IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.02.2020

C O R A M

The Hon'ble Mr. Justice M.M.SUNDRESH
and
The Hon'ble Mr. Justice KRISHNAN RAMASAMY

C.M.A.Nos.2886 & 2900 of 2019
and C.M.P.No.15261 of 2019

M/s.Reliance General Insurance Company Limited,
Sri Lakshmi Complex,
Bharathi Street,
Swarnapuri, Salem-4.

... Appellant in C.M.A.No.2886 of 2019/
2nd Respondent

Vs.

1.Sangeetha
2.Minor Adhav(Minor rept.by mother and NF/1st Respondent)
3.Savithri
4.Sathiyamoorthi
5.Parvathi
6.Elangovan
7.Oriental Insurance Company Limited,
The Divisional Office,
TP Hub Parimalam Complex,
Erode.

... Respondents in C.M.A.No.2886 of 2019/
Petitioners and Respondent 1,3 & 4

1.Sangeetha
2.Minor