

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 25.09.2020
CORAM :

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

C.M.A.No.1241 of 2016
and
C.M.P.No.9383 of 2016

Reliance General Insurance Company Ltd,
3rd Floor, No.408, Perundurai Road,
Erode. ... Appellant

/versus/

1. Periyasamy
2. Samiyathal
3. Jagannathan ... Respondents

Prayer: Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act 1988, against the award and decree dated 17.08.2015 made in M.C.O.P.No.1106 of 2010 on the file of the Motor Accident Claims Tribunal, Additional Subordinate Judge, Tiruppur.

For Appellant : Mr.S.Arun Kumar

For R1 & R2 : Mr.Ma.P.Thangavel

For R3 : No appearance

JUDGMENT

(The case has been heard through Video Confernece)

Being aggrieved by the quantum of award passed by the Tribunal, the Insurance Company has preferred this civil miscellaneous appeal.

2.It is case of fatal accident of 23 years old boy studying final year B.E. The claimants are the parents of the deceased. Seeking Rs.25,00,000/- as compensation, a claim petition was filed against the owner of the two wheeler bearing Reg.No. TN 42 Y 3502 and the insurer which according to the claimants, dashed against the two wheeler of the deceased Naveetha Prabhu. The Insurance Company has filed a counter stating that they are not liable to pay any compensation since the claimants have not produced any document to prove the insurance coverage with them. Further, the driver of the motorcycle bearing Reg.No. TN 42 Y 3502

which is the offending vehicle had no effective driving license. Therefore, they are not liable to indemnify the owner of the said vehicle for policy violation. Further, the earning capacity and income of the deceased were also questioned.

3.The Tribunal after considering the materials evidence placed by the claimants, has fixed notional income of the deceased as Rs.9,000/- per month; added 50% of the income towards future prospects and being a bachelor, 50% of the income was deducted towards personal expenditure and after applying the multiplier fixing the multiplicand "18" based on the age of the deceased, a sum of Rs.14,58,000/- was awarded towards loss of income. Rs.2,00,000/- was awarded towards loss of love and affection and Rs.25,000/- was awarded towards funeral expenses. Totally, a sum of Rs.16,83,000/- was awarded as compensation.

4.In the appeal, the Insurance Company has stated that the Tribunal has erred in concluding that the rider of the motor cycle bearing Reg.No.TN 42 Y 3502 was responsible for the accident in spite of the fact that the accident had occurred due to the negligence of the deceased. It has questioned the prudence of the Tribunal accepting the interested testimony of PW-2 and also questioned the fixation of earning capacity of the deceased person, who has not completed his degree and the award of Rs.2,00,000/- towards loss of love and affection has also been pointed out as an excessive award.

5.The learned counsel appearing for the Insurance Company/appellant would fairly submit that though the liability has been questioned for contributory negligence by the deceased, since no evidence has been let in by the respondents, the Insurance Company is not pressing on the liability and contributory negligence of the deceased. However, the quantum of compensation has to be rational. The award is not in tune with the recent Constitutional Bench decision of the Hon'ble Supreme Court. The learned counsel also insisted that the fixation of notional income of Rs.9,000/- per month and 50% for future prospects are highly excessive which have to be reduced.

6.Per contra, the learned counsel appearing for the claimants/respondents 1 and 2 would submit that in some of the judgments of this Court, for Engineering college student the Court has fixed monthly income notionally at Rs.10,000/- and above. Whereas, in this case, the Tribunal has fixed only Rs.9,000/- and therefore, there is no need to interfere in the award of the Tribunal.

7.After considering the rival submissions and the records, this Court finds that the standardized formula given by the Hon'ble Supreme Court in National Insurance Company v.

Pranay Sethi and others reported in (2017(2) TNMAC 609(SC) has to be applied while computing the compensation. The notional income of Rs.9,000/- for final year Engineer student is fair and reasonable, which need not be reduced or increased. Accordingly, the compensation payable to the claimants is modified as below:

Sl. No.	Particulars	Modified award passed by this Court (Rs.)
1.	Loss of income (9000/- + 3600 (FP 40%) =12,600/- - 1/2 (6300/-) = 6300 x 12 x 18	13,60,800-00
2.	Loss of consortium	40,000-00
3.	Funeral expenses	15,000-00
4.	Loss of estate	15,000-00
	Total	14,30,800-00

The award amount of the Tribunal is reduced from Rs.16,83,000/- to Rs.14,30,800/-.

