

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.01.2020

Coram

THE HONOURABLE MR. JUSTICE M.M.SUNDRESH  
and  
THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

C.M.A.Nos.2705 and 2706 of 2016  
and  
C.M.P.Nos.19508 and 19509 of 2016

Royal Sundaram Alliance Insurance  
Company Limited  
rep. by its Branch Manager  
Having its Office at Bus Plaza,  
3rd Floor, No.5-G, Lawsons Road,  
Cantonment, Trichy.

.. Appellant in  
both C.M.As/3<sup>rd</sup> Respondent

vs.

1.D.Ramakrishnan .. Respondents 1 & 2/Petitioners  
in C.M.A.No.2705/2016.

2.Pichaimani

3.Prabhakaran

4.Arul Agencies rep. by its  
Managing Partner  
No. 58/1 Needamangalam Road  
Sakkottai  
Kumbakonam

.. Respondents 3 & 4 in  
C.M.A.No.2705 of 2016/Respondents 1 & 2

1.Manikandan ..1<sup>st</sup> Respondent in C.M.A.No.2706 of 2016/  
Petitioner

2.Prabhakaran

3.Arul Agencies rep. by its  
Managing Partner  
No. 58/1 Needamangalam Road  
Sakkottai  
Kumbakonam

.. Respondents 2 & 3 in  
C.M.A.No.2706 of 2016/Respondents 1 & 2

Civil Miscellaneous Appeal filed under Section 173 of the  
Motor Vehicles Act, 1988 against the judgments and decrees dated  
12.07.2016 made in M.C.O.P.Nos.54 and 79 of 2014 on the file of  
the Motor Accidents Claims Tribunal, District Court, Karaikal.

For Appellant : Mr.N.Vijayaraghavan  
in both CMAs

For Respondents : Mr.S.Sounthar  
for R1 & R2 in both CMAs

#### COMMON JUDGMENT

(Judgment of the Court was delivered by M.M.SUNDRESH, J.)

Since both the appeals arise out of the single accident, they have been taken up together and disposed of by a common judgment.

2.Learned counsel appearing for the appellant/insurance company submitted that insofar as C.M.A.No.2706 of 2016 is concerned, the claimant being the injured witness apart from pillion rider, quantum and liability are not challenged. In such view of the matter, C.M.A.No.2706 of 2016 stands dismissed, confirming the award passed by the Tribunal. No costs. Consequently, connected miscellaneous petition stands closed.

3.Respondents 1 and 2, who are the parents of the deceased are the claimants in M.C.O.P.No.54 of 2014. The deceased was aged about 27 years at the time of accident and working as Sub Inspector, Railway Protection Special Force. On 08.02.2014, when the deceased was riding the motorcycle bearing Regn. No.PY 02 K 6035, near Kumaran Koil, Manjakollai Village, it colluded with the maxi truck bearing Regn. No.TN 49 AY 1877 and within few days of the accident, the deceased died.

4.Before the Tribunal, respondents 1 and 2 herein made a claim for Rs.75,00,000/-. The Tribunal awarded a sum of Rs.41,25,000/-. Challenging the same, the present appeal in C.M.A.No.2705 of 2016 has been filed.

5.Learned counsel appearing for the appellant submitted that the Tribunal was wrong in fixing the entire liability on the appellant. As per Ex.R6, the deceased was not having any licence nor wearing helmet. This document also shows that on the same day, Rs.4,750/- has been collected by the Transport Department as fine for violation. The Tribunal was not correct in considering the final report filed under Ex.R3. 100% income has been taken towards the future prospects, which is contrary to the judgment of the Constitution Bench in National Insurance Company Limited v. Pranay Sethi ((2017) 16 SCC 680). Therefore, the appeal will have to be allowed both on liability and quantum.

6.Learned counsel appearing for the claimants/respondents 1 and 2 submitted that the Tribunal committed an error in taking

the income at Rs.22,222/- which is the net income. The gross salary comes to Rs.32,479/-. However, the learned counsel submitted that the Tribunal was not correct in adding 100% towards future prospects. Learned counsel further submitted that the Tribunal has awarded a meagre sum of Rs.20,000/- towards loss of love and affection, though a sum of Rs.25,000/- has been awarded towards funeral expenses.

7. On the question of liability, it is submitted that the document marked by way of final report under Ex.R3 has been rightly eschewed by the Tribunal as there is no evidence to show that notice has been served on the first respondent/first claimant, who was the author of the First Information Report. Therefore, the appeal will have to be dismissed.

8. On the question of liability, we find some force in the submission made by the learned counsel for the appellant. Records produced would show that the accident has occurred when the two wheeler dashed against the stationed vehicle. Further more, Ex.R6 indicates non-possession of the licence by the deceased apart from not wearing helmet. We may note that there are other evidence to show that the negligence was substantially on the part of the vehicle insured with the appellant. Therefore, it should be the case of contributory negligence. In such view of the matter, we fix the negligence on the part of the deceased at 20%.

9. Coming to quantum, the Tribunal took the income at Rs.22,222/- which is admittedly the net income. Therefore, the Tribunal ought to have taken into consideration the gross salary. The gross income of the deceased was Rs.32,429/-. We add 50% towards future prospects. The Tribunal correctly adopted multiplier '17'. Statutory deduction is made towards income tax. Since the deceased was admittedly a bachelor at the time of accident, the Tribunal has rightly adopted 50% deduction towards the personal expenses of the deceased. Thus, the loss of income is arrived at a sum of Rs.45,71,487/- (Rs.37,479/- + 50% = Rs.48,718/- x 12 = Rs.5,84,622 - Rs.46,800/- (IT) = Rs.5,37,822 - 50% = Rs.2,68,911/- x 17 = Rs.45,71,487/-). We award a sum of Rs.15,000/- towards funeral expenses and Rs.80,000/- for loss of love and affection. Thus a total sum of Rs.46,66,487/- has been arrived as compensation and after deducting amount towards 20% contributory negligence, Rs.37,33,190/- has been arrived at, which we round off to Rs.37,50,000/-. The interest awarded by the Tribunal at 7.5% per annum is confirmed.

10. In the result, C.M.A.No.2705 of 2016 is allowed in part. No costs. Consequently, connected miscellaneous petition is closed.

11.In view of the above, the appellant is directed to deposit the reduced compensation amount awarded by this Court along with proportionate interest, less the amount if any already deposited, to the credit of M.C.O.P.No.54 of 2014 and the compensation awarded by the Tribunal along with proportionate interest, less the amount if any already deposited, to the credit of M.C.O.P.No.79 of 2014 on the file of the Motor Accidents Claims Tribunal, District Court, Karaikal, within a period of six weeks from the date of receipt of a copy of the judgment.

12.We also direct the Tribunal to transfer the amount deposited by way of RTGS to the bank accounts of the claimants within a period of three weeks from the date of deposit of the award amount. On such transfer, the claimants are entitled to withdraw the same.

s/d-  
Assistant Registrar

True Copy

Sub-Assistant Registrar

mmi  
To

The District Judge  
Motor Accidents Claims Tribunal,  
District Court, Karaikal.

Copy to  
The Section officer  
VR Section  
High Court, Madras 104.

+2 CCS to Mr.S.Sounthar, Advocate sr 1393, 1394  
+2 CCS to Mr.M.B. Gopalan Associates sr 1537, 1538

C.M.A.Nos.2705 and 2706 of 2016

AK(CO)  
SP(04/09/2020)

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