

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.10.2018

CORAM:

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

CMA.No.2987 of 2017
and CMP 17628 of 2017

M/s. Reliance General Insurance
Company Limited,
Rai Tower, Plot No.2054,
2nd Avenue, 2nd Floor,
Anna Nagar, Chennai 600 040. Appellant/2nd Respondent

-vs-

1. P.Panchatcharam
2. P.Rajesh
3. P.Radhika
4. P.Venkatesan ...Respondents 1 to 4/Claimants
5. R.Selvakumar ...5th Respondent/1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and decree dated 25.11.2016 made in MCOP No.7084 of 2013, on the file of the Motor Accidents Claims Tribunal, II Court of Small Causes, Chennai.

For Appellant : Mr.Mohanbabu
for M/s. M.B.Gopalan Associates

For Respondent : Mrs. Subathra
for M/s.M.Malar for RR 1 to 4

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 a sum of Rs.16,16,000/- for the death of one Dilli Rani, in a motor accident that occurred on 23.09.2013, has come forward with this appeal challenging the quantum of compensation awarded.

2. According to the claimants, the accident occurred at about 8.30 a.m. when the deceased was walking along the Vandalur Kandigai road, a motor cycle bearing Registration No.TN-19-E-7845, driven by its rider cum owner/5th respondent in the appeal, dashed against her causing grievous injuries, resulting in her death. Contending that the accident occurred due to the rash and negligent driving of the rider of the two wheeler, the claimants who are the husband and children of the deceased claimed the compensation of Rs.30,00,000/-.

3. The Insurance Company resisted the claim contending that the accident did not occur due to the rash and negligent driving of the two wheeler. According to the Insurance Company, it was the deceased who crossed the road without looking for any on coming vehicles which resulted in the accident. The Insurance Company also disputed the quantum of compensation claimed.

4. The Motor Accident Claims Tribunal which heard the Original Petition, found that the accident occurred due to the rash and negligent driving of the rider of the two wheeler on the basis of the First Information Report filed as Ex.P1 and the evidence of P.W.2 an eye witness. The Tribunal also took note of the fact that the Insurance Company has not chosen to examine the rider of the two wheeler to disprove the contents of the FIR and the evidence of P.W.2.

5. On the quantum, the Tribunal took the monthly notional income at Rs.7,500/-. Adding 30% towards future prospects, the Tribunal arrived at the monthly notional income for the purposes of calculation of loss of dependency at Rs.9,750/-, deducting one fourth towards personal expenses and applying a multiplier of 13, the Tribunal arrived at the total pecuniary loss at Rs.11,40,828/-. Apart from the loss of dependency, the Tribunal awarded a sum of Rs.3,00,000/- towards loss of love and affection, Rs.50,000/- towards loss of estate, Rs.1,00,000/- towards loss of consortium and Rs.25,000/- towards funeral expenses, totalling to Rs.16,15,828/-. The same was rounded off to Rs.16,16,000/-.

6. We have heard Mr.Mohanbabu, learned counsel appearing for M/s.M.B.Gopalan Associates for the appellant/Insurance Company and Mrs.Subathra, learned counsel appearing for M/s.M.Malar, for Respondents 1 to 4. The 5th respondent, the owner of the two wheeler had remained ex-parte before the Tribunal and hence notice to the 5th respondent in this appeal is dispensed with.

7. Mr.Mohanbabu, learned counsel appearing for the appellant Insurance Company would contend that the Tribunal was not right in taking the income at Rs.7,500/- and adding future prospects at 30%. According to him future prospects would be only 25% since the deceased was aged about 60 years. He would also submit that the award of compensation under the conventional heads, namely loss of consortium and loss of love and affection are on the higher side, in view of the parameters suggested by the Larger Bench of the Hon'ble Supreme Court in National Insurance Company Ltd., Vs. Pranay Sethi reported in 2018 (1) LW 331.

8. Per contra, Mrs.Subathra, learned counsel appearing for the respondents/claimants would contend that even though the future prospects has been taken at 30% by the Tribunal, the notional income adopted at Rs.7,500/- is too low. She would contend that the accident having happened in the year 2013, the Tribunal should have at least adopted Rs.9,000/- i.e. Rs.300/- per day as the notional income.

9. We have considered the rival submissions.

10. According to the claimants, the deceased was working as a sweeper in Tagore Medical College for 8 months prior to the death. Even in the FIR, it was stated that she was working as a sweeper in Tagore Medical College. The learned counsel for the Insurance Company would submit that there is no proof for the employment or receipt of salary and hence the Tribunal erred in assuming that the income at Rs.7,500/-. We are unable to agree with the said contention. As already stated even in the FIR, it was stated that the deceased was working as sweeper in Tagore Medical College. The accident had occurred in the year 2013, we therefore, find that the Tribunal was not right in fixing the monthly notional income at Rs.7,500/-. An able-bodied person would have earned a minimum of Rs.300/- per day. Thus worked the monthly notional income can be safely taken at Rs.9,000/-. The Tribunal has adopted 30% towards future prospects. Considering the pronouncement of the larger Bench of the Hon'ble supreme court in National Insurance Company Ltd., Vs. Pranay Sethi reported in 2018 (1) LW 331, the future prospects could be taken only at 25%. Thus calculated the monthly notional income for the purposes of determining the loss of dependency would be Rs.11,250/-. Since there are four claimants/dependants, one fourth has to be deducted towards the personal expenses of the deceased. This leads the monthly loss of dependency at Rs.8,437.50, the multiplier applicable as per decision in Sarla

