IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 30.01.2018

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The Honourable Mr. Justice S.BASKARAN

Civil Miscellaneous Appeal No.2621 of 2017

M/s.Reliance General Insurance Co. Ltd.,
Reliance House, Haddows Road,
Nungambakkam,
Chennai -621034. ... Appellant/2nd Respondent

..vs..

1.D.Subramanian ...1st Respondent/Petitioner
2.T.Kannan ...2nd Respondent/1st Respondent

This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the Award and Decree dated 25.04.2017 made in MCOP.No.804 of 2015 on the file of the Motor Accident Claims Tribunal/III Small Causes Court, Chennai

For Appellant : Mr.S.Arunkumar
For first Respondent : Mrs.P.T.Saleem Fathima for Mr.K.Swamikannu
R2 : Exparte before the Tribunal

JUDGMENT

This civil miscellaneous appeal has been filed by the appellant/2nd respondent Insurance Company to set aside the Fair and Decreetal order dated 25.04.2017 made in MCOP.No.804 of 2015 on the file of the Motor Accident Claims Tribunal/III Small Causes Court, Chennai

2. For sake of convenience, the parties will hereinafter be referred to in this judgment as arrayed before the Tribunal.

3. The case of the petitioner is that on 04.12.2014 at about 17.30 hours, when the deceased Duraisamy was riding his motor cycle bearing Registration NO.TN-45-J-4786, in Manaparai - Kovilpatti Road, the Maxi Cab Van bearing Registration No.TN-05-AT-2473 driven by its driver in a rash and negligent manner at high speed proceeding from north to south overtook number of vehicles came to the extreme western side of the road and dashed against the motor cycle, in which the deceased Duraisamy was

going. Consequently, the said Duraisamy fell down from the motor cycle suffered fatal injuries and passed away at the occurrence spot itself. The petitioner claims himself to be the son of the deceased has come forward with the petition seeking payment of Rs.16,00,000/- as compensation for the untimely death of his father Duraisamy.

4. On the other hand, opposing the petition, the appellant/2nd respondent Insurance Company filed their counter contending that the averments and allegations about the manner of accident is not correct. The age, avocation and income of the deceased was disputed. It is further contended that the compensation claimed under various heads are excessive and exorbitant. It is further stated that only due to the negligence on the part of the deceased, the accident occurred. Hence, the 2nd respondent sought for dismissal of the petition.

5. In order to prove the case before the Tribunal, the petitioner examined P.W.1 and P.W.2 and produced Ex.P1 to Ex.P8. On the side of the respondents, no oral evidence was let in and no document was produced.

6. The Tribunal, after considering the pleadings, oral and documentary evidence, concluded that the accident occurred only due to the rash and negligent driving of the driver of the offending vehicle owned by the first respondent and insured with the second respondent and directed the respondents jointly and severally to pay a sum of Rs.7,00,000/- as compensation. The Tribunal has passed the award as follows:-

Pecuniary Loss	Rs.	5,60,000.00
Loss of love and affection	Rs.	1,00,000.00
Funeral Expenses	Rs.	25,000.00
Transport Expenses	Rs.	15,000.00
Total	Rs.	7,00,000.00

Aggrieved over the impunged order passed by the Tribunal, the second respondent/Insurance Company has filed the present appeal.

7. The learned counsel for the appellant/second respondent Insurance Company contended that the Tribunal has awarded a sum of Rs.7,00,000/- as compensation without any basis and failed to notice the fact that the petitioner is not dependent of the deceased. It is further pointed out that in the absence of any materials to prove the income of the deceased and the fact of the petitioner being dependent of the deceased, the Tribunal has awarded a sum of Rs.5,60,000/- towards pecuniary loss and the

same is not correct. Thus, the learned counsel for the 2nd respondent/appellant Insurance Company contended that the appeal has to be allowed and the award passed by the Tribunal is liable to be set aside.

8. On the other hand, the learned counsel for the petitioner/claimant submitted that the accident occurred only due to the rash and negligent driving of the driver of the first respondent's Maxi cab van and hence he sought for dismissal of the appeal.

9. Considered the rival submissions and perused the materials available on record.

10. The Point for consideration is:-

(i) Whether the accident occurred only due to the rash and negligent driving of the driver of the offending vehicle, namely, Maxi Cab van bearing Registration No.TN-05-AT-2475?

(ii) Whether the Award passed by the Tribunal is just and reasonable?

