

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1575 of 2015

and

M.P.No.1 of 2015

Reliance General Insurance Co. Ltd.
Heavitree Unit No.1, 3rd floor
No.23, Spur tank road
Chetpet, Chennai-31. Appellant/2nd Respondent

Vs.

1.Lydia Kamalam

2.D.Mariya Christildha

3.D.Joyees Priya ... Respondents 1 to 3/Petitioners

4.T.Chandra

5.C.V.Deenadayalan

(Amended as per order in
M.P.No.2141/2014, dated 02.09.2014)

.. Respondents 4 & 5/1st and 3rd Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 25.09.2014 made in M.C.O.P.No.1355 of 2011 on the file of Motor Accidents Claims Tribunal, Small Causes Court No.V, Chennai.

For Appellant : Mr.S.Arunkumar

For R1 to R3 : Mr.R.Kalaiarasan for
Mr.M.N.Muthurajan

RR4 & 5 : Not ready in Notice

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company challenging the award dated 25.09.2014 made in M.C.O.P.No.1355 of 2011 on the file of Motor Accidents Claims Tribunal, Small Causes Court No.V, Chennai.

2.The appellant/Insurance Company is 2nd respondent in M.C.O.P.No.1355 of 2011 on the file of Motor Accidents Claims Tribunal, Small Causes Court No.V, Chennai. The respondents 1 to 3 filed the said claim petition claiming a sum of Rs.12,00,000/- as compensation for the death of one D.Johnson, who died in the accident that took place on 06.02.2011.

3.According to the respondents 1 to 3, on the date of accident, i.e., on 06.02.2011 at 3.00 hours, while one Premkumar was riding in his motorcycle along with the deceased as pillion rider from Keelkattalai to Medavakkam along Velachery main road from West to East direction, a lorry, which came from behind, driven by its driver in a rash and negligent manner, dashed against the motorcycle and caused the accident. In the accident, the deceased Johnson died and therefore, the respondents 1 to 3 have filed the claim petition seeking compensation.

4.The 4th respondent, owner of the lorry remained exparte before the Tribunal.

5.The appellant/Insurance Company filed counter statement denying the averments made by the respondents 1 to 3 and contended that the offending lorry was not insured with the appellant at the time of accident. The driver of the lorry did not possess valid driving license at the time of accident and the 4th respondent violated the policy conditions and therefore, the appellant/Insurance Company is not liable to pay compensation.

6.Before the Tribunal, 1st respondent, mother of the deceased, examined herself as P.W.1, one Premkumar, rider of the motor cycle, in which the deceased travelled as pillion rider, was examined as P.W.2 and Dr.M.Saravanabavanandham was examined as P.W.3 and marked fifteen documents as Exs.P1 to P15. On the side of the appellant, no oral and documentary evidence was let in.

7.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the lorry belonging to the 4th respondent and directed the appellant/Insurance

Company being insurer of the said lorry to pay a sum of Rs.17,70,000/- as compensation to the respondents 1 to 3 and 5.

8. Against the said award dated 25.09.2014 made in M.C.O.P.No.1355 of 2011, granting compensation to the respondents 1 to 3 and 5, the appellant/Insurance Company has come out with the present appeal challenging the quantum of compensation awarded by the Tribunal.

9. The learned counsel appearing for the appellant/Insurance Company contended that the Tribunal failed to note that the respondents 1 to 3 have not proved the avocation and income of the deceased. The Tribunal ought to have applied multiplier on the basis of the age of the mother of the deceased. The Tribunal erred in awarding 50% enhancement towards future prospects. In any event, the compensation awarded by the Tribunal under different heads are excessive and prayed for setting aside the award of the Tribunal.

10. The learned counsel appearing for the respondents 1 to 3/claimants contended that the respondents 1 to 3 have produced sufficient documents to prove the avocation and income of the deceased. The Tribunal after considering all the materials available on record, has awarded just compensation and prayed for dismissal of the appeal.

11. Heard the learned counsel appearing for the appellant as well as the respondents 1 to 3 and perused the materials available on record.

12. It is the contention of the respondents 1 to 3 that the deceased was aged 22 years at the time of accident and was earning a sum of Rs.16,700/- per month by working as an Accountant in M/s.Implicity Solutions, Chennai. A perusal of Ex.P15/transfer and conduct certificate issued by Vel's college of Science, Pallavaram, marked by the respondents 1 to 3 shows that the deceased had discontinued his studies, left the college on 04.02.2011 and he died in the accident on 06.02.2011. P.W.1/mother of the deceased in her evidence deposed that her son was about to finish the degree course final year at the time of accident and he had 15 days service in M/s.Implicity Solutions. In the absence of any material evidence to prove the avocation and income of the deceased, the Tribunal fixed a sum of Rs.10,000/- per month as notional income of the deceased, which is excessive. The accident is of the year 2011 and a sum of Rs.9,000/- per month is fixed as notional income of the deceased. The Tribunal has granted 50% enhancement towards future prospects, which is excessive and the respondents 1 to 3 & 5 are entitled to 40% only. The deceased was aged 22 years at the time of accident and the Tribunal has rightly applied multiplier '18' on the basis of

the age of the deceased. After deducting 50% towards personal expenses, the compensation awarded by the Tribunal towards loss of dependency is modified to Rs.13,60,800/- (Rs.9,000/- + 3600 [Rs.9,000/- X 40%] X 12 X 18 X 50%). A sum of Rs.25,000/- each awarded by the Tribunal towards loss of estate and funeral expenses are excessive and the same are hereby reduced to Rs.15,000/- each. Considering the fact that the respondents 1 to 3 & 5 have lost the deceased at his tender age, a sum of Rs.1,00,000/- awarded by the Tribunal towards loss of love and affection is just and reasonable and hence, the same is hereby confirmed. Thus the compensation awarded by the Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted or reduced
1.	Loss of dependency	16,20,000	13,60,800	Reduced
2.	Loss of love and affection	1,00,000	1,00,000	Confirmed
3.	Funeral expenses	25,000	15,000	Reduced
4.	Loss of estate	25,000	15,000	Reduced
	Total	17,70,000	14,90,800	Reduced by Rs.2,79,200 /-

13. With the above modification, the Civil Miscellaneous Appeal is partly allowed. The compensation of Rs.17,70,000/- awarded by the Tribunal is hereby reduced to Rs.14,90,800/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant/Insurance Company is directed to deposit the modified award amount along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the respondents 1 to 3/claimants and the 5th respondent are permitted to withdraw their respective share of the award amount along with proportionate interest and costs, as per the apportionment made by the Tribunal, after adjusting the amount if any, already withdrawn. The appellant/Insurance Company is permitted to withdraw the excess amount lying in the deposit to the credit of M.C.O.P.No.1355 of 2011, if the entire award amount has already

been deposited by them. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CCC)

//True copy//

Sub Assistant Registrar

kj

To

1.The V Judge
Motor Accident Claims Tribunal
Small Causes Court, Chennai.

2.The Section Officer
VR Section
High Court
Madras.

+1cc to Mr.M.N.Muthurajan, Advocate SR.No.2328

+1cc to Mr.S.Arunkumar, Advocate SR.No.2308

C.M.A.No.1575 of 2015

SJ (CO)
GMY (27/08/2020)



WEB COPY