

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.2369 of 2016
and C.M.P.No.16488 of 2016

Reliance General Insurance Company Ltd.,
570, Naigaum cross
Next to Royal Industrial Estate
Wadala(W), Mumbai-400 031 ...Appellant
/2nd respondent.

Vs

1.Manickam
2.Madesh
3.Santhi
4.Madhu
5.Selvi
6.Mallika
7.Ilayaraja

..Respondents 1 to 7
/Petitioners 1 to 7

8.P.Selvaraj

..8th Respondent
/1st respondent.

Civil Miscellaneous Appeal filed against the judgment and decree dated 16.03.2016 passed in M.C.O.P.No.511 of 2014 on the file of Motor Accidents Claims Tribunal, Special District Court, Dharmapuri.

For appellant : : Mr.S.Arun Kumar
for Respondents : : Mr.V.Kumaravelan for R1 to R7.

J U D G M E N T

This Civil Miscellaneous Appeal is filed by the appellant/Insurance Company, challenging the judgment and decree dated 16.03.2016 passed in M.C.O.P.No.511 of 2014 on the file of Motor Accidents Claims Tribunal, Special District Court, Dharmapuri.

2. For the sake of convenience, the parties are referred to as per their litigative status before the Tribunal. The case of the petitioners is that on 04.11.2013, while the deceased Nagarani was walking along with his son Madesh in the Karimangalam to Agaram Road around 6.30 p.m., the Lorry bearing

Reg.No.KA-01-AC-3042 belonging to the 1st respondent and insured with the 2nd respondent which was going towards Krishnagiri, came at high speed, without following the traffic rules, dashed against the deceased, causing her fatal injuries, resulting in her death subsequently in the hospital on the same day. The accident occurred only due to rash and negligent driving by the driver of the 1st respondent vehicle. At the time of the accident, the deceased was aged 60 years and by carrying on milk vending business, she was earning Rs.12,000/- per month. The Petitioners who are the husband and children of the deceased are denied her love and affection and also contribution to the family income due to the death of the Nagarani. As such, the Petitioners seek a sum of Rs.10,00,000/- as compensation from the respondents, who are the owner and insurer of the vehicle.

3. On the other hand, opposing the claim of the petitioners, by filing counter, the 2nd respondent/Insurance Company contends that the accident did not occur in the manner alleged by the Petitioners, but the accident occurred only due to negligence on the part of the deceased who crossed the road without noticing the on-coming vehicle. The driver of the Lorry bearing Reg.No.KA-01-AC-3042 did not possess valid driving licence. The said Lorry was allowed to be driven on the road without valid documents. As such, the 2nd respondent/Insurance company is not liable to pay any compensation. The claim of the Petitioners about the age, avocation and income of the deceased is denied. The amount claimed by the Petitioners is exorbitant. Thus, the 2nd respondent/Insurance company sought for dismissal of the petition.

4. Before the Tribunal, the Petitioners examined P.W.1 and P.W.2, produced documents Ex.P.1 to Ex.P.6 to prove their claim. On the side of the respondents, neither oral nor documentary evidence was let in. On the basis of available evidence on record, the Tribunal found that the 1st respondent vehicle driver's negligence alone caused the accident and passed the Award for a sum of Rs.8,61,600/- payable by the 2nd respondent to the Petitioners.

5. Aggrieved over the said finding of the Tribunal, the 2nd respondent/Insurance Company has come forward with the present appeal.

6. The learned counsel for the appellant/2nd respondent/Insurance company contends that the Tribunal erred in fixing notional income of the deceased at Rs.6500/- per month. The Tribunal erred in deducting 1/5th of the income without noticing the fact that the petitioners 2 to 7 are major children and they are not dependants of the deceased. The amount awarded under different heads is very exorbitant. Thus, the appellant/2nd respondent/Insurance company contends that the

award passed by the Tribunal is on the higher side and sought for setting aside the same by entertaining the appeal.

7. Per contra, refuting the claim of the 2nd respondent/Insurance company, it is contended by the Petitioners/claimants that the Tribunal ought to have deducted only 1/4th of the income considering the fact that number of dependants are more than three persons. The Tribunal ought to have awarded higher amounts towards loss of love and affection and under other heads. As such, the petitioners/claimants contend that there is no ground made out by the insurance company to set aside the award passed by the Tribunal. Thus, the petitioners/claimants sought for dismissal of the appeal.

