation of Rs.9,000/- as notional income is just and proper and does not call any interference at our hands. The Tribunal has adopted 40% towards future prospects and has deducted 1/2 for his personal expenses, the deceased being a bachelor, and applied a multiplier of 18 to arrive at the total loss of dependency at Rs.13,60,800/-.

10. Mr.K.Varadha Kamaraj, learned counsel appearing for the appellants in CMA No.2170 of 2018 would contend that the Tribunal was not right in rejecting the Salary Certificate Ex.P16. He would also point out that the Tribunal erred in rejecting the Salary Certificate Ex.P16 without valid reason.

We have perused Ex.P16 as well as the evidence of P.W.3 who has been examined to prove the said Salary Certificate. P.W.3 in his cross-examination stated that there is no appointment order, there is no documentary evidence or accounts for payment of salary. Therefore, the Tribunal was right in rejecting Ex.P16. The very document Ex.P16 appears to be wholly unreliable, inasmuch as the same shows the payment of HRA and deduction of Provident Fund etc. for a Pizza delivery boy. The very contents of the document shows that it is a document that has been brought up for the purposes of claiming the higher compensation. We, therefore, concur with the finding of the Tribunal that Ex.P16 cannot form the basis for deciding the compensation payable. We find that the Tribunal has awarded Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses, which is also reasonable.

11. We, therefore, see no reason to interfere with the award. Hence both the appeals are dismissed. However, there will be no order as to costs. Consequently, the connected miscellaneous petition is closed.

12. The Insurance Company is directed to deposit the award amount, less the amount, if any, already deposited within a period of six (6) weeks from the date of receipt of a copy of the judgment. The award will carry interest at 7.5% per annum from the date of petition till date of payment and proportionate costs. The Tribunal has apportioned the compensation equally among the claimants/parents respondents 1 & 2 of the deceased and the said apportionment will stand confirmed. On such deposit, both the claimants being majors they are permitted to withdraw the entire compensation.

jv

Sd/-

Assistant Registrar (IX)

//True Copy//

Sub Assistant Registrar

To

The Motor Accidents Claims Tribunal  
Chief Court of Small Causes, Chennai.

Copy to: The Section Officer  
VR Section, High Court, Madras

+1cc to MR.S.Arunkumar, Advocate Sr.No.65628

+1cc to Mr.K.Varadhakamaraj, Advocate Sr.No.64799

PA(CO)

sm:31.10.2018

CMA.No.1998 of 2018  
& CMP No.15547 of 2018  
and CMA No.2170 of 2018