Verma v. Delhi Transport Corporation, reported in 2009 INSC 756, is 13. The total loss of dependency applying the multiplier of 13 would be

$$\text{Rs.}8,437.50 \times 12 \times 13 = \text{Rs.}13,16,250.00$$

11. As rightly contended by Mr.Mohanbabu, learned counsel appearing for the Insurance Company, the award of the Tribunal under the heads loss of consortium and loss of love and affection and loss of estate is on the higher side. Hence, the same are reduced granting a sum of Rs.1,20,000/- to the children towards loss of love and affection at Rs.40,000/- each and Rs.40,000/- to the husband/1st respondent towards loss of consortium. The amount awarded towards loss of estate at Rs.50,000/- is reduced to Rs.15,000/-. The award for funeral expenses is sustained. Thus the total compensation would be Rs.15,16,250/-, the same is rounded off to 15,16,000/-.

12. Hence, the Appeal is partly allowed. The award will carry interest at 7.5% from the date of petition till date of payment. There will be no order as to costs. Consequently, the connected miscellaneous petition is closed.

13. The apportionment of the compensation is as follows:

The Claimant/husband 1st respondent will be entitled to the compensation of Rs. 4,66,000/- with proportionate interest and entire costs. Claimants 2, 3 and 4 each will be entitled to the compensation of Rs. 3,50,000/- each with proportionate interest.

14. The Insurance Company is directed to deposit the award amount, 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 claimants, namely, the respondents 1 to 4 will be entitled to withdraw the compensation.

s/d-

Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

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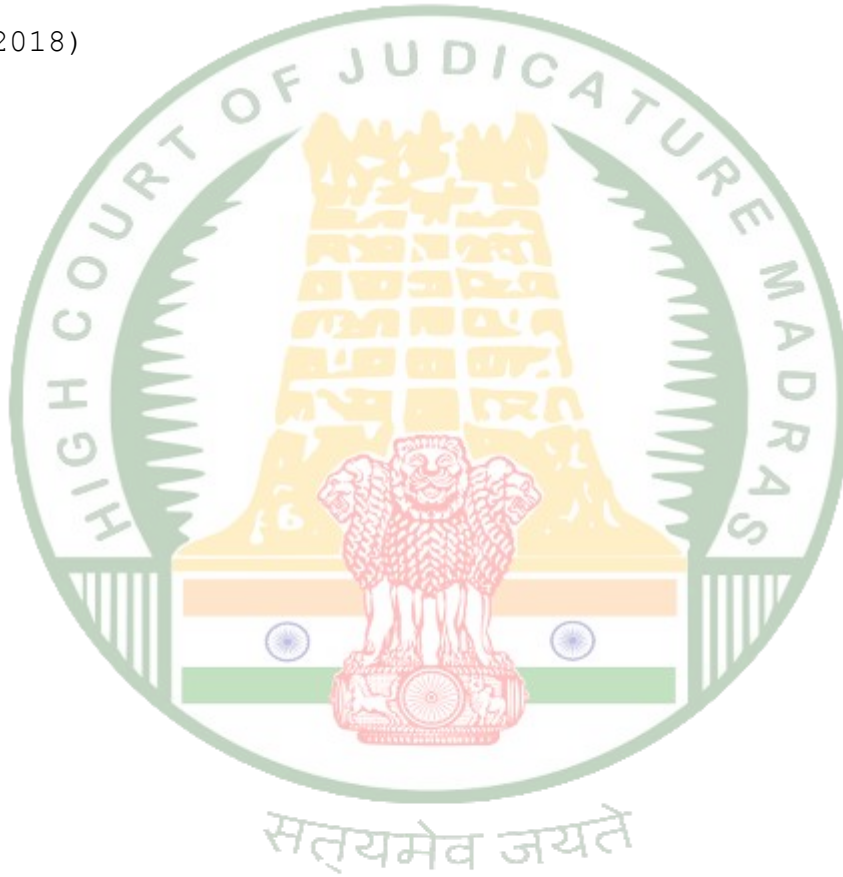
1. The II Judge
The Motor Accidents Claims Tribunal,
II Court of Small Causes,
Chennai.

2. The Section officer
VR Section, High Court, Madras 104.

+1 CC to Mrs.A. Subathra, Advocate sr 69257.
+1 CC to M/s.M.B. Gopalan Associates sr 69827

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and CMP 17628 of 2017

KJI (CO)
SP (20/11/2018)



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