

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.10.2020

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No.3724 of 2012

and

M.P.No.1 of 2012

(Through Video Conferencing)

M/s.ICICI Lombard General
Insurance Company Ltd.,
Vigneshwara Crests,
1095, Avinashi Road,
Pappanaickenpalayam,
Coimbatore.

.... Appellant/3rd Respondent

Vs.

1. Thangamani,
W/o.Muthan

.... 1st Respondent/Petitioner

2. Viathinathan,
S/o.Mathu

3. R.Subramaniam,
S/o.Raji

....2nd and 3rd Respondent/
Respondents 1 & 2

(R2 set exparte in Lower Court)

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree in M.C.O.P.No.131 of 2008, dated 07.07.2010, on the file of the Motor Accidents Claims Tribunal (Subordinate Judge) at Tiruppur.

For Appellant : Ms.R.Srividhya
For R1 : Mr.Ma.P.Thangavel
For R2 : Set exparte
For R3 : Not ready in notice

JUDGMENT

The Insurance Company is the appellant. It is aggrieved by the impugned Judgment and Decree dated 07.07.2010 passed by the Motor Accidents Claims Tribunal (Subordinate Judge) at Tiruppur in M.C.O.P.No.131 of 2008.

2. By the impugned Judgment and Decree, the Tribunal has awarded a sum of Rs.35,200/- together with interest at 7.5% per annum from the date of filing of the claim petition (21.02.2008) till the date of deposit (07.07.2010), to the

first respondent/claimant.

3. The Tribunal has awarded the aforesaid amount to the first respondent/claimant under the following heads:-

(i) Mental agony for the abortion of 7 months foetus	= Rs.25,000/-
(ii) Simple Injuries	= Rs.10,000/-
(iii) Medical Expenses	= Rs. 200/-

Total	= Rs.35,200/-

4. Earlier also the case was listed under the caption "for being withdrawn" at the instance of the appellant/Insurance Company. However, the respondents/claimants protested and the prayer for withdrawing the appeal was rejected by an order of this Court on 01.04.2016. Again, this case was listed for being withdrawal at the request of the appellant/Insurance Company. Since the order dated 01.04.2016 has not been disturbed there is no question of allowing the appellant/Insurance Company to withdraw the appeal. Therefore, I shall consider the submission of the parties hereto. The respondents/claimants submits that, the Tribunal ought to have awarded amounts towards premature death of foetus.

5. The Tribunal has recorded the evidences in Exs.A1 & A2 discharge summaries clearly admits that a 7 months foetus/Intrauterine Pregnancy (IUP) weighing 1.5 Kgs was expelled on 13.01.2008 at 10.50 p.m., after the accident.

6. The learned counsel for the respondents/claimants has brought to my attention to the following two decisions of the Hon'ble Division Bench of this Court in :-

(i) National Insurance Co. Ltd., Kumbakonam Vs G.Parimala alias Nirmala and others, 2010 (2) TN MAC 486 (DB)

(ii) Rakhi Kothari Vs R.Soundaapandian and another, 2013 (1) TN MAC 552

7. In National Insurance Co. Ltd., Kumbakonam Vs G.Parimala alias Nirmala and others, 2010 (2) TN MAC 486 (DB) the Tribunal had awarded a sum of Rs.5,00,000/- as compensation.

8. The Hon'ble Division Bench after considering the over all facts and circumstances of the case has concluded that the sum of Rs.5,00,000/- awarded by the Tribunal for the death of the foetus (7 months unborn child) was excess and therefore reduced the amount to Rs.2,50,000/-.

9. The Hon'ble Division Bench of this Court in Rakhi Kothari Vs R.Soundaapandian and another, 2013 (1) TN MAC 552 again had an opportunity to consider the issue as to whether

the respondents/claimants were entitled claim for medical termination of pregnancy of a 9 months foetus on account of the accident. After considering the evidences on record, the Court finally held as follows:-

"29. Death of foetus is certainly a loss to the parents, particularly to the expectant mother and it is a physical and emotional injury. But for the accident and the injuries, the Appellant would not underwent a surgery and that in the normal course, she would have given birth to a child, but for any unforeseen circumstances, in the midway, but it also depends upon the general condition of the mother. There must be proximity with the injuries and the death. The cause of death should not be remote and unconnected with the injury sustained. If the cause of death is integrally connected with the injury sustained and is one, in the chain of causa causans, then the cause of death can be attributed to the injuries. In the case on hand, there is relationship with the death of the foetus, for the reason that due to the severe injuries in the hip and the likelihood of danger to the foetus, during surgery, the Appellant was constrained to abort the baby in the womb.