11. The learned counsel for the appellant/2nd respondent Insurance Company contended that the claims Tribunal without any basis awarded a sum of Rs.7,00,000/- as compensation and the same is to be set aside and the fact that the petitioner was not dependent on the deceased was not considered. It is further pointed out that considering the age of the deceased, the conclusion of the Tribunal that Rs.10,000/- be taken as monthly income of the deceased is unsustainable. In other aspects also, the conclusion of the Tribunal is stated to be not correct and the same is sought to be set aside.

12. On the other hand, the learned counsel for the petitioner/claimant submitted that the accident occurred only because of the negligence of the driver of the first respondent's Maxicab van, who drove the vehicle at high speed in a rash and negligent manner and dashed against the victim resulting in his death. It is evident from the evidence of P.W.2 eye witness to the occurrence and Ex.P1 copy of the first information report, Ex.P2 copy of charge sheet and Ex.P3 copy of rough sketch that the driver of the first respondent vehicle alone is responsible for the accident. Further, the eye witness to the occurrence P.W.1, the son of the deceased has categorically stated that the accident occurred only due to the rash and negligent driving of the driver of the first respondent's vehicle. The evidence of P.W.1 is cogent and clear and the same has not been shattered in the cross examination. The Tribunal after considering the material available on record found that the deceased was aged about 64 years at the time of accident and as per the Apex Court decision reported in [2009] 6 SCC 121 [SARALA VERMA AND OTHERS

Vs. DELHI TRANSPORT CORPORATION AND ANOTHER, for the age group 61 to 65, the multiplier to be applied is 7 and as the deceased is 64 years at the time of accident, the Tribunal applied the multiplier of 7. Further, as the deceased was aged about 64 years, no future prospectus need to be added. The Tribunal has fixed a sum of Rs.10,000/- as notional income of the deceased, who was an agriculturist and also carried on business of provisional stores. The petitioner contends that the Tribunal instead of accepting the evidence of P.W.1, fixed the notional monthly income at Rs.6,500/-, which is not correct. On the other hand, the learned counsel for the second respondent Insurance company contended that there is no document to prove the income of the deceased. In such circumstances, the Tribunal correctly fixed the notional income at Rs.6,500/- and the same needs no interference. However, considering the fact that the deceased was doing agriculture and also running provisional store, this Court is of the view that it would be just and proper to fix the notional monthly income of the deceased at Rs.7,500/- per month and 1/3rd of the said amount deducted towards his personal expenses. The deceased was aged about 64 years and hence the correct multiplier to be applied is 7. Thus, the loss of income of the dependent is calculated as follows:- Rs.7,500/- - deduct 1/3rd amount of Rs,2,500/- = Rs.5,000/- x 12 = Rs.60,000/- x 7 = Rs.4,20,000/-. Following the Apex Court decision reported in 2017 (2) TN MAG 609 (SC) NATIONAL INSURANCE CO. LTD., Vs. PRANAY SETHI AND OTHERS, towards loss of estate, loss of consortium and funeral expenses, this Court is inclined to modify the compensation as under:-

Loss of Estate = Rs.15,000.00
Funeral Expenses = Rs.15,000.00

A sum of Rs.1,00,000/- awarded by the Tribunal under the head of Loss of love and affection and a sum of Rs.15,000/- awarded under the head of Transportation charges is here by set aside. Accordingly, the compensation granted by the Tribunal is modified as follows:-

Sl No	*Heads*	*Amount awarded by the Tribunal*	*Awarded by this Court*
1.	Loss of income	5,60,000.00	4,20,000.00
2.	Loss of love and affection	1,00,000.00	-
3.	Loss of Estate	-	15,000.00
4.	Funeral Expenses	25,000.00	15,000.00
5.	Transportation charges	15,000.00	-
	Total	7,00,000.00	4,50,000.00

13. In view of the above modification, the civil miscellaneous appeal is partly allowed. No costs. The total compensation of Rs.7,00,000/- awarded by the Tribunal in M.C.O.P.No.804 of 2015 dated 25.04.2017 on the file of MACT/III Small Causes Court, Chennai, is reduced to Rs.4,50,000/-. The appellant/Insurance Company is permitted to withdraw the excess amount deposited before the Tribunal along with proportionate interest. The first respondent/claimant is entitled to withdraw the modified compensation along with proportionate accrued interest, less the amount if any already withdrawn, by filing necessary application before the Tribunal.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To
The III Judge, Small Causes Court,
The Motor Accident Claims Tribunal,
Chennai.

+1cc to Mr.S.Arunkumar, Advocate SR.No.7863
+1cc to Mr.M.Swamikannu, Advocate SR.No.6702

C.M.A.No.2621 of 2017

GJII(CO)
sm:28.2.2018