

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.11.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.Nos.2710 of 2017 & 2719 of 2018
and C.M.P.No.20573 of 2018

1.Manimegalai

2.Jayapal

... Appellants in C.M.A.No.2710/2017

Reliance General Insurance Co. Ltd.,
Sree Lakshmi Complex, First Floor,
Bharathi Street, Omalur Main Road,
Swarnapuri, Salem-4.

... Appellant in C.M.A.No.2719/2018

Vs.

1.Mariappan

2.M/s.Reliance General Insurance Co. Ltd.,
Sree Lakshmi Complex, First Floor,
Bharathi Street, Omalur Main Road,
Swarnapuri, Salem -4.

... Respondents in C.M.A.No.2710/2017

1.Manimegalai

2.Jayapal

3.Mariappan

... Respondents in C.M.A.No.2719/2018

Common Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988 against the award and decree dated 21.02.2017 made in M.C.O.P.No.138 of 2014, on the file of Special District Judge, (Motor Accidents Claims Tribunal), Salem.

(In C.M.A.No.2710/2017)

For Appellants : Dr.P.Jagadeesan

For R1 : No appearance

For R2 : Mr.S.Arunkumar

(In C.M.A.No.2719/2018)

For Appellant : Mr.S.Arunkumar

For R1 & R2 : Dr.P.Jagadeesan

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

This Civil Miscellaneous Appeal has been filed against the award dated 21.02.2017, made in M.C.O.P.No.138 of 2014, on the file of Special District Judge, (Motor Accidents Claims Tribunal), Salem.

2.Both the appeals are arising out of the common award and hence, they are disposed of by this common judgment. The parties are referred to as per their rank in the claim petition.

3.The claimants filed M.C.O.P.No.138 of 2014, on the file of Special District Judge, (Motor Accidents Claims Tribunal), Salem, claiming a sum of Rs. 20,00,000/- as compensation for the death of one Jeevanandam, husband of the 1st claimant and son of the 2nd claimant, who died in the accident that took place on 17.06.2013.

4.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to negligence of both the riders and directed the 2nd respondent-Insurance Company to pay a sum of Rs.5,85,000/- as compensation to the claimants, fixing negligence.

5.Not being satisfied with the compensation granted by the Tribunal, the claimants have come out with appeal in C.M.A.No.2710 of 2017.

6.Aggrieved by the said award, the Insurance Company has come out with appeal in C.M.A.No.2719 of 2018.

7.The learned counsel appearing for the claimants contended that the Tribunal failed to appreciate the evidence of P.W.2, independent eye-witness. The Tribunal erred in relying on Ex.P1, FIR and interested witness R.W.1, 1st respondent and erroneously held that riders of both the vehicles are responsible for the accident. The Tribunal ought to have seen that FIR was not lodged by R.W.1. His signature was obtained and false FIR was registered by the Police. The Tribunal has not adopted proper method of calculation. The Tribunal ought to have fixed the entire negligence on the part of the driver of the other vehicle and awarded entire compensation to the claimants.

8.The learned counsel appearing for the 2nd respondent-Insurance Company/appellant in C.M.A.No.2719 of 2018 contended that presence of P.W.2 in the accident spot was not proved. P.W.2 has given false evidence. The Tribunal failed to see that the claimants did not dispute that FIR was lodged against the deceased and 1st respondent has filed claim petition in M.C.O.P.No.1833 of 2013 against the owner and insurer of the motor cycle bearing Registration No.TN 30 AR 0830, driven by the deceased. The said claim petition was settled in the Lok Adalat, granting compensation to the 1st respondent, admitting the negligence on the part of the deceased. The Tribunal failed to properly appreciate the evidence of R.W.1, who is the eye-witness and fixed the notional income of the deceased at Rs.10,000/-, without any basis.

9.Heard the learned counsel for the claimants as well as the 2nd respondent-Insurance Company and perused the materials on record.

10.It is the case of the claimants that the 1st respondent drove the motor cycle in a rash and negligent manner and dashed against the motor cycle bearing Registration No.TN 30 AR 0830, driven by the deceased and caused the accident. By influencing the police, false FIR was registered against the deceased. It is the case of the 1st respondent as R.W.1 that the deceased came from behind, driving his motor vehicle in a rash and negligent manner and dashed against the motor cycle driven by the 1st respondent and caused the accident. In the FIR, the 1st respondent did not state that deceased came from behind and dashed behind the motor cycle driven by him. P.W.2, who is an independent witness has stated that the 1st respondent came from side street and hit the motor cycle driven by the deceased. R.W.1 has stated that the police examined him in the hospital. The claimants have not filed any objection with the police or higher authorities that a false FIR was registered against the deceased. Considering all the above facts, the Tribunal has held that both the riders of the motor cycles are negligent and responsible for the accident and fixed negligence at 50:50. The reasons given by the Tribunal are valid and there is no reason to interfere with the said finding.

11.As far as the quantum of compensation awarded by the Tribunal is concerned, the claimants have not produced any acceptable evidence to substantiate their claim that the deceased was earning Rs.12,000/- per month at the time of accident. Hence, the Tribunal fixed the notional income of the deceased at Rs.10,000/- per month. The deceased was 22 years at the time of accident. However, the Tribunal has not given any addition towards future prospects. Hence, the claimants are

entitled to 40% addition for future prospects. By deducting 50% towards personal expenses of the deceased and applying the multiplier of '18', the loss of income is modified to Rs.15,12,000/- {[Rs.10,000/- + Rs.4,000/- (40% of Rs.10,000)] x 12 x 18 x ½}. The Tribunal has granted excessive amount towards funeral expenses. The same is reduced to Rs.15,000/-. The amount granted by the Tribunal towards loss of love and affection is meagre and the same is enhanced to Rs.40,000/-. The Tribunal failed to grant any amount towards loss of estate. Hence, a sum of Rs.15,000/- is granted towards loss of estate. Thus, the compensation awarded by the Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of income 50% of the amount=	10,80,000/- 5,40,000/-	15,12,000/-	Enhanced
2.	Funeral expenses	25,000/-	15,000/-	reduced
3.	Loss of love and affection	20,000/-	40,000/-	Enhanced
4.	Loss of estate	-	15,000/-	granted
	Total	5,85,000/-	15,82,000/-	enhanced by Rs.2,06,000/-
			50% of the award amount= 7,91,000/-	

12. In the result, both these Civil Miscellaneous Appeals are partly allowed and the compensation awarded by the Tribunal is enhanced to Rs.15,82,000/- with interest and costs and the claimants are entitled to 50% of the compensation. The 2nd respondent-Insurance Company is directed to pay 50% of the award amount, together with interest and costs. The claimants are entitled to Rs.7,91,000/- (50% of the award amount) with interest and costs. The 2nd respondent-Insurance Company is directed to deposit the enhanced award amount of Rs.7,91,000/- with interest, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the claimants are permitted to withdraw their share with accrued interest and costs, as per the ratio of

apportionment fixed by the Tribunal, after adjusting the amount, if any, already withdrawn. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

gsa

To

1.The Special District Judge,
(Motor Accidents Claims Tribunal), Salem.

2.The Reliance General Insurance Co. Ltd.,
Sree Lakshmi Complex, First Floor,
Bharathi Street, Omalur Main Road,
Swarnapuri, Salem-4.

+2cc to Dr.P.Jagadeesan, Advocate Sr.81710, 81709 [09/07/2019]

+1cc to M/S.S.Arunkumar, Advocate Sr.81489 [09/07/2019]

C.M.A.Nos.2710 of 2017 & 2719 of 2018
and C.M.P.No.20573 of 2018

srg 14/06/2019

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