IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 20.04.2018

CORAM:

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

C.M.A. No.930 OF 2018
&
Connected Miscellaneous Petitions

M/s.Reliance General Insurance
Company Limited,
The Registered Office,
No.19, Reliance Centre,
Watchand Hirachand Marg,
Ballard Estate,
Mumbai - 400 001. .. appellant / 3rd respondent

versus

1.K.Thiyagarajan
2.T.Suseela
3.T.Siyamala Gowri .. respondents 1 to 3 / petitioners

4.Murugan
5.M/s.XPS Cargo Services,
TCI House, No.69,
INSTIT Area, Sector - 32,
Gurgaon, Haryana. .. respondents 4 & 5 / respondents 1 & 2

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 13.02.2017 made in M.C.O.P.No.622 of 2011 on the file of the Motor Accident Claims Tribunal [IV Additional District Court], Erode District at Bhavani.

For Appellant : Mr.Mohan Babu
for Mr.M.B.Gopalan Associates

For Respondent Nos.1 to 3 : Mr.Ma.P.Thangavel

J U D G M E N T

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

This Civil Miscellaneous Appeal is directed against the order dated 13.02.2017 in M.C.O.P.No.622 of 2011, whereby the Tribunal has awarded compensation of Rs.14,28,000/- to the claimants, who are the parents and sister of the deceased, namely, Rajeshkumar, who died in a road accident on 18.05.2010.

2. The brief facts are that, on 18.05.2010 at about 7.30p.m. one Ravichandran drove the Motor Cycle bearing Registration No.TN-36-H-9043 along with the deceased Rajeshkumar, as pillion rider and with moderate speed and observing the traffic rules. At that time, near AVS Thirumana Mandapam, the fourth respondent drove the Lorry bearing Registration No.HR-38-G-1257 with very high speed and negligent manner came from same direction and hit behind the deceased. Due to the accident, the deceased Rajeskumar died on the spot. At the time of his death, he was aged 21 years. He was working as R & D Manager in Kumar Agro Agencies, Private Fertilizers and Pesticides Company and earned a sum of Rs.20,000/- per month. The appointment order of the deceased was marked as Ex.X-2 and the Pay Certificate was marked as Ex.X-3. Regarding the accident, a criminal case was registered in Crime No.468 of 2010 of Komarapalayam Police Station for the offences punishable under Sections 279, 304[A] of IPC alleging that the accident had happened due to the rash and negligent driving of the fourth respondent. The claimants, who are the dependants of the deceased Rajeshkumar filed a Claim Petition claiming compensation of Rs.20,00,000/-. After elaborate enquiry, the Claims Tribunal awarded compensation of Rs.14,28,000/- with interest at the rate of 7.5% per annum, against which, the present appeal has been preferred.

3. Before the Tribunal, the first respondent / K.Thiyagarajan was examined as P.W.1. One Palanisamy was examined as P.W.3, who has stated in his evidence about the alleged accident. Further, the copy of the First Information Report, Rough Sketch, Observation Mahazar, M.V. Report, and the Postmortem Certificate of the deceased Rajeshkumar had been marked as Ex.P.1 to Ex.P.5 on the side of the claimants. None was examined on the side of the appellant and no document was marked on their side.

4. The Claims Tribunal, after analysing the evidence given by P.W.1 [K.Thiyagarajan] and P.W.3 [Palanisamy] and after going through Ex.P.1 to Ex.P.5 came to the conclusion that the alleged accident had happened due to the rash and negligent driving of the fourth respondent. Further held that, the owner of the vehicle and the appellant being the insurer are jointly

and severally liable to pay compensation. Even though the negligence and liability was disputed by the learned counsel appearing for the appellant in the Claims Tribunal, in order to prove the same, nobody was examined, thereby, we hold that the accident had happened only due to the rash and negligent act of the fourth respondent. Further, the Claims Tribunal awarded Rs.13,68,000/- towards Loss of Income, Rs.40,000/- towards Loss of Love and Affection and Rs.10,000/- each was awarded under the heads of Funeral Expenses and Transportation and totally Rs.14,28,000/- was determined as compensation to the claimants / respondents 1 to 3.

5. It is not necessary for us to narrate the entire facts in detail, who is liable to pay the compensation and also coverage of the Policy. It is for the reason that these aspects are recorded in favour of the claimants and consequently none of the findings are under challenge, only the quantum is under dispute in this Appeal.

6. Now, on going through the findings of the Claims Tribunal with regard to the Loss of Dependency, the Claims Tribunal has fixed the monthly income of the deceased as Rs.8,000/-. Moreover, the evidence given by P.W.1 [K.Thiyagarajan] is that before the death the deceased Rajeshkumar was working as R & D Manager in Kumar Agro Agencies, Private Fertilizers and Pesticides Company and earned Rs.20,000/- per month. In order to substantiate the same, one Gugan [P.W.4], Superintendent of Kumar Agro Agencies deposed that the deceased was working as a Manager/Field Officer in their Agency and was paid total emoluments of Rs.20,000/- per month. The appointment order of the deceased was marked as Ex.X-2 and the Pay Certificate was marked as Ex.X-3, wherein it has been certified that the deceased was paid Rs.12,000/-, T.A and other allowances of Rs.4,000/- each in all a sum of Rs.20,000/-. Moreover, the license issued to Kumar Agro Agency for doing seed commerce was marked as Ex.X-4. However, P.W.4 [Gugan] admitted in the cross examination that Ex.X-2 and Ex.X-4 were created after the death of Rajeshkumar. In the said circumstances, it is not easy to hold the entire evidence of P.W.4, thereby, this Court determines Rs.10,000/- as the monthly income of the deceased.

