

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.06.2019

CORAM

THE HONOURABLE MRS. JUSTICE S. RAMATHILAGAM

C.M.A.No.2409 of 2015 and
M.P.No.1 of 2015

Reliance General Insurance Company Ltd.,
3rd Floor, 408, Perundurai Road,
Erode - 638 011. ...Appellant/2nd Respondent

Vs.

1.Kaliyammal
2.Jamuna
3.Pattan ...Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988, against the award and decree dated 12.02.2014 made in M.C.O.P.No.800 of 2011 on the file of the Motor Accidents Claims Tribunal, Sub Court, Tiruppur.

For Appellant : Mr.S.Arun Kumar

For Respondents 1,2: Mr.M.Lokesh for Mr.Ma.Pa.Thangavel
R3 : Left

J U D G M E N T

This Civil Miscellaneous Appeal has been preferred against the award and decree dated 12.02.2014 made in M.C.O.P.No.800 of 2011 on the file of the Motor Accidents Claims Tribunal, Sub Court, Tiruppur.

2.The brief facts leading to the claim application are as follows:

On 03.06.2011 at about 07.30 hours when the deceased was travelling in a two wheeler bearing Registration No.TN-37-PL-6358 from Palladam to Udulamalpet in a rash and negligent manner by the rider and the deceased who travelled the same as billion rider sustained injuries when the rider obtained sudden break and immediately the injured was taken to the Hospital, he died on 08.06.2011, the accident occurred only due to the negligent riding of the driver cum owner of the two wheeler who is the 1st respondent herein and the claimants have claimed a sum of Rs.10,00,000/- as compensation. Since the deceased was a hale

and healthy person and the claimants have lost the financial and other related support of the deceased and the claim sum in Loss of Income, Funeral Expenses and Consortium and Loss of Love and affection.

3. The respondent/Insurance company totally denied the allegation made in the petition regarding mode of accident. The other averment made by the respondent is that the rider cum owner of the said vehicle was not having any valid license at the time of accident and hence, the 1st respondent had violated the terms and conditions of the policy and the Insurance Company is not liable to pay any compensation. Further, the sum claimed by the claimants under various heads, regarding the age, income and occupation of the deceased were very much denied in the absence of any proof by way of documents.

4.The Tribunal, after analysing the evidence and documents placed before the same, viz., on Ex.P1 FIR and the evidence of P.W.1 and one eye witness of the accident has come to the conclusion that the accident have occurred only due to the rash and negligent driving on the part of the said two wheeler. The Tribunal has also analysed the evidence in respect of the occupation, income of the deceased and also the resultant difficulties experienced by the claimants and awarded a sum of Rs.6,40,000 as compensation under the various heads as follows:

S.No.	Head	Amount
1	Loss of Income	Rs.5,40,000/-
2	Love and Affection	Rs.75,000/-
3	Funeral Expenses	Rs.25,000/-
Total		Rs.6,40,000/-

Aggrieved against the said award, the Insurance Company has preferred this appeal to set aside the same.

5.Heard Mr.S.Arun Kumar learned counsel appearing for the appellant. Mr.M.Lokesh learned counsel appearing for the respondents 1 and 2.

6.In the grounds of appeal, the appellant contended that the 1st respondent has willfully violated the conditions and hence, the appellant totally denied the liability. The other contentions put forth by the appellant is that there is no proof for the age of the deceased such as Voter Identity Card and the

adoption of multiplier is also very much disputed and the sum awarded for future prospects at 15% is also very much aggrieved by the appellant.

7.The main grievance is that when the age of the deceased has been mentioned as 65 in Ex.P3 Post Mortem Certificate, the Tribunal has taken as 56 and calculated the loss of income. It is vehemently argued by the appellant that no other document have been filed to prove the age of the deceased. When it is clearly stated in the postmortem certificate as 65 years, it is for the respondent/claimant to furnish the relevant document to prove the age, hence the age taken by the Tribunal at 60 years is not at all justified. The sum calculated under the head Loss of Love and Affection at Rs.75,000/- and the Funeral expenses at Rs.25,000/- also very much aggrieved by the appellant.

8.On perusal of award, it is seen that the tribunal has taken the age of the deceased as 60 years with out any proper documents and assessed the loss of income, which is not proper. Hence this Court is inclined to fix the age of the deceased by considering the year of the accident and evidence available on record, hence it would be proper to consider the age of the deceased between 61 to 65, the appropriate multiplier would be '7'. In view of the modification in the age of the deceased, the monthly income taken by the deceased by adding future prospects also modified to Rs.6500/- per month by observing the earlier decisions made by the Apex Court in similar cases. Accordingly, this Court modifies the loss of income at Rs.3,64,000/- ($6500 \times 12 \times 7 \times 1/3$). Further the sum awarded by the tribunal under the other head Loss of love and affection and Funeral expenses are also reduced to a sum of Rs.40,000/- and Rs.15,000/- respectively. Thus the sum awarded by the tribunal is modified by this Court as follows;

S.No .	Head	Amount awarded by the tribunal (Rs.)	Amount modified by this Court (Rs.)
1	Loss of Income	5,40,000/-	3,64,000
2	Loss of Love and Affection	75,000/-	40,000
3	Funeral Expenses	25,000/-	15,000
Total		6,40,000/-	4,19,000/-

9. In view of the above modification, the compensation awarded by the tribunal at Rs.6,40,000/- is reduced to

Rs.4,19,000/- together with interest at the rate of 7.5% per annum.

10. In the result, this Civil Miscellaneous Appeal is partly allowed No costs. Consequently, the connected Miscellaneous Petition is closed.

11. The Appellants/Insurance Company is directed to deposit the modified amount as per the order this Court with interest and costs within a period of four weeks from the date of receipt of a copy of this order. On such deposit, the Tribunal is directed to transfer the amount to the claimants bank accounts thro' RTGS within one week thereon as per the apportionment ordered by the tribunal.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

rna

To

The Motor Accidents Claims Tribunal,
Sub Court,
Tiruppur.

Copy to

The Section Officer,
VR Section, High Court, Madras.

+1cc to Ma.P.Thangavel, Advocate Sr.48241

+1cc to Mr.S.Arunkumar, Advocate Sr.48190

C.M.A.No.2409 of 2015
and
M.P.No.1 of 2015

vg II[co]
srg 08/02/2021