



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.07.2019

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE
C.M.A.Nos.1635 & 1728 of 2015
and

C.M.P.No.1 of 2015

C.M.A.No.1635 of 2015

Reliance General Insurance Company ltd.,
Sri Lakshmi Complex, 1st Floor,
Bharathi Street, Omalur Main Road,
Swarnapuri, Salem.

...Appellant/
3rd Respondent

Vs

1.Kaleeshwari, 43 years,
W/o.Angusamy,

...1st Respondent/Petitioner

2.Gomathi, 19 years,
D/o.Angusamy,

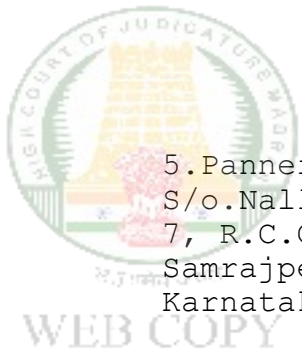
...2nd Respondent/Petitioner

3.Minor.Deepan, 16 years,
S/o.Angusamy,
All are residing at No.22A,
C.Palayam, Pallaiyur Nadar Street,
Poolavadi Road, Dharapuram Taluk,
(Minor rep. by his mother & N.F.Kalleshwari)
(Minor declared as major as per order
dated 15/07/2019 and discharged from
guardianship

...3rd respondent/petitioner

4.P.Ramakrishnan,
S/o.Pannerselvam,
Residing at No.185, Meenakshipuram,
V.K.Pudur, Pollachi.

...4th Respondent/
1st Respondent



5.Pannerselvam,
S/o.Nalligounder,
7, R.C.C., 206-261, S.G.Mutt Road,
Samrajpettai, Bangalore,
Karnataka State.

...5th Respondent/
2nd Respondent

PRAYER : Civil Miscellaneous Appeal filed against the Award and Decree dated 17.06.2014 made in M.C.O.P.No.334 of 2011 on the file of the Motor Accident Claims Tribunal, III Additional District Judge, Dharapuram .

For Appellant :Mr.S.Arun Kumar

For Respondents :Mr.Ma.P.Thangavel (for R1 to R3)
R3-declared as major
R4 & R5 - Exparte before the Tribunal.

C.M.A.No.1728 of 2015

1.Kaleeswari,
W/o.Angusamy,

2.Gomathi,
D/o.Angusamy,

3.Minor.Deepan,
S/o.Angusamy,
Minor rep. by guardian/NF/
Mother Kaleeswari ...Minor declared as Major and
discharged from gaurdianship vide
order dated 15/07/2019

All are residing at No.22-A,
C.Palayam, Pallaiyur Nadar Street,
Poolavadi Road, Dharapuram Taluk,... Appellants/Petitioners

Vs

1.P.Ramakrishnan,
S/o.Paneerselvam,
Residing at No.185, Meenachipuram,
V.K.Pudur, Pollachi.

2.N.Pannerselvam,
S/o.Nalli Gounder,
No.7, RCC 206-261, S.G.Mutt Road,
Chamrajpet, Bangalore,
Karnataka State.



3.Reliance General Insurance Company Ltd.,
Sri Lakshmi Complex, 1st Floor,
Bharathi Street, Omalur Main Road,
Swarnapuri, Salem.

... Respondents/Respondents

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PRAYER : Civil Miscellaneous Appeal filed against the Judgment and Decree dated 17.06.2014 made in M.C.O.P.No.334 of 2011 on the file of the MACT/Additional District Court No.3 at Dharapuram .

For Appellant :Mr.Ma.P.Thangavel

For Respondents :Mr.S.Arunkumar (for R3)

R1 & R2 - Exparte before the Tribunal.

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

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

C.M.A.No.1635 of 2015 has been filed by the Insurance Company against the award passed in M.C.O.P.No.334 of 2011 on 17.06.2014 by the III Additional District Judge, Motor Accident Claims Tribunal, Dharapuram questioning the negligence aspect as well as the quantum of compensation.

2.C.M.A.No.1728 of 2015 has been filed by the claimants against the award passed in M.C.O.P.No.334 of 2011 on 17.06.2014, by the III Additional District Judge, Motor Accident Claims Tribunal, Dharapuram questioning the quantum of compensation.

