

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.11.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CMA.No.1904 of 2018
and CMP No.14654 of 2018

M/s.Reliance General Insurance Company Ltd,
Reliance House, 6th Floor,
No.6, Haddows Road,
Nungambakkam,
Chennai 600 006. ... Appellant/3rd Respondent

-vs-

1. D.Devaki

[M.Durai - (Died)] .. 1st Respondent / Petitioner

2. Jayel Cargo Movers,
Room No.7, Door No.100,
Croal Merchant Street,
3rd Floor, Chennai 600 001.

3. S.Elangovan ... Respondents 2 &3/
Respondents 1 &2

Civil Miscellaneous Appeal filed under Section 173, of
the Motor Vehicles Act, 1988, against the Judgment and
decree in MCOP No.2021 of 2010, dated 22.09.2017 on the
file of the Motor Accidents Claims Tribunal, V Court of
Small Causes, Chennai.

For Appellant : Mr. M.B.Raghavan
M/s.M.B.Gopalan Associates

For Respondents : Mr. S.Srinivasa Narayanan for R1

J U D G M E N T

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

The Insurance Company which suffered an award for
payment of a sum of Rs.13,73,000/- for the death of one
Selvakumar, in a motor accident that occurred on
05.11.2008, is the appellant.

2. According to the claimants, while the deceased was travelling as a pillion rider in the motorcycle bearing Registration No.TN 03 1847, in Thiruvottiyur High Road, a lorry bearing Registration No.TN 28 AC 0840, driven in a rash and negligent manner by its driver, came from behind and dashed against motor cycle. As a result of the impact, the pillion rider was thrown off the vehicle and the lorry ran over him, causing his death instantaneously. Terming the rash and negligent driving of the lorry as the cause of the accident, the parents of the deceased sought for a compensation of Rs.13,00,000/-. The claimants would contend that the deceased who was Diploma Holder in Civil Engineering and he was working as a Civil Engineer in M/s. Kalpatharu Marketing Vision (P) Ltd., drawing a salary of Rs.9,000/- per month.

3. The Claim Petition was resisted by the Insurance Company contending that the accident did not occur due to the rash and negligent driving of the lorry by its driver. According to the Insurance Company, it was the rider of the two-wheeler, who, by his negligent driving, contributed to the accident. The Insurance Company also denied the educational qualification and quantum of income as stated in the petition.

4. The Tribunal, on a consideration of the evidence on record found that the accident occurred due to the rash and negligent driving of the driver of the lorry. In coming to the said conclusion, the Tribunal relied upon the FIR which was marked as Ex.P1, Charge Sheet which was marked as Ex.P5, Rough Sketch which was marked as Ex.P6. The evidence of P.W.2 was also taken into account. The Tribunal also faulted the Insurance Company for not examining the driver of the lorry, in support of its claim of absence of negligence on the part of the driver of the lorry.

5. On the quantum, though a salary certificate issued by the employer was marked as Ex.P11, since the author of the document was not examined, the Tribunal took the notional income at Rs.7,000/-. The Tribunal added 50% towards future prospects and fixed the annual income at Rs.1,26,000/-. The Tribunal deducted 50% towards personal expenses of the deceased since he was a Bachelor and the claimants were parents, applied a multiplier of 18 and worked out the loss of dependency at Rs.11,34,000/-. The Tribunal also awarded a sum of Rs.1,00,000/- towards loss of love and affection, Rs.1,00,000/- towards loss of expectation of life, Rs.10,000/- towards transport to hospital, Rs.4,000/- towards damage to clothing and other articles and Rs.25,000/- towards funeral expenses. Thus, the total award worked out to Rs.13,73,000/-.

6. We have heard Mr.M.B.Raghavan, learned counsel appearing for M/s.M.B.Gopalan Associates for the appellant/Insurance Company and Mr.S.Srinivasa Narayanan, learned counsel appearing for the 1st respondent/claimant, mother of the deceased. The father of the deceased Durai had died during the pendency of the Original Petition. The owner of the lorry, namely the 2nd respondent and the owner of the two-wheeler, the 3rd respondent remained ex-parte before the Tribunal and hence notice to them in this appeal is dispensed with.

7. Mr.M.B.Raghavan, learned counsel appearing for the Insurance Company would contend that the Tribunal was not right in taking the monthly income at Rs.7,000/- after having disbelieved the salary certificate, which was marked as Ex.P11. He would further contend that the addition of 50% towards future prospects made by the Tribunal is not inconsonance with the judgment of the larger Bench of the Hon'ble Supreme Court in National Insurance Company Ltd., Vs. Pranay Sethi reported in 2018 1 LW 331. Mr.M.B. Raghavan, would also fault the Tribunal for awarding a sum of Rs.1,00,000/- towards loss of love and affection and Rs.1,00,000/- towards loss of expectation of life.

8. Contending contra, Mr.S.Srinivasa Narayanan, learned counsel appearing for the claimant/1st respondent would submit that the overall award of the Tribunal is just and reasonable.

9. We have considered the rival submissions.

10. As regards the question of negligence, we see no ground to interfere with the findings of the Tribunal, since the same is based on a valid documentary evidence in the form of FIR and the Charge Sheet. The Insurance Company has not examined the driver of the lorry which would render its defence regarding negligence very weak. We therefore confirm the findings of the Tribunal on the question of negligence.