8. Heard both sides and perused the records carefully.

9. The 2nd petitioner, Madesh who deposed as P.W.1 is the son of the deceased Nagarani and the 1st petitioner herein viz., Manickam. According to him, on 04.11.2013, at about 6.30 p.m., while he was going along with his mother, deceased Nagarani, and as they were standing near Agaram junction to cross the road, the 1st respondent owned Lorry bearing Reg.No.KA-01-AC-3042 came at high speed, dashed against the deceased Nagarani who was standing by the side of the road resulting in her death subsequently. The other eyewitness to the occurrence who deposed as P.W.2 also stated likewise, blaming the high speed in which the 1st respondent Lorry was driven, as the cause for the accident. P.W.2 has denied the suggestion of the respondent/Insurance company that the accident occurred while the deceased was trying to cross the road, without noticing the on coming vehicle. Further, the Police have also registered Ex.P.1-FIR against the driver of the 1st respondent Lorry only. As such, it is clear from the evidence of P.W.1 and P.W.2 as well as contents of Ex.P.1 -FIR that the negligence of the 1st respondent Lorry driver alone caused the accident. Further to disprove and contradict the evidence of P.W.1 and P.W.2, the respondent has not chosen to let in any oral evidence. Neither the driver of the 1st respondent Lorry or any other person was examined by the contesting 2nd respondent. As such it is clear from the evidence of P.W.1 and P.W.2 and contents of Ex.P.1-FIR that the negligence of the 1st respondent Lorry driver alone caused the accident.

10. The Petitioners' claim that the deceased Nagarani was aged 60 years and by carrying on vegetable and milk vending business, she was earning Rs.12,000/- per month. The same is disputed by the 2nd respondent. The Petitioners produced Ex.P.2-Post Mortem report wherein, the deceased is stated to be aged 60 years. In the absence of any other document to prove the age of the deceased, the Tribunal is justified in fixing the age of the deceased as 60 years on the basis of Ex.P.2-Post Mortem Report.

It is contended by the Petitioners that the deceased was earning Rs.12,000/- per month from her self employment. However, there is no proof regarding the avocation and income of the deceased. In such circumstances, considering the fact that the deceased was stated to be carrying on milk vending and vegetable sales business and the accident occurred during 2013, it is just and appropriate to fix the notional income of the deceased at Rs.6500/-. As the age of the deceased is fixed at 60 years, the multiplier to be applied is 9. Even though the petitioners stated that they are depending on the income of the deceased and that they are seven in numbers, it is apparent that the daughters of the deceased who are the 3rd to 6th petitioners are all married, they cannot be stated to be dependants. Thus the petitioners viz., 1, 2 and 7 alone to be considered as living along with the deceased. As such it is appropriate to deduct 1/3rd of the income towards personal expenses of the deceased, instead of 1/5 deducted by the Tribunal. Accordingly, the loss of dependency is calculated as under:-

Monthly salary Rs.6500/-.

As the age of the deceased is 60, 10% addition towards Future prospects.

$6500 + 10\% (650) = \text{Rs.}7150$

$\text{Rs.}7150 - 1/3\text{rd deduction (Rs.}2383) = \text{Rs.}4767.$

The correct multiplier to be applied herein is 9.

$\text{Rs.}4767 \times 12 \times 9 = \text{Rs.}5,14,836/-.$

Thus, a sum of Rs.5,14,836/- is awarded under the head "Loss of Dependency". By applying the Ruling of the Supreme Court reported in 2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and Others], the following amounts are awarded as compensation under conventional heads.

Funeral expenses	-15,000/-
Loss of estate	-15,000/-
Loss of consortium	-40,000/-
Add: Loss of dependency	-5,14,836/-
Total =	Rs.5,84,836/-.

Accordingly, the compensation awarded by the Tribunal stands modified to Rs.5,84,836/-. The apportionment of the award amount is as follows:-

1st Petitioner/1st respondent - 40%

Petitioners 2 to 7/Respondents 2 to 7 - 10% each.

11. In the result,

(i) This Civil Miscellaneous Appeal is Partly Allowed;

(ii) The award amount is reduced from 8,61,600/- to Rs.5,84,836/-.

(iii) The award amount will carry interest at the rate of 7.5% from the date of petition till the date of realisation;

(iv) The Appellant/Insurance company is directed to deposit the entire award amount along with proportionate interest and cost, as ordered by this court, less the amount, if any already

deposited. The Insurance company is entitled to withdraw the excess sum, if any, in deposit.

(v) The Petitioners / Claimants / Respondents 1 to 7 are entitled to withdraw their respective share amount of the award amount along with accrued interest. The Tribunal shall pass necessary orders following the appropriate procedure for disbursal of the award amount.

(vi) No costs. Consequently connected MP is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

1. The Judge,
The Motor Accident Claims Tribunal,
Special District Court, Dharmapuri.

+1cc to Mr.S.Arunkumar, Advocate sr.27024

+1cc to Mr.V.Kumaravelan, Advocate sr.no.26150

C.M.A.No.2369 of 2016

VGI (CO)
NR 14/05/2018

सत्यमेव जयते
WEB COPY