

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.06.2018

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and
THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY
C.M.A.Nos.2559 of 2017 and 2142 of 2017
and
M.P.No.13922 of 2017

C.M.A.No.2559 of 2017

Reliance General Insurance Company ltd.,
Rai's Tower,
Plot No.2054, 2nd Avenue,
2nd Floor, Next to Senthil Nursing Home,
Anna Nagar, Chennai 40 ... Appellant

Vs

1. G.Ramachandran
2. R.Veerammal
3. P.Selvam ... Respondents

PRAYER : Civil Miscellaneous Appeal filed under section 173 of Motor Accident Vehicle Act 1988 against the award and decree dated 20.12.2016 made in M.C.O.P.No.6552 of 2013 on the file of the Motor Accidents Claims Tribunal, II Court of Small Causes, Chennai.

For Appellant :Mr.S.Arun Kumar
For Respondents :Mr.F.Terry Chella Raja for R1 & R2
R3 exparte before Tribunal

C.M.A.No.2142 of 2017

1. G.Ramachandran
2. R.Veerammal ... Appellants

Vs

1. P.Selvam
2. Reliance General Insurance Company Limited
RAI's Tower,
Plot No.2054, 2nd Avenue, 2nd Floor,
Next to Senthil Nursing Home,
Anna Nagar, Chennai - 40. ... Respondents

PRAYER : Civil Miscellaneous Appeal filed under section 173 of Motor Vehicles Act 1988, against the Judgment and decree dated 20.12.2016 made in M.A.C.T.O.P.No.6552 of 2013 on the file

of the Motor Accidents Claims Tribunal, II Judge Court of Small Causes, Chennai.

For Appellants :Mr.F.Terry Chella Raja

For Respondents :Mr.S.Arun Kumar for R2
R1 set exparte before Tribunal

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

(Judgment of the Court was delivered by KRISHNAN RAMASAMY, J)

These appeals have been preferred against the award passed by the Tribunal, awarding a sum of Rs.18,27,000/-. Both the Insurance Company as well as claimants are before this Court. The claimants have filed CMA.No.2142 of 2017 and the Insurance Company has filed CMA.No.2559 of 2017.

2.For the sake of convenience hereinafter, the appellants in C.M.A. No.2142 of 2017 would be referred as claimants and the appellants in C.M.A.No.2559 of 2017 would be referred as Insurance Company.

3. Heard the learned counsel for the claimants and the learned counsel for the Insurance Company.

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

On 08.07.2013 at about 4:00 p.m. when the deceased was lifting scrap load on his head behind Eichler Lorry bearing TN-22-BR-9243 for loading the said lorry at Perungudi Barma Colony, Selvam scrap shop, Bhavani steels 1st street at that time the first respondent Eichler Lorry bearing TN 22 BR 9243 driver, drove in reverse in a rash and negligent manner endangering public safety and without any indication and any signal hit against the deceased. Due to the accident the deceased sustained multiple crush injuries and taken first aid at Dr.Lakshmipathi Neurosurgical Center, Perungudi and after that admitted in the Voluntary Health Service, Adyar and died in the hospital on 15.07.2013. The Insurance Company merely denied all the averments made by the petitioners in the claim statement.

5. In the above circumstances, the Tribunal has arrived at a conclusion that the first respondent driver drove the vehicle in a rash and negligent manner and hit the deceased, therefore the Tribunal had fixed the negligence on the part of the driver of the vehicle, bearing registration No.TN 22 BR 9243 and consequently fixed the compensation of Rs.18,27,000/-

6. Against the award of the Tribunal the claimants and Insurance Company preferred these appeals challenging only the quantum of compensation fixed by the Tribunal. The main issues that have arisen in both the appeals are as follows:-

1. Whether the quantum of compensation fixed by the Tribunal is correct?

7. On behalf of the claimants the below mentioned PWs and exhibits were marked.

Claimants side witnesses:-

PW1 Ramachandran

PW2 M.Balaji (eye witness)

Claimant's side exhibits:-

Ex.P1: FIR copy

Ex.P2: Final Report

Ex.P3: Prescriptions

Ex.P4: Postmortem Certificate

Ex.P5: Legal Heirship Certificate

Ex.P6: Death Report

Ex.P7: Death Certificate

Ex.P8: Medical Bills (objected)

Ex.P9: Voter identity card of PW2

8. However, on the side of the Insurance Company neither any witness nor exhibits were marked before the Tribunal. To substantiate the contention of the PW1 and PW2, the traffic police also registered a criminal case against the driver of the Eichler lorry on the complaint given by the eye witness Balaji and Ex.P1 FIR and Ex.P2 final report also confirm the nature of accident. Since both the appeals filed by the appellants are with regard to quantum of compensation there is no need to go into the issue of negligence in these appeals.