8. In the result, this Civil Miscellaneous Appeal is partly allowed. No costs. The modified award amount of Rs.14,30,800/- shall be paid with interest at the rate of 7.5 % p.a., from the date of petition, till the date of realisation. The ratio of apportionment fixed by the Tribunal is modified by this Court to that effect that the claimants 1 and 2 are entitled to share the modified award amount equally. No costs. consequently connected Miscellaneous Petition is closed.

9. The learned counsel appearing for the appellant/Insurance Company would submit that as per direction of this Court dated 21.06.2016, 50% of the award amount has already been deposited before the Tribunal in MCOP account. If so, the balance award amount as modified by this Court has to be deposited, within a period of 12 weeks from the date of receipt of a copy of this order. On such deposit being made by the Insurance Company, the claimants/respondents 1 and 2 are permitted to withdraw the modified award amount equally on filing proper application.

Sd/-
Assistant Registrar(co)

//True Copy//

Sub Assistant Registrar

To
The Motor Accident Claims Tribunal,
Additional Subordinate Judge,
Tiruppur.

Copy to:
The Section Officer, VR Section, High Court, Madras.

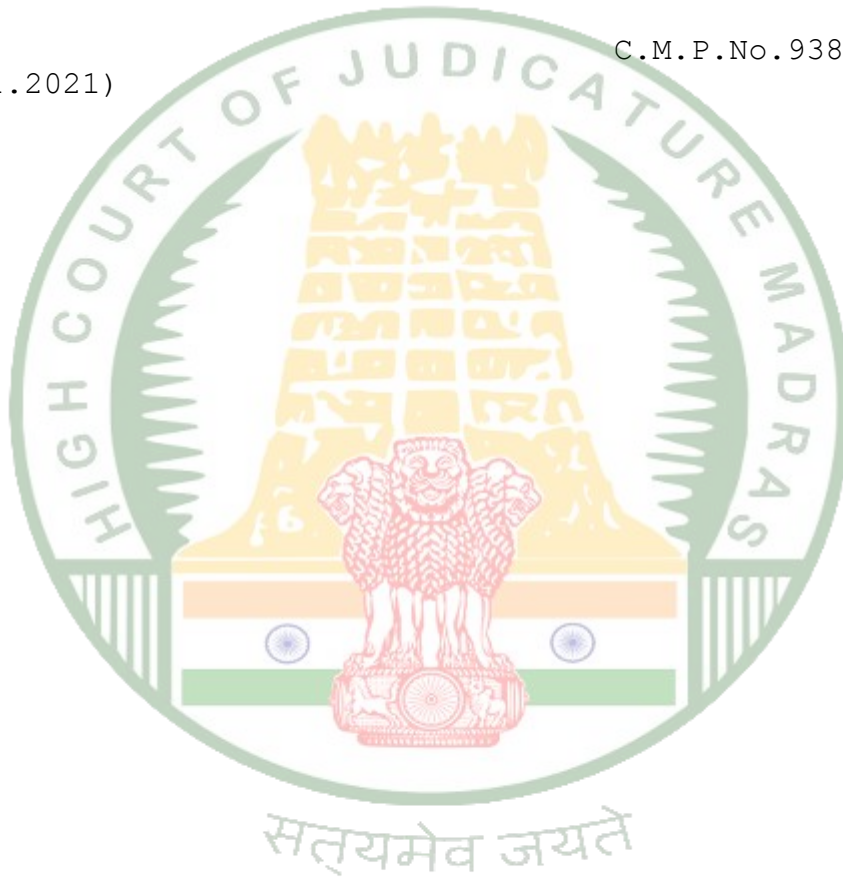
+1cc to Mr.S.Arun kumar , Advocate SR.No. 31794

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A.SK(06.01.2021)



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