

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.08.2019

CORAM :

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

C.M.A.Nos.1624, 1625, 792 & 793 of 2018
and
C.M.P.Nos.6634 & 6635 of 2018

C.M.A.No.1624 of 2018

1.P.Vijayalakshmi
2.P.Krishna (Minor)
3.P.Sriram (Minor)
(Minors rep.by their mother & Next guardian
of 1st petitioner herein)
V.Subramanian (since died)
S.Ganga (since died) ... Appellants/Petitioners

Vs

1.M.Kathiravan
2.Reliance General Insurance Co.Ltd.,
Plot No.2054, 2nd Avenue,
Ragis Towers, 2nd Floor, Anna Nagar,
Chennai - 600 040 and functioning/
Regional Off at No.6, 6th Floor,
Haddows Road, Nungambakkam,
Chennai - 600 034. ... Respondents

C.M.A.No.792 of 2018

M/s.Reliance General Insurance Co.Ltd.,
Plot No.2054, 2nd Avenue,
Ragis Towers, 2nd Floor, Anna Nagar,
Chennai - 600 040 ... Appellant
Vs.

1.P.Vijayalakshmi
2.P.Krishna (Minor)
3.P.Sriram (Minor)
(Minors rep.by their mother &
Natural guardian of P.Vijayalakshmi)
4.V.Subramanian (Died)

5.S.Ganga (Died)
6.M.Kathiravan

..Respondents 1 to 3/Petitioners
...6th Respondents/Owner of Vehicle

C.M.A.No.1625 of 2018

1.R.Vimala
2.R.Tosesh (Minor)
3.R.Hemanth (Minor)
(Minors rep.by their mother & Next guardian
of 1st petitioner herein)
V.Subramanian (since died)
S.Ganga (since died)

... Appellants/Petitioners

Vs

1.M.Kathiravan ...1st Respondent/Owner of Vehicle

2.Reliance General Insurance Co.Ltd.,
Plot No.2054, 2nd Avenue,
Ragis Towers, 2nd Floor, Anna Nagar,
Chennai - 600 040 and functioning/
Regional Off at No.6, 6th Floor,
Haddows Road, Nungambakkam,
Chennai - 600 034.

...2nd Respondent/Respondent

C.M.A.No.793 of 2018

M/s.Reliance General Insurance Co.Ltd.,
Plot No.2054, 2nd Avenue,
Ragis Towers, 2nd Floor, Anna Nagar,
Chennai - 600 040

...Appellant

Vs.

1.R.Vimala
2.Minor R.Tosesh
3.Minor R.Hemanth
(Minors rep.by their mother &
Natural guardian R.Vimala)

4.V.Subramanian (Died)

5.S.Ganga (Died)

6.M.Kathiravan

.. Respondents 1 to 3/Petitioners

..6th Respondent/Owner of Lorry

COMMON PRAYER : Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgments and Decrees dated 15.09.2017 made in M.C.O.P.Nos.6606 & 6607 of 2013 on the file of the Motor Accident Claims Tribunal, II Court of Small Causes, Chennai.

For Appellants in C.M.A.No.1624,
1625 of 2018 & For Respondents
in C.M.A.No.792 & 793 of 2018 : Mr.K.T.Sree Krishnaraj

For Appellants in C.M.A.No.792,
793 of 2018 & For Respondents
in C.M.A.No.1624 & 1625 of 2018 : Mr.S.Arun Kumar

R1 in CMA No.1624 & 1625/
R6 in CMA No.792 & 793 / 18 : NA

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

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

These four appeals have been filed by the claimants as well as by the insurance company questioning the adequacy of the compensation awarded in two claim petitions viz., M.C.O.P.No.6606 of 2013 in which a sum of Rs.12,22,200/- was awarded for the death of one Mr.S.Parthasarathy against which C.M.A.Nos.1624 & 792 of 2018 have been filed and M.C.O.P.No.6607 of 2013 in which a sum of Rs.14,39,000/- was awarded for the death of one Mr.S.Raghuraman against which C.M.A.Nos.1625 & 793 of 2018 have been filed.

