

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.07.2019

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.2725 of 2019
and
C.M.P.No.13823 of 2019

M/s.Reliance General Insurance Company Limited,
4th Floor, No.6, Nungambakkam,
Chennai 600 006. ... Appellant/2nd Respondent

Vs

1.Basheera Begum, W/o.Habeeb Rahman
2.Habeeb Rahman, S/o.Dawood Rawthar,
Both are residing at
No.8, Krishna Nagar,
Virudhachalam.

3.Vinayagamoorthy, S/o.Elumalai,
No.7, Pillaiyar Koil Street,
Pduhupedu, Chennai 600 069. ... Respondents/Petitioners/
1st Respondent

PRAYER : Civil Miscellaneous Appeal filed against the Judgment
and Decree made in MCOP.No.485 of 2016, dated 04.10.2018, on
the file of the Motor Accidents Claims Tribunal, III
Additional District & Sessions Court, Cuddalore at
Virudhachalam.

For Appellant : Mr.R.Mohanbabu
for Mr.M.B.Gopalan Associates

For Respondents : Mr.S.Udhayakumar for R1 & R2

J U D G M E N T

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

The appeal has been preferred by the Insurance Company
against the award of Rs.34,47,000/- as compensation for the
death of one Mansoor Ali, aged about 29 years, Software
Engineer in a private company limited, earning about
Rs.30,000/- per month in the accident occurred on 26.10.2015,
when he was travelling as a pillion rider in a motorcycle
which was hit down by a van belonging to the 3rd respondent,
insured with the appellant/insurance company.

2.Heard Mr.Mohanbabu, learned counsel appearing for the appellant and Mr.S.Udhayakumar, learned counsel appearing for the claimants.

3.Though Mr.Mohanbabu, learned counsel appearing for the Insurance company would submit that the rider of the two wheeler in which the deceased was travelling was not having driving licence, it is proved before the Tribunal that due to the negligence of the driver of the van alone, the accident had happened and not due to the rider of the two wheeler in which the deceased was travelling. Therefore, whether the rider of the two wheeler was in possession of driving licence or not does not make any difference. The Division Bench of this Court in which one of us was a party (NKKJ) in the case of Gaurav Kumar V. Gestampt Sungwoo Hitech (Chennai) Pvt. Ltd., and another reported in 2019 ACJ 1239 held that non possession of valid driving license though not permissible under the Motor Vehicles Act, but considering the fact that the accident occurred solely due to the rash and negligence of the offending vehicle, no contributory negligence could be fastened on the claimant. The relevant paragraph of the said judgment is usefully extracted as follows.

"4.A perusal of the records would show that the Tribunal, based on the evidence of P.W.2 eye witness as well as the claimant and the filing of FIR as against the ambulance driver, rightly found that the accident occurred because of the rash and negligent driving by the driver of the ambulance. Having found that the driver of the ambulance was responsible for the accident, the Tribunal should not have fixed 50% contributory negligence on the part of the victim on the ground that he did not possess valid driving licence. Though non-possession of valid driving licence is not permitted under the Motor Vehicles Act, 1988, considering the fact that the Tribunal found that the accident occurred solely because of the driver of the ambulance, 50% contributory negligence fastened by the Tribunal on the claimant is hereby set aside."

Therefore, the contention of Mr.Mohanbabu, learned counsel appearing for the appellant that non possession of driving licence by the rider of the two wheeler violates the policy condition and also it amounts to contributory negligence are liable to be rejected. Accordingly, rejected.

4.It is proved before the Tribunal that the deceased was drawing a sum of Rs.24,994/- through Ex.P.19 and Ex.P.20/salary certificates. Ex.P.18 would also demonstrate that there was an increase in salary. Hence, the Tribunal rightly determined the monthly income at Rs.25,000/- and therefore, it cannot be disturbed. The age of the deceased is

31 years as per Ex.P.12/Driving licence of the deceased and Ex.P.15/M.C.A., certificate of the deceased. Therefore, the Tribunal rightly took 40% towards future prospects and determined the monthly income at Rs.35,000/- (Rs.25,000/- + Rs.10,000/-).

5.Since the deceased was a bachelor, 50% has to be deducted towards personal expenses, which was rightly done by the Tribunal. After deducting 50% towards personal expenses, the loss of monthly contribution would be at Rs.17,500/-.

6.According to the age of the deceased i.e., 31 years, right multiplier is "16" 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 loss of income was determined at Rs.33,60,000/- (Rs.17,500/- x 12 x 16).

7.Loss of love and affection

A sum of Rs.50,000/- was awarded by the Tribunal towards loss of love and affection and the same is very low, as the parents, to bring up a child as an Engineer, really they would have sacrificed their life. Unfortunately, when he started earning, they lost him in the accident, depriving them of his love and affection and the comfort in the evening of their life and therefore a sum of Rs.80,000/- is awarded under this head.

8.Loss of estate:

The amount of Rs.15,000/- awarded by the Tribunal towards loss of articles is adjusted towards loss of estate.

9.Funeral expenses:

A sum of Rs.15,000/- was awarded by the Tribunal under this head. The same is confirmed.

10.Medical expenses and Transportation charges:

A sum of Rs.7,000/- was awarded by the Tribunal under this head. The same is increased to Rs.10,000/-

Head	Amount (Rs.)
Loss of contribution	3360000
Loss of love and affection	80000
Funeral expenses	15000
Loss of estate	15000
Medical expenses and Transportation charges	10000
	3480000

11.Hence the compensation awarded to the claimant comes to Rs.34,80,000/- rounded off to Rs.35,00,000/-. Out of the modified award amount, the claimants are entitled to get equal share. The rate of interest fixed by the Tribunal at 7.5% per annum is confirmed.

12. Though the Insurance company has filed the appeal, the facts and circumstances enable this Court to enhance the compensation. Accordingly, award of the Tribunal (i.e.,) Rs.34,47,000/- is enhanced to Rs.35,00,000/-, invoking Order 41 Rule 33 of CPC and Section 151 of CPC and Article 227 of Constitution of India. The provisions of the Motor Vehicles Act are benevolent in nature and what is required to be awarded is just and reasonable compensation. Therefore, even in the absence of appeal/cross-appeal by the claimants, this Court has got power and jurisdiction to enhance the compensation, which has been recognised by the Honourable Supreme court in Nagappa V. Gurdayal Singh reported in 2004 (2) TN MAC 398 (SC).

13. The insurance company is directed to deposit the entire award amount as per the modified award 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.

14. 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 and thereafter, transfer the remaining award amount as per the ratio fixed by this Court to the account of the claimants.

15. Accordingly, this appeal is dismissed enhancing the compensation amount from Rs.34,47,000/- to Rs.35,00,000/- with interest. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar (CS-V)

//True copy//

Sub Assistant Registrar

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To
The III Additional District and Sessions Judge,
Motor Accidents Claims Tribunal,
Cuddalore at Virudhachalam.

Copy To

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

+1cc to M/s.M.B.Gopalan Associates, Advocate SR.No.56597

+1cc to Mr.S.Udhayakumar, Advocate SR.No.55780

C.M.A.No.2725 of 2019

GJ(CO)
GMY(23/01/2020)