7. In order to calculate the Future Prospects, it is necessary to follow the judgment of the Constitution Bench in the case of NATIONAL INSURANCE COMPANY LIMITED vs. PRANAY SETHI AND OTHERS reported in 2017 ACJ 2700, in which, our Honourable Apex Court has held that if a person is self-employed and under the age of 40 years, 40% of the established monthly income to be the Future Prospects for calculating the Loss of Dependency. In this case, as per the Postmortem Certificate [Ex.P-5], the age

of the deceased was 21 years. Further, we cannot hold that the job provided by the Kumar Agro Agencies is not a permanent one, thereby, if the deceased is under the category of self employed, the Future Prospects of the deceased is calculated as Rs.4,000/-. So, the notional income of the deceased is fixed as Rs.14,000/- per month.

8. Considering the deduction towards Personal Expenses, it is necessary to see the judgment of SARLA VERMA vs. DELHI TRANSPORT CORPORATION reported in (2009) 6 SCC 121. Now, in this Appeal according to the evidence given by P.W.1, the deceased was a Bachelor, thereby, it is necessary to deduct 50% of the Notional Income towards Personal Expenses of the deceased. Accordingly, Rs.7,000/- is deducted. In the above way, we are of the considered view that it would be appropriate to take Rs.7,000/- per month as pecuniary loss to the family of the claimants.

9. Coming to the choice of multiplier, at the time of accident, the deceased Rajeshkumar was aged 21 years, the same was proved through the Leaving Certificate of the deceased, which was marked as Ex.P.10 issued by the Tamilnadu Agricultural University, wherein the deceased last studied. Taking into consideration of the age of the deceased, the Tribunal had adopted 19 as the proper multiplier. According to the judgment of Sarla Verma's case [stated supra], if a person in-between the age of 21-25, the appropriate multiplier is 18. Accordingly, the Loss of Dependency is calculated as follows:

Loss of Dependency	::	Rs.7,000 x 12 x 18
	::	Rs.15,12,000/-

10. In so far as the conventional damages, as per the case of NATIONAL INSURANCE COMPANY LIMITED vs. PRANAY SETHI AND OTHERS reported in 2017 ACJ 2700, the respondents 1 to 3 are entitled to get Rs.15,000/- under the head of Funeral Expenses and Rs.15,000/- towards Loss of Estate. In this aspect, the learned counsel appearing for the respondents 1 to 3 argued that losing their son in their elderly age and losing the brother in a young age cannot be compensated by any way. The deceased Rajeshkumar is the only son to the respondents 1 and 2. Now due to the said accident, they lost their son. Further, after the marriage of the third respondent, the respondents 1 and 2 being the parents could expect only others help, thereby, he prayed to allow some amount towards Loss of Love and Affection.

11. Now, on considering the arguments advanced by the learned counsel appearing for the respondents 1 to 3, it is true that the said submission is quite natural. So, the above loss is nothing but akin to the Loss of Consortium given to the wife,

thereby, we decided to award Rs.1,00,000/- towards Loss of Love and Affection. Thus, the compensation awarded by the Tribunal is enhanced to Rs.16,42,000/- as under:

Head	Amount (Rs.)
Loss of Dependency	15,12,000.00
Funeral Expenses	15,000.00
Loss of Estate	15,000.00
Loss of Love and affection	1,00,000.00
Total	16,42,000.00

12. Accordingly, the compensation arrived at by the Claims Tribunal is modified to the extent of Rs.16,42,000/-. The modified compensation of Rs.16,42,000/- has to be apportioned among the claimants equally. The rate of interest awarded by the Tribunal at 7.5 % per annum remains unaltered. Though the Insurance Company has filed the appeal, the facts and circumstances enable this Court to enhance the compensation. Accordingly, award of the Tribunal (i.e.,) Rs.14,28,000/- is enhanced to Rs.16,42,000/- invoking Order 41 Rule 33 of CPC and Section 151 and Article 227 of Constitution of India. The provisions of the Motor Vehicles Act are benevolent in nature and what is required to be awarded is just and reasonable compensation. Therefore, even in the absence of appeal/cross-appeal by the claimant, this Court has got power and jurisdiction to enhance the compensation, which has been recognised by the Honourable Supreme court in Nagappa V. Gurdayal Singh reported in 2004 (2) TN MAC 398 (SC).

13. The appellant/Insurance Company is directed to deposit the entire award amount along with interest and costs after deducting the amount already paid, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the said amount to the Bank Account of the respondents 1 to 3 / claimants through RTGS/NEFT within a period of one week.

14. In the result, the Civil Miscellaneous Appeal is disposed of enhancing the compensation of Rs.14,28,000/- to Rs.16,42,000/-. Consequently connected Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar(CS II)

//True copy//

Sub Assistant Registrar

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TO

The Motor Accident Claims Tribunal
[IV Additional District Court],
Erode District at Bhavani.

COPY TO

The Record Keeper,
VR Section, High Court,
Madras.

+1cc to Mr.Ma.P.Thangavel, Advocate SR.No.30458
+1cc to Mr.M.B.Gopalan Associates, Advocate SR.No.29701

C.M.A. No.930 OF 2018

RJI(CO)
GN(12/06/2018)