

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

CMA.No.2587 of 2016 and C.M.P.No.18545 of 2016
& Cross Objection No.20 of 2019

CMA.No.2587 of 2016

Reliance General Insurance Company Ltd,
Sri Lakshmi Complex, First Floor,
Bharathi Street, Omalur Main Road,
Swarnapuri, Salem - 4. ... Appellant/2nd Respondent

Vs.

1.Mari
2.Rovatha
3.Arun 1 to 3 Respondent/Petitioners

4.V.P.Palanisamy ... 4th Respondent/1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 21.04.2016 made in M.C.O.P.No.2171 of 2015 on the file of the Motor Accident Claims Tribunal, Additional District and Sessions Court, Salem.

For Appellant : Mr.S.Arunkumar
For RR1 to R3 : Mr.A.Sathish Kumar for
Mr.C.Thangaraju
R4 : Served - NA

Cross Objection No.20 of 2019 in CMA. 2587/2016

1.Mari
2.Rovatha
3.Arun .. Cross objectors/1 to 5 Respondents

Vs.

1.V.P.Palanisamy ... 1st Respondent/4th Respondent

2. Reliance General Insurance Company Ltd,
Sri Lakshmi Complex, First Floor,
Bharathi Street, Omalur Main Road,
Swarnapuri, Salem - 4. ... 2nd Respondent/Appellant

Prayer: This Cross Appeal is filed under Order XLI Rule 22 of C.P.C against the judgment and decree dated 21.04.2016 made in M.C.O.P.No.2171 of 2015 on the file of the Motor Accident Claims Tribunal, Additional District and Sessions Court, Salem.

For Cross Appellants : Mr.A.Sathish Kumar for
Mr.C.Thangaraju
For R2 : Mr.S.Arunkumar

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

The Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company against the award dated 21.04.2016 made in M.C.O.P.No.2171 of 2015 on the file of the Motor Accident Claims Tribunal, Additional District and Sessions Court, Salem.

The Cross-Objection has been filed by the claimants seeking enhancement of compensation granted by the Tribunal in the award dated 21.04.2016 made in M.C.O.P.No.2171 of 2015 on the file of the Motor Accident Claims Tribunal, Additional District and Sessions Court, Salem.

2.Parties in these appeals are referred to by their respective ranks in the claim petition, for the sake of convenience.

3.The appellant/Insurance Company is 2nd respondent in M.C.O.P.No.2171 of 2015 on the file of the Motor Accident Claims Tribunal, Additional District and Sessions Court, Salem. The claimants/cross objectors filed the above claim petition claiming a sum of Rs.25,00,000/- as compensation for the death of one Prakash, who died in the accident that took place on 12.09.2015.

4.According to the claimants, on the date of accident i.e. on 12.09.2015, at about 15.00 hours, when the deceased was riding in motorcycle bearing Registration No. TN 29 AT 3117 on the extreme left of the Harur - Salem Main Road, near Thavittu Mill, driver-cum-owner of a lorry bearing Registration No.TN 52 F 7967 which came from the opposite direction, in a rash and negligent manner, without blowing horn, with great speed, hit against the deceased and caused the accident. Due to the accident, the deceased sustained grievous injuries all over the body and died on the spot. Hence, the claimants have filed the above petition claiming compensation against the respondents as owner and insurer of the vehicle.

5.The 1st respondent, driver-cum-owner of the lorry remained

exparte before the Tribunal.

6.The 2nd respondent/Insurance Company being insurer of the lorry filed counter statement denying various averments made by the claimants in the claim petition. They contended that the deceased minor suddenly crossed the road without noticing the vehicle and invited the accident. The claimants have purposely omitted to state the name of the doctors who conducted postmortem, to create evidence on a later date to suit his convenience. The claimants have not impleaded the owner and insurer of the motorcycle involved in the accident. Hence, the claim petition is bad for non-joinder of necessary parties and mis-joinder of unnecessary parties. Hence, the Insurance Company is not liable to pay any compensation and prayed for dismissal of the claim petition.

7.Before the Tribunal, on behalf of claimants the father of the deceased examined himself as P.W.1 and one Thiruman, eye-witness to the accident, was examined as P.W.2 and nine documents were marked as Exs.P1 to P9. The respondents did not let in any oral and documentary evidence.

8.The Tribunal considering the pleadings, oral and documentary evidence held that the accident occurred only due to rash and negligent driving by the 1st respondent driver cum owner of the lorry and directed both 1st respondent as well as the 2nd respondent/Insurance Company to jointly and severally pay a sum of Rs.13,96,000/- as compensation to the claimants 1 & 2. The Tribunal dismissed the claim petition as against the 3rd claimant.