11. On the quantum, we find that the Tribunal has adopted the monthly notional income at Rs.7,000/- and added 50% towards future prospects. This, in our opinion, is not justified, in view of the pronouncement of the larger Bench of the Honble Supreme Court in Pranay Sethi, cited supra. We therefore conclude that the proper addition for future prospects should be only at 40%. We find that the notional income assessed by the Tribunal at

Rs.7,000/- per month is marginally low. Admittedly, the deceased was having Diploma in Civil Engineering. Therefore, he would have earned at least Rs.250/- per day, i.e. 7,500/- rupees per month. We therefore take the monthly income at Rs.7,500/-. Thus worked the loss of dependency would be

$$\text{Rs.7,500/-} + 40\% - \frac{1}{2} \times 12 \times 18 = \text{Rs.11,34,000/-}$$

12. We also find that the award under the heads of loss of love and affection and loss of expectation of life is on higher side. We therefore reduce the same to Rs.40,000/- each. The awards under the heads of Transport to hospital, damage to clothing and funeral expenses are confirmed. The Tribunal has not awarded any amount towards loss of estate. We therefore award a sum of Rs.15,000/- towards loss of estate. Thus worked, the total compensation would be Rs.12,68,000/-.

The breakup details are as follows:

S.No	Heads	Amount
1.	Loss of Dependency	Rs.11,34,000/-
2.	Loss of love and affection	Rs.40,000/-
3.	Loss of Expectation of Life	Rs.40,000/-
4.	Transport to Hospital	Rs.10,000/-
5.	Damage to clothing	Rs.4,000/-
6.	Funeral Expenses	Rs.25,000/-
7.	Loss of estate	Rs.15,000/-
	TOTAL	Rs.12,68,000/-

13. In view of the above, the appeal is partly allowed. The award of the Tribunal is reduced to Rs.12,68,000/-. The award will carry interest at 7.5% per annum from the date of petition till date of payment. There shall be no order as to costs in this appeal. Consequently, the connected miscellaneous petition is closed.

14. The Insurance Company is directed to deposit the award amount as per the modified award, less the amount, if any, already deposited within a period of six (6)

weeks from the date of receipt of a copy of the judgment. On such deposit, the 1st claimant, namely, the 1st respondent is permitted to withdraw the entire compensation.

Sd/-
Assistant Registrar (Co)

//True Copy//

Sub Assistant Registrar

jv
To

The Motor Accidents Claims Tribunal,
V Court of Small Causes,
Chennai

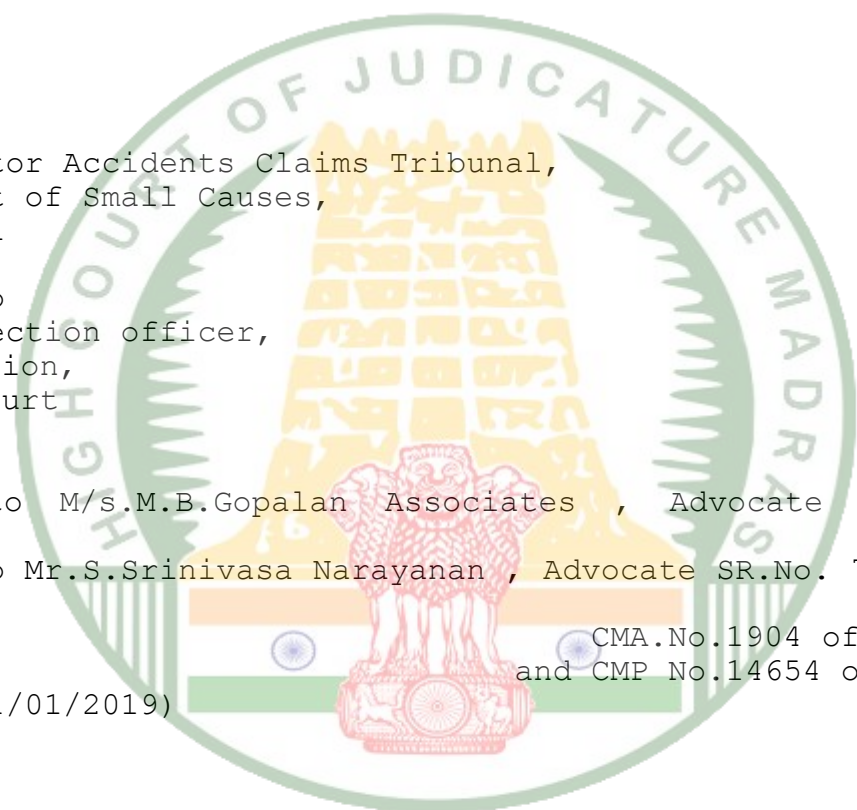
copy to
The section officer,
VR Section,
High court
Madras

+1cc to M/s.M.B.Gopalan Associates , Advocate SR.No. 764547

+1cc to Mr.S.Srinivasa Narayanan , Advocate SR.No. 75443

CMA.No.1904 of 2018
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A.SK(21/01/2019)

The seal of the High Court of Madras is a circular emblem. It features a central yellow temple gopuram (tower) with a red lion capital on top. The gopuram is flanked by two green palm trees. The words "HIGH COURT OF JUDICATURE MADRAS" are written in a green circle around the central image. Below the gopuram is a red lion capital on a base. At the bottom of the seal, the Sanskrit motto "सत्यमेव जयते" (Satyameva Jayate) is written in Devanagari script.

सत्यमेव जयते

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