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31. In the light of the above decisions and medical evidence that there was termination of pregnancy, entitlement of the Appellant to payment of compensation, for the Loss of Foetus, is absolute and as rightly contended by the learned Counsel for the Appellant, the Claims Tribunal has failed to award a just and reasonable compensation for the loss of the unborn child in the womb, which has to be treated as a child in existence. When the life of a child in the womb is terminated, on account of the injuries or where there is nexus between the injuries and termination of pregnancy, mother/father is entitled to claim a just and reasonable compensation. Hence, following the decisions in National Insurance Company v. G.Parimala, 2010 (2) TN MAC 486 (DB); National Insurance Co. Ltd. v. Kusuma, 2011 (2) TN MAC 321 (SC) : 2011 (13) SCC 306 : 2011 ACJ 2432, this Court is inclined to award a sum of Rs.2,50,000/- for the Loss of Life of the Child in the Womb."

The Hon'ble Division Bench of this Court in Rakhi Kothari Vs R.Soundaapandian and another, 2013 (1) TN MAC 552 ultimately again awarded a sum of Rs.2,50,000/-. Therefore, the first

respondent/claimant is entitled to compensation on account of the pre-mature termination of pregnancy due to the accident.

10. Therefore, the only issue that arises for consideration is whether the respondents/claimants are now entitled to claim compensation in an appeal filed by the Insurance Company where the Insurance Company wants to withdraw the same in absence of Cross Objection or Cross Appeal by the respondents/claimants.

11. Before, dealing with the merits of the case, I would like to make it clear that even if a restricted claim was filed before the Tribunal, not only the Tribunal, but also the High Courts and the Hon'ble Supreme Court are empowered to award enhanced compensation as they are duty bound to award just compensation under the Act to the victims of Motor Accident as was observed by the Hon'ble Supreme Court in Nagappa Vs. Gurudayul Singh, (2003) 2 SCC 274.

12. In this case, the first respondent/claimant met with an accident on 12.01.2008, as a result of which, there is a miscarriage. Thus, the first respondent/claimant was entitled to compensation for the miscarriage and death of the foetus, as the Courts have now recognized that claimants can claim compensation in the case of death of the foetus due to the accident.

13. The Tribunal has awarded a sum of Rs.35,200/- as has been noted in Paragraph (5) of the impugned order and Paragraph (3) of this order. In the light of the Hon'ble Division Bench of this Court in National Insurance Co. Ltd., Kumbakonam Vs G.Parimala alias Nirmala and others, 2010 (2) TN MAC 486 (DB) and in Rakhi Kothari Vs R.Soundaapandian and another, 2013 (1) TN MAC 552 (DB) I am inclined to award a sum of Rs.2,50,000/- to the first respondent/claimant.

14. Considering the same, the amount of Rs.25,000/- awarded by the Tribunal towards Mental Agony for the abortion of 7 months foetus is enhanced to Rs.2,50,000/-. In all, the first respondent/claimant is entitled to receive a sum of Rs.2,50,000/- + Rs.10,200/- (towards simple injuries & medical expenses) = Rs.2,60,200/-.

15. It is made clear that since neither an appeal nor a cross objection was filed by the first respondent/claimant before this Court, there shall be no interest on the enhanced amount of compensation. The first respondent/claimant is directed to pay necessary court fee on the enhanced amount of compensation.

The compensation is therefore requantified as follows:-

Sl. No.	Heads of Compensation	Amount Awarded by the Tribunal	Amount awarded by this Court	Award Confirmed or enhanced or granted or reduced
1.	Mental Agony	Rs.25,000/-	Rs.2,50,000/-	Enhanced by 2,25,000/-
2.	Simple Injuries	Rs.10,000/-	Rs.10,000/-	Confirmed
3.	Medical Expenses	Rs.200/-	Rs.200/-	Confirmed
	Total	Rs.35,200/-	Rs.2,60,200/-	Enhanced by Rs.2,25,000/-

16. Therefore, the appellant/Insurance Company is directed to deposit the amount of compensation of Rs.2,60,200/-, less any amount already deposited by it, within a period of six weeks from the date of receipt of the copy of this Judgment. The appellant/Insurance Company shall also deposit the proportionate interest at 7.5% per annum on Rs.35,200/- (2,60,200 - 2,25,000) from the date of filing of the claim petition till the date of such deposit, less any amount already deposited, within the aforesaid period.

17. On such deposit, the first respondent/claimant is entitled to withdraw the same together with interest accrued thereon, less any amount already withdrawn by her after filing suitable application before the Tribunal.

18. The present Civil Miscellaneous Appeal is dismissed with the above observation and direction. No cost. Consequently, connected Miscellaneous petition is closed.

Sd/-

Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

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To:

1.The Motor Accidents Claims Tribunal,
Subordinate Judge at Tiruppur.

2. The Section Officer,
V.R. Section, High Court, Madras.

+1cc to Mr.Ma.P.Thangavel, Advocate, S.R.No. 35018

C.M.A.No.3724 of 2012
and M.P.No.1 of 2012

SPD (CO)

GN(22/04/2021)

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