3.The claim petition was filed seeking compensation for the death of one Mr.R.Angusamy, aged about 53 years, working as Conductor in TNSTC Palladam branch, earning about Rs.25,215.83/- per month, in the accident occurred on 02.03.2011 when he was riding his motorcycle on Dharapuram to Pollachi road near Govindhapuram village, a container lorry insured with the Insurance Company which was going ahead of the deceased suddenly applied brake and came to the right side of the road and dashed against the deceased.

4.The Tribunal found that the accident occurred because of the rash and negligent driving of the container lorry and determined the monthly income at Rs.25,215/- and deducted a sum of Rs.15,000/- towards income tax and determined the compensation at Rs.21,33,920/-.



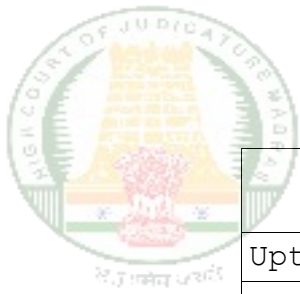
5. Heard Mr. Ma. P. Thangavel, learned counsel appearing on behalf of the claimants and Mr. S. Arunkumar, learned counsel appearing on behalf of the Insurance Company.

6. Mr. S. Arunkumar, learned counsel appearing on behalf of the Insurance Company would submit that the deceased did not maintain sufficient distance between him and the Container lorry and due to the same, the deceased was only responsible for the accident. If he had been vigilant enough, he could have avoided the accident. In this regard, he relied upon a judgment passed in Nishan Singh and others Vs. Oriental Insurance Co. Ltd., and others reported in 2018 (1) TNMAC 745 (SC), in which the car driver did not maintain sufficient distance between two vehicles and therefore, the Honourable Supreme Court found fault only with the car driver and set aside the compensation awarded against Insurance Company. He would also submit that contributory negligence has to be fixed on the deceased whereas Mr. Ma. P. Thangavel, learned counsel appearing on behalf of the claimants would submit that in the judgment relied upon by the learned counsel appearing on behalf of the Insurance Company, no evidence was adduced by the claimants to show that the driver of the container lorry suddenly applied brake in the middle of the road whereas in the case on hand PW2/eyewitness categorically deposed that the accident occurred because of the rash and negligent driving of the driver of the container lorry.

7. A close scrutiny of the records would show that the FIR/Ex.P.1 was filed against the driver of the container lorry and PW2 categorically stated that the accident occurred because of the rash and negligent driving of the container lorry and there is no contra evidence on the side of the Insurance Company to contradict what has been stated by PW2. In the absence of any contra evidence, based on PW2's (eyewitness) evidence, the Tribunal was right in fastening the negligence on the driver of the container lorry as rightly pointed out by Mr. Ma. P. Thangavel, learned counsel appearing on behalf of the claimants in Nishan Singh's case, there was evidence on record adduced by the claimants to show that the driver of the truck suddenly applied the brake in the middle of the road whereas in this case PW2 categorically stated so. Therefore, this Court confirms the finding given by the Tribunal regarding negligence.

8. The Tribunal based on Ex.P.11/Pay slip of the deceased determined the monthly income at Rs.25,215/- and yearly income at Rs.3,02,580/-.

9. The income tax payable by the claimant for the compensation amount, considering the income tax rates applicable at the relevant point of time is as hereunder.



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	Income tax rate	Taxable income	Income Tax
Upto Rs.1,80,000/-	Nil	Rs.1,80,000/-	0
Upto Rs.5,00,000/-	10%	Rs.1,22,580/-	12258
Upto Rs.8,00,000/-	20%	-	0
Above Rs.8,00,000/-	30%	-	0
Total Income Tax			12258
Add: Education Cess 3% of total income tax			368
Surcharge			0
Total Tax payable			12626

After deducting income tax, the yearly income would be at Rs.2,89,954/- [Rs.3,02,580/- (-) Rs.12,626/-].

