

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.04.2018

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and
THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

C.M.A.No.766 of 2018 and
C.M.P.No.6482 of 2017

M/s.Reliance General Insurance Co. Limited,
Plot No.2054, 2nd Avenue, IIInd Floor,
Next to Senthil Nursing Home,
Anna Nagar, Chennai 600 040. ... Appellant

Vs

1.Malarvizhi
2.Brinda
3.Minor Thenarasi
4.Minor Jayapriya
5.S.Esaivalli
6.R.Jayalakshmi ... Respondents

PRAYER : Civil Miscellaneous Appeal filed against the award and Decree dated 14.03.2017 made in M.C.O.P.No.1448 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.K.Premkumar

J U D G M E N T

(Judgment of the Court was delivered by N.KIRUBAKARAN, J)

The appeal has been preferred by the Insurance company against the award of Rs.21,04,000/- as compensation for the death of one Mr.S.Sripathi, Police Head Constable, aged about 41 years, earning about Rs.12,000/- per month, in the accident which occurred on 05.06.2007, when he was enquiring the occupants of a car in discharge of his duty, the offending car, which was going from Pondicherry to Chennai, driven rashly and negligently dashed against the him.

2.Heard Mr.S.Arunkumar, learned counsel appearing for the appellant and Mr.K.Premkumar, learned counsel appearing for the claimants.

3.The only question to be decided is with regard to quantum.

4.Mr.S.Arunkumar, learned counsel appearing for the insurance company would submit that the Tribunal based on Ex.P.6, pay certificate, rightly determined the monthly income at Rs.9,333/- and added 30% towards future prospects and determined the monthly income at Rs.12,132/- (9333 + 30% of 9333) and deduction 1/4th was applied as the size of the family of the victim was five. Similarly, right multiplier of "14" was adopted as the age of the victim was 41 years and loss of income was determined at Rs.15,28,632/- (12132- (1/4 of 12132) x 12 x 14). The said determination is according to law.

5.As far as loss of love and affection is concerned, the Tribunal awarded a sum of Rs.4,00,000/-, which according to Mr.S.Arunkumar, learned counsel appearing for the appellant is contrary to the Constitution Bench's judgment of the Honourable Apex Court in National Insurance Company Limited V. Pranay Sethi and others, reported in 2017 (2) TN MAC 609 (SC). Since the constitution bench's judgment has come subsequently, quantum of compensation awarded towards loss of love and affection has to be reduced. The children especially, 3 and 4 are aged about 13 and 7 years and they lost their father at a very young age. The role of father cannot be substituted by anybody. The care, love and affection, guidance, which is expected from a father cannot be given by anybody. Care, love and affection, moral support, which is shown by the father is akin to consortium. Therefore, the Honourable Supreme Court having granted Rs.40,000/- towards loss of consortium to the spouse would not have meant that any amount could not be given to the children and parents of the victim. Therefore, for respondents 2 to 4, a sum of Rs.50,000/- each is awarded and totally, a sum of Rs.1,50,000/- is awarded towards loss of love and affection to respondents 2 to 4 and Rs.25,000/- is awarded towards loss of love and affection to the 5th respondent/mother of the victim. Similarly, Rs.50,000/- awarded towards loss of estate by the Tribunal is reduced to Rs.15,000/-; Rs.1,00,000/- awarded towards loss of consortium to the 1st respondent by the Tribunal is reduced to Rs.40,000/- and Rs.25,000/- awarded towards funeral expenses by the Tribunal is reduced to Rs.15,000/-.

6.Hence, the total compensation awarded in this case is Rs.17,73,632/-, rounded off to Rs.18,00,000/-

Head	Amount (Rs.)
Loss of income	1528632
Loss of consortium	40000
Loss of love and affection	175000

Head	Amount (Rs.)
Funeral expenses	15000
Loss of estate	15000
	1773632

7.The rate of interest awarded by the Tribunal at 7.5 % per annum remains unaltered. Out of the award amount, the 1st respondent is entitled to get Rs.8,00,000/-; 5th respondent is entitled to get Rs.1,00,000/- and the respondents 2 to 4 are entitled to get Rs.3,00,000/- each.

8.The appellant is directed to deposit the entire amount along with interest and costs, as per the order of this Court, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the Tribunal is directed to transfer the respective shares of the respondents 1, 2 and 5 to their respective accounts through RTGS, within a period of one week thereon. Since the 3rd and 4th respondents are minor, their shares shall be deposited in interest bearing fixed deposits in any of the nationalised banks until they attain majority. The 1st respondent, being the mother of the minors, is permitted to withdraw the interest accruing on such deposit once in three months.

9.With the above directions, this Appeal is partly allowed. Consequently connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

The II Judge,
Motor Accident Claims Tribunal,
II Court of Small Causes, Chennai.

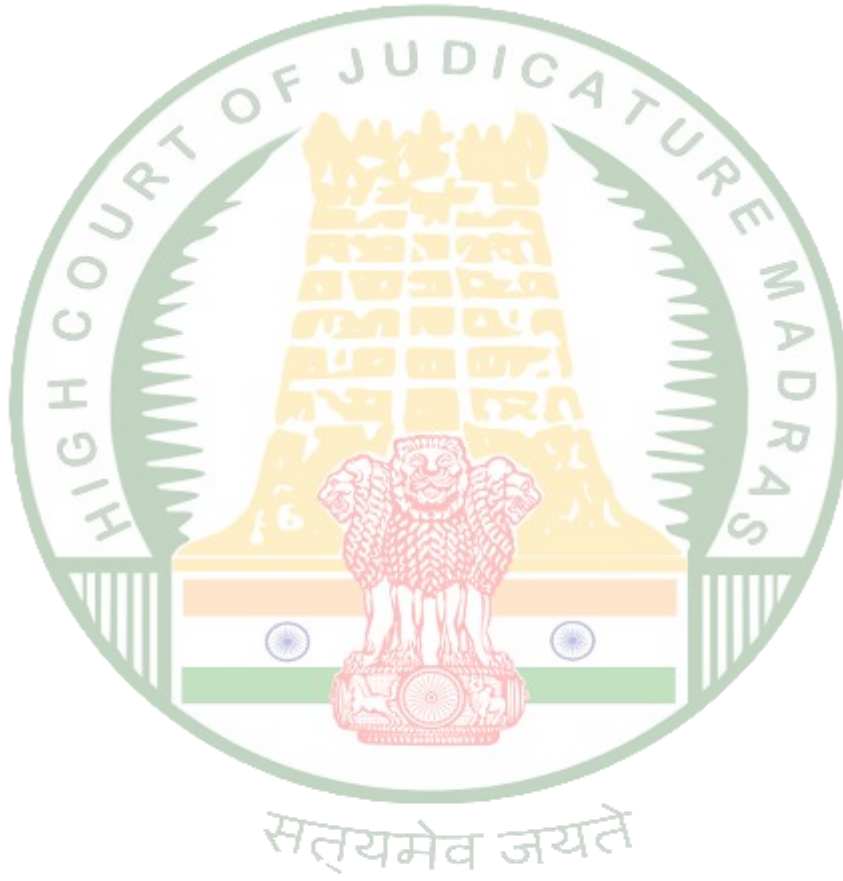
Copy to

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

+lcc to Mr.S.Arun Kumar, Advocate sr.no.27818

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