9.Against the said award dated 21.04.2016 made in M.C.O.P.No.2171 of 2015, the 2nd respondent/Insurance Company has come out with C.M.A.No.2587 of 2016 challenging the liability fastened on them as well as the quantum of compensation awarded by the Tribunal. Not being satisfied with the quantum of compensation awarded by the Tribunal, the claimants have come out with the Cross Objection No.20 of 2019 seeking enhancement of compensation awarded by the Tribunal.

10.The learned counsel appearing for the 2nd respondent/Insurance Company contended that the deceased was a minor boy and was driving the motorcycle without any valid driving license. PW2 is not an eyewitness and in order to help the claimants, he has deposed that the driver of the lorry is negligent in driving the vehicle. In any event, the Tribunal ought to have fixed contributory negligence on the part of the deceased also. The Tribunal, without any basis, fixed notional income of the deceased at Rs.8,000/- per month and granted 50% enhancement towards future prospects and awarded excessive

compensation. In view of the excessive amount already awarded by the Tribunal, the claimants are not entitled to any further enhancement in the cross appeal and prayed for allowing the appeal filed by the 2nd respondent and dismissing the cross appeal filed by the claimants.

11. Per contra, the learned counsel appearing for the claimants contended that the claimants have proved their claim that the accident has occurred only due to rash and negligent driving by the driver of the lorry belonging to the 1st respondent by letting in both oral and documentary evidence. The 2nd respondent has not let in any evidence to prove that the deceased also contributed negligence. The Tribunal considering the documents filed by the claimants, fixed notional income of the deceased at Rs.8,000/- per month. The amounts awarded by the Tribunal under the different heads are meagre and prayed for enhancement of compensation.

12. Heard the learned counsel appearing for the 2nd respondent/Insurance Company as well as the learned counsel appearing for the claimants and perused the materials available on record.

13. It is the contention of the claimants that at the time of accident the deceased was aged 17 years studying plus two and he was also doing part time job and agricultural work and was earning a sum of Rs.6,000/- per month. The accident has occurred only due to the negligence on the part of the driver of the lorry. To prove the negligence on the part of the driver of the lorry, the claimants examined PW2/eyewitness and marked Ex.P1/FIR which was registered against the driver of the lorry. The 2nd respondent did not examine driver of the lorry or any other eyewitness to disprove the contention of the claimants. Based on the oral and documentary evidence let in by the claimants, the Tribunal held that the accident had occurred only due to rash and negligent driving by the driver of the lorry belonging to the 1st respondent. There is no error in the said finding of the Tribunal warranting interference by this Court. At the same time, it has to be taken note of the fact that the claimants in the claim petition itself have stated that the deceased was aged 17 years at the time of accident. The claimants have permitted the deceased who was a minor to ride the motorcycle without any valid driving license, in violation of statutory provision. Even though, the 2nd respondent has not proved the negligence on the part of the deceased, in view of the fact that the deceased was a minor and drove the motorcycle in violation of policy condition 20% negligence is fixed on the part of the deceased. The claimants are entitled to receive only 80% of the award amount as compensation.

14.As far as quantum of compensation is concerned, the claimants have contended that at the time of accident the deceased was earning a sum of Rs.6,000/- per month by doing agricultural work. In the absence of any material evidence, considering the date of accident, the Tribunal fixed notional income of the deceased at Rs.8,000/- per month. The Tribunal granted 50% enhancement towards future prospects which is excessive. As per the judgment of the Hon'ble Apex Court reported in 2017 (2) TNMAC 609 (SC) (National Insurance Company v. Pranay Sethi & others), the claimants are entitled to 40% towards future prospects. The deceased was aged 17 years at the time of accident and bachelor. The Tribunal rightly deducted 1/2 towards personal expenses and adopted multiplier 18 which is proper. Thus the amount awarded by the Tribunal towards loss of income is modified to Rs.12,09,600/- {(Rs.8,000/- + 3,200 (Rs.8,000/- x 40%) x 12 x 18 x 1/2)}. The amount awarded by the Tribunal towards funeral expenses is excessive and hence the same is hereby reduced to Rs.15,000/-. The Tribunal has awarded a sum of Rs.60,000/- towards loss of love and affection to the claimants 1 & 2, which is meagre. The same is hereby enhanced to Rs.40,000/- each towards loss of love and affection to the claimants 1 & 2. The Tribunal has not awarded any amounts towards loss of love & affection to the 3rd claimant and loss of estate. Hence, a sum of Rs.20,000/- is awarded towards loss of love & affection to the 3rd claimant and Rs.15,000/- is awarded towards loss of estate. The amount awarded by the Tribunal under the head transport expenses 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
1.	Loss of dependency	12,96,000	12,09,600	Reduced
2.	Funeral Expenses	25,000	15,000	Reduced
3.	Loss of love and affection to the claimants 1 & 2	60,000	80,000	Enhanced
4.	Loss of Love and affection to the 3 rd claimant	-	20,000	Granted