10. According to the age of the deceased viz., 53 years, 15% has to be added towards future prospects as per 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). After adding 15% towards future prospects the yearly income would be at Rs.3,33,447/- (Rs.2,89,954/- + 15% of Rs.2,89,954/- viz., Rs.43,493/-).

11. Since the size of the family is three, $1/3^{\text{rd}}$ has to be deducted towards personal expenses, which was rightly done by the Tribunal. After deducting $1/3^{\text{rd}}$ towards personal expenses, the loss of yearly contribution would be at Rs.2,22,298/- [Rs.3,33,447/- (-) $1/3^{\text{rd}}$ of Rs.3,33,447/- viz., Rs.1,11,149/-]

12. According to the age of the deceased i.e., 53 years, right multiplier is "11" as per the judgment of the Honourable Supreme Court in Sarla Verma & Others .Vs. Delhi Transport Corporation & another, reported in 2009 (2) TNMAC 1 (SC) which has been rightly applied by the Tribunal and therefore, loss of contribution would be at Rs.24,45,278/- (Rs.2,22,298/- x 11).

13. Loss of consortium:

A sum of Rs.15,000/- has been awarded by the Tribunal under this head to the 1st claimant/wife, the same is enhanced to Rs.40,000/- as per the judgment of the Honourable Supreme Court in Pranay Sethi's case.

14. Funeral expenses:

A sum of Rs.10,000/- has been awarded by the Tribunal under this head, the same is enhanced to Rs.15,000/-



15. Loss of Estate:

No amount has been awarded by the Tribunal under this head. Hence, a sum of Rs.15,000/- is awarded under this head.

16. Transportation charges:

No amount has been awarded by the Tribunal under this head. Hence, a sum of Rs.15,000/- is awarded under this head.

17. Loss of love and affection

The children/claimants 2 & 3 have not been awarded any amount towards loss of love and affection which is akin to the amount awarded towards loss of consortium to the spouse. Therefore, a sum of Rs.50,000/- each is awarded under this head to the children/claimants 2 & 3. Totally, a sum of Rs.1,00,000/- is awarded under this head.

Head	Amount (Rs.)
Loss of contribution	2445278
Loss of love and affection	100000
Funeral expenses	15000
Loss of estate	15000
Loss of consortium	40000
Transportation charges	15000
	2630278

18. Hence the compensation awarded to the claimants comes to Rs.26,30,278/- rounded off to Rs.26,30,000/-. Out of the modified award amount, the claimants are entitled to their share as per the ratio fixed by the Tribunal. The rate of interest fixed by the Tribunal at 7.5% per annum is confirmed.

19. The age of the minor claimant viz., Deepan was 16 years at the time of accident. He would have attained majority by this time. Therefore, this court declares him as major and the guardian (mother) is discharged from guardianship.

20. The insurance company is directed to deposit the entire award amount as per the modified award passed by this Court along with interest and costs, within a period of four weeks from the date of receipt of a copy of this order, after deducting the amount already deposited, if any. On such deposit being made, the Tribunal is directed to transfer the respective shares of the claimants with proportionate interest and costs to their respective bank accounts through RTGS within a period of one week thereon.



21.The claimants are directed to pay the requisite court-fee, if any, before the Tribunal, within a period of two weeks from the date of receipt of a copy of this order. If the requisite court-fee is not paid by the claimants, the Tribunal is directed to deduct the requisite court fee from the compensation awarded to the claimants as per the ratio fixed by the Tribunal and thereafter, transfer the remaining award amount to the account of the claimants.

22.Accordingly, C.M.A.No.1635 of 2015 is dismissed and C.M.A.No.1728 of 2015 is partly allowed, enhancing the compensation amount from Rs.21,33,920/- to Rs.26,30,000/- with interest. Consequently, connected miscellaneous petition is closed. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1.The III Additional District Judge,
Motor Accidents Claims Tribunal,
Dharapuram .

2.The Section Officer
VR Section
High Court, Madras

+1 cc to M/s.Thiru.Ma.P.Thangavel Advocate sr59896
+1 cc to M/s.S.Arunkumar Advocate sr60327

C.M.A.Nos.1635 & 1728 of 2015

mr(co)
aa20/11/2019