9. We have perused the oral evidence of PW1, PW2 and Ex.P1 copy of FIR, Ex.P3 Post Mortem certificate, Ex.P6 Death Report and Ex.P7 Death certificate of the deceased. In the Post Mortem certificate the age of the deceased was mentioned as 24 years whereas in the claim statement the age of the deceased was mentioned as 23 years. However the Tribunal had rightly took the age of the deceased as 24 years, as mentioned in the post mortem certificate, for the purpose of determination of loss of income of the deceased. We have also perused Ex.P5 the legal heir certificate. As per the legal heir certificate the father and mother are the only legal heirs for the deceased. As per the evidence of PW1 the deceased was earning about Rs.15,000/- per month. However in support of that no documentary evidence was produced before the Tribunal. Under these circumstances, the Tribunal fixed the notional income of Rs.9,000/- per month for the deceased. However we feel that fixing of notional income of Rs.9,000/- by the Tribunal is little low, therefore we inclined to re-fix the same as Rs.10,000/- per month.

10. Now in order to calculate the future prospects it is necessary to refer the judgment of the Hon'ble Apex Court in the

case of National Insurance Company Limited Vs. Pranay Sethi reported in 2017-13 SCALE 12, in which the Hon'ble Apex Court held that if the deceased was having either self employment or fixed salary and below the age of 40 years, 40% of the monthly income to be added as future prospects, thereby 40% of monthly income is added for calculating the pecuniary loss instead of 50% which was wrongly fixed by the Tribunal.

11. Now with regard to the multiplier, the Hon'ble Apex Court in the case of Sarla Verma and others Vs. Delhi Transport Corporation and another reported in 2009 ACJ 1298 SC held that if the person having the age of 20 to 25 years the multiplier of "18" to be taken into account for calculating the loss of dependency. In this case also as per Ex.P3 Post Mortem certificate the age of the deceased was 24 years. Hence we take the multiplier of '18' for the purpose of calculating the loss of earning of the deceased. Further, in order to calculate the personal expenses the Hon'ble Apex Court in the case of Sarla Verma (cited supra) has observed that if the deceased is a bachelor, 50% of the total income to be deducted towards the personal expenses of the deceased. Therefore, we decided to deduct 50% of the total annual income of the deceased.

12. Accordingly, we decided that the monthly income of the deceased would be Rs.10,000/-. Adding a component of 40% for future prospects, the income would stand at Rs.14,000/-. Deducting half of the amount towards personal expenses, the loss of dependency per month works out to Rs.7,000/- (14,000 - 7,000). Applying the multiplier of '18' the total loss of income would work out to Rs.15,12,000/- [(Rs.10,000/- + 40% of Rs.10,000) - (50% of Rs.14,000/-) x 12 x 18]. Further the Tribunal awarded Rs.1,00,000/- each for the 1st and 2nd claimants towards loss of love and affection. However we feel that the said amount is too high therefore we incline to reduce the same to Rs.50,000/- each for the 1st & 2nd appellants herein. As no amount awarded towards "Transportation" by the Tribunal, a sum of Rs.20,000/- is fixed under that caption. The Tribunal awarded a sum of Rs.50,000/- towards "loss of estate" and as per the Constitution Bench's judgment in National Insurance Company Limited V. Pranay Sethi and others, reported in 2017 (2) TN MAC 609 (SC), the same is reduced to Rs.15,000/-. Under the head "Funeral expenses" this Court is inclined to reduce the amount from Rs.25,000/- to Rs.15,000/- as fixed in Pranay Sethi's case (cited supra) by the Hon'ble Supreme Court of India. The Tribunal awarded a sum of Rs.93,384/- towards medical expenses. After considering PW1 deposition and Ex.P8 we confirm the same.