5.	Transport expenses	15,000	15,000	Confirmed
6.	Loss of Estate	-	15,000	Granted
	Total	Rs.13,96,000/-	Rs.13,54,600/-	Reduced by Rs.3,12,320/-
	80% of the award amount		Rs.10,83,680/-	

15. In the result, the Civil Miscellaneous Appeal and the Cross Objection are partly allowed. The compensation awarded by the Tribunal at Rs.13,96,000/- is hereby reduced to Rs.13,54,600/- with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The claimants are entitled to 80% of the award amount i.e. Rs.10,83,680/-. Both the 1st respondent as well as 2nd respondent/Insurance Company are jointly and severally directed to deposit the modified award amount now determined by this Court 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 claimants 1 & 2 are permitted to withdraw their respective share of the enhanced award amount along with proportionate interest and costs, less the amount if any, already withdrawn. The 3rd respondent is also permitted to withdraw Rs.20,000/- as awarded by this Court. Both the 1st respondent and 2nd respondent/Insurance Company are permitted to withdraw the excess amount, if any lying in the deposit to the credit of M.C.O.P.No.2171 of 2015 on the file of the Motor Accident Claims Tribunal, Additional District and Sessions Court, Salem if the entire award amount has already been deposited by them. No costs. consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

Mtl

To

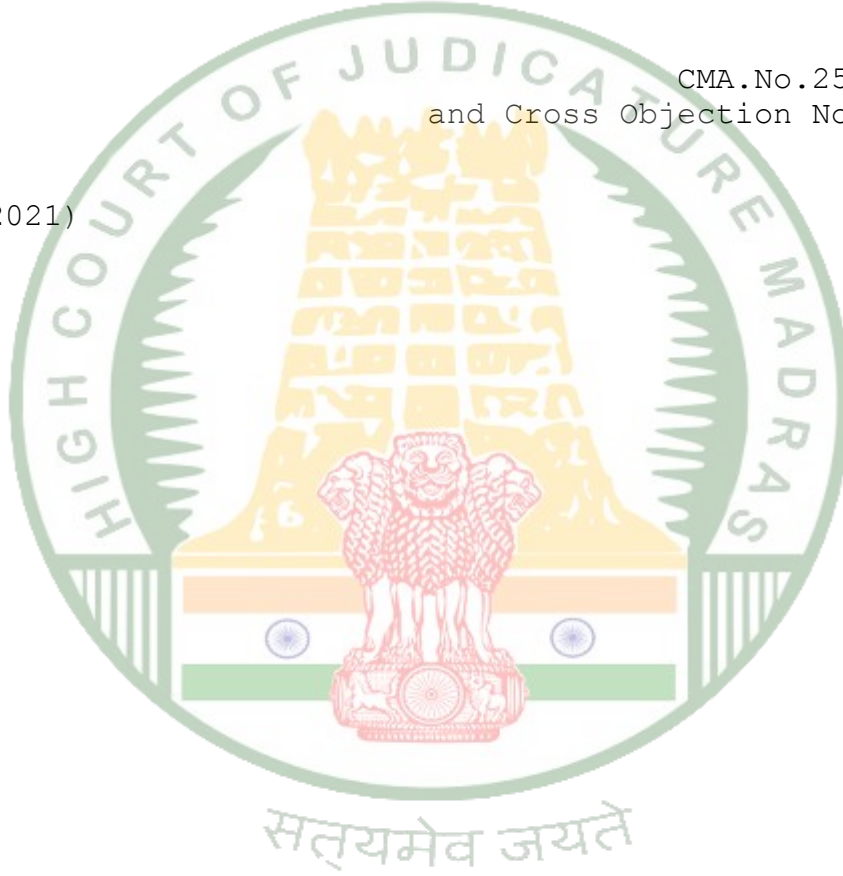
1. The Motor Accident Claims Tribunal,
The Additional District and Sessions Judge,
Salem.

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

+1cc to Mr.S.Arunkumar, Advocate, S.R.No. 12517

CMA.No.2587 of 2016
and Cross Objection No.20 of 2019

EV(CO)
GN(22/03/2021)



WEB COPY