2.The above said Mr.S.Parthasarathy and Mr.S.Raghuraman were travelling in their Maruthi Alto car from Adambakkam towards Oragadam and hit by a container lorry insured with the insurance company driven rashly and negligently causing accident in which both the aforesaid Mr.S.Parthasarathy and Mr.S.Raghuraman died. Therefore, claim petitions. On appreciation of evidence, the tribunal found that the accident occurred because of the rash and negligent driving of the container lorry and awarded a sum of Rs.12,22,200/- for the death of Mr.S.Parthasarathy and a sum of Rs.14,39,000/- for the death of Mr.S.Raghuraman. Questioning the adequacy of the compensations alone, both the claimants as well as insurance company filed appeals against each of the award passed in the claim petitions.

3.Heard Mr.K.T.Sree Krishnaraj and Mr.S.Arun Kumar, learned Counsel for the parties.

4.The finding regarding the negligence aspect is not questioned by the insurance company as pay and recovery has already been ordered as there was no fitness certificate for the container lorry which is one of the violations of the policy conditions.

5.Regarding the quantum of compensation, the tribunal took the monthly income of both the deceased at Rs.6,000/- per month notionally even though, Ex.P.13 & Ex.P.18 viz., Income tax return (Parthasarathy) & Income tax return (Raghuraman) were filed. Both the deceased were brothers and they were partners in Bar Code business under the name of Cosmic Technologies.

6.The individual income assessment of Mr.S.Parthasarathy is Ex.P.13 which would show his monthly income viz., Rs.22,837/- for the year 2011 - 2012 and Rs.24,584/- for the year 2012 - 2013. As far as Mr.S.Raghuraman is concerned, the individual income assessment is marked as Ex.P.18 which would show his monthly income viz., Rs.22,837/- for the year 2011 - 2012 and Rs.24,533/- for the year 2012 - 2013. Therefore, Rs.6,000/- fixed by the tribunal notionally for both the deceased is contrary to the evidence and therefore, the same is set aside. Since the monthly income of Mr.S.Parthasarathy is Rs.22837/- for the year 2011-2012 and Rs.24584/- for the year 2012-2013, this Court takes the average monthly income and thus, the monthly income of Mr.S.Parthasarathy is Rs.23,710/- $(22837 + 24584 / 2)$ and similarly, since the monthly income of Mr.S.Raghuraman is Rs.22705/- for the year 2011-2012 and Rs.24533/- for the year 2012-2013, this Court takes the average monthly income and thus, the monthly income of Mr.S.Raghuraman is Rs.23,619/- $(22705 + 24533 / 2)$.

7.The age of the deceased Mr.S.Parthasarathy is 43 years as per Ex.P.7 viz., Post mortem certificate and therefore, 25% has to be added towards future prospects. Since 30% was added towards future prospects by the tribunal, the same is reduced to 25%. If 25% is added, the "total income" would be Rs.23,710 + 25% (Rs.5928/-) = Rs.29,638/- Similarly, the age of the deceased Mr.S.Raghuraman is 38 as per Ex.P.16 viz., Post mortem certificate and therefore, 40% has to be added towards future prospects. Since 50% was added towards future prospects by the tribunal, the same is reduced to 40%. If 40% is added, the loss of income would be Rs.23,619 + 40% (Rs.9448/-) = Rs.33,067/-

8.In respect of both the deceased, three persons are claimants and therefore, 1/3rd was rightly deducted by the tribunal towards personal expenses for both the deceased. After deduction of 1/3rd, the loss of income of Mr.S.Parthasarathy would be Rs.29,638 - 1/3 = Rs.19,759/- and the loss of income of Mr.S.Raghuraman would be Rs.33,067 - 1/3 = Rs.22,045/-.

9.Since the age of the deceased Mr.S.Parthasarathy is 43 years the appropriate multiplier '14' was rightly adopted by the tribunal and therefore, the loss of Income would be Rs.19,759/- x 12 x 14 = Rs.33,19,512/- and since the age of the deceased Mr.S.Raghuraman is 38 years, the appropriate multiplier '15' was rightly adopted by the Tribunal and therefore, the Loss of Income would be Rs.22,045/- x 12 x 15 = Rs.39,68,100/-.