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

Head	Amount (Rs.)
Loss of income	Rs.15,12,000/-
Funeral expenses	Rs.15,000/-
Loss of love and affection to the 1 st appellant	Rs.50,000/-
Loss of love and affection to the 2 nd appellant	Rs.50,000/-
Loss of estate	Rs.15,000/-
Transportation	Rs.20,000/-
Medical Bills	Rs.93,384/-
Total	Rs.17,55,384/-

14. The total amount of compensation of Rs.17,55,000/- (Rounded Off) shall be shared by the appellants 1 and 2 herein in the following manner:-

The mother of the deceased shall receive a sum of Rs.7,55,000/- the father of the deceased shall receive a sum of Rs.10,00,000/-.

15. 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 four weeks from the date of receipt of a copy of this order, after deducting the amount already deposited, if any. 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. On such deposit being made, the Tribunal shall transfer the amount to the claimants bank account through RTGS within a period of one week thereon.

16. Accordingly, CMA.No.2142 of 2017 is dismissed. CMA.No.2559 of 2017 is partly allowed by reducing the award of the Tribunal from Rs.18,26,384/- to Rs.17,55,000/- with interest and costs. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-

Assistant Registrar (CS-V)

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Sub Assistant Registrar

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Motor Accidents Claims Tribunal,

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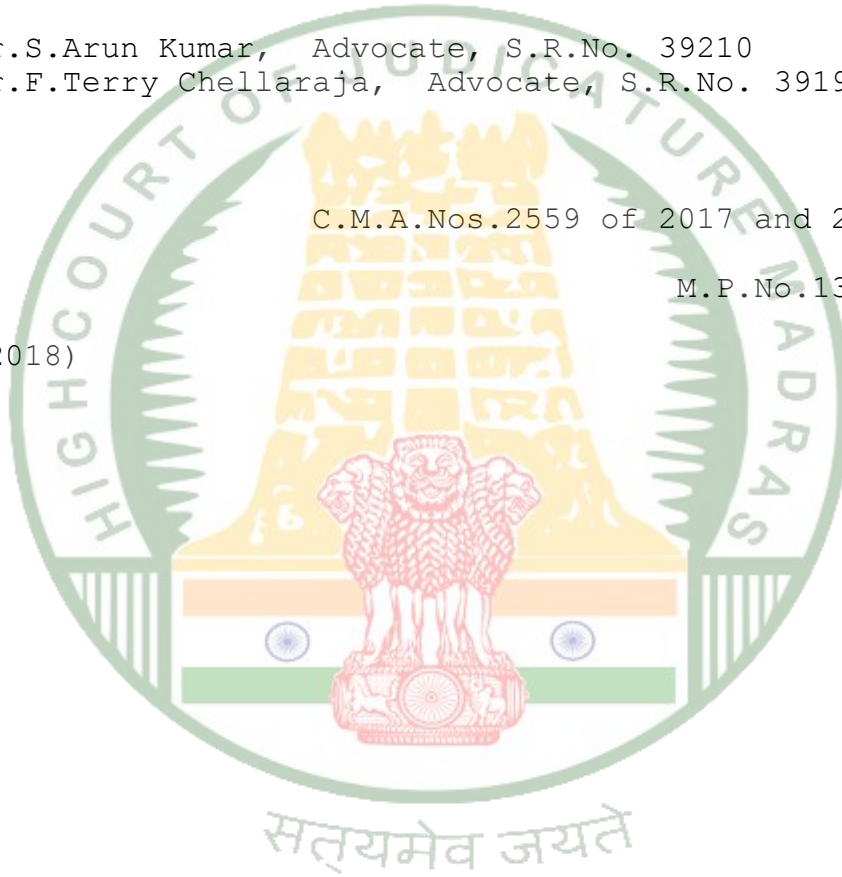
The Section Officer,
VR Section, High Court,
Madras.

+1cc to Mr.S.Arun Kumar, Advocate, S.R.No. 39210

+2cc to Mr.F.Terry Chellaraja, Advocate, S.R.No. 39196

C.M.A.Nos.2559 of 2017 and 2142 of 2017
and
M.P.No.13922 of 2017

SSV(CO)
GN(04/09/2018)



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