10.Rs.1,00,000/- awarded toward Loss of Consortium to the wives of the deceased is contra to the Judgment in "Pranay Sethi's Case (2017 (2) TN MAC 609 (SC)" and therefore, the same is reduced to Rs.40,000/-each. Rs.1,80,000/- awarded towards Loss of Love and Affection to both the children of the deceased which is akin to the amount awarded towards Loss of Consortium to the wives of both the deceased is on the higher side and the same is reduced to Rs.1,00,000/- in respect of children of each of the deceased.

11.Further, Rs.25,000/- awarded towards Funeral Expenses to each of the deceased is reduced to Rs.15,000/-. No amount has been awarded towards Loss of Estate and Transportation to the deceased and therefore, Rs.15,000/- is awarded to each of the deceased.

12.Therefore, the sum of Rs.12,22,000/- awarded by the tribunal in M.C.O.P.No.6606 of 2013 is modified as follows:

SI.No	Head	Amount (Rs.)
1.	Loss of Income	33,19,512/-
2.	Loss of Love and affection	1,00,000/-
3.	Loss of Consortium	40,000/-
4.	Funeral Expenses	15,000/-
5.	Loss of estate	15,000/-
6.	Transportation	15,000/-
	Total	35,04,512/-
	Rounded off	35,05,000/-

and the sum of Rs.14,39,000/- awarded by the tribunal in M.C.O.P.No.6607 of 2013 is modified as follows:

SI.No	Head	Amount (Rs.)
1.	Loss of Income	39,68,100/-
2.	Loss of Love and affection	1,00,000/-
3.	Loss of Consortium	40,000/-
4.	Funeral Expenses	15,000/-
5.	Loss of estate	15,000/-
6.	Transportation	15,000/-
	Total	41,53,100/-
	Rounded off	41,53,000/-

13.Hence, the total compensation payable in respect of the appeals in C.M.A. Nos.1624 & 792 of 2018 is Rs.35,05,000/- and C.M.A. Nos.1625 & 793 of 2018 is Rs.41,53,000/-. Though the Tribunal has awarded 9% interest, this Court reduces it to 7.5% per annum. The claimants are directed to pay the requisite court-fee, if any, 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 amounts awarded to the respective claimants, as per the ratio fixed by the Tribunal and thereafter, transfer the remaining award amount to the respective claimants' account.

14.The Insurance company is directed to deposit the entire respective award amounts as per the order of this Court before the Tribunal along with interest and costs after deducting the amount, if any, already deposited within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the tribunal is directed to transfer the respective shares of the claimants as per the ratio fixed by the Tribunal to the respective accounts of the major claimants in the respective appeals through RTGS within a period of one week except the shares of the minors which shall be deposited in the interest bearing Fixed Deposit in any one of the Nationalized Banks until they attain majority.

15. In the result, the appeals filed by the insurance company in C.M.A.Nos.792 & 793 of 2018 are dismissed since this Court has already confirmed the finding of the Tribunal that the driver of the container lorry was rash and negligent and the

liability is fixed on the owner of the container lorry as the lorry did not possess fitness certificate to ply on the road and therefore, the insurance company is directed to deposit the respective award amounts and recover the same from the owner of the lorry and the appeals filed by the claimants in C.M.A.Nos.1624 & 1625 of 2018 are partly allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-VI)

//True copy//

Sub Assistant Registrar

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To

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

+2cc to Mr.K.T.Sree Krishnaraj, Advocate SR.No.66166 & 66165

+1cc to Mr.S.Arun Kumar, Advocate SR.No.66077

+2cc to Mr.K.T.Sree Krishnaraj, Advocate SR.No.66166 & 66165
(06/11/2019)

C.M.A.Nos.1624, 1625, 792 & 793 of 2018
and

C.M.P.Nos.6634 & 6635 of 2018

CNR(CO)
GMY(01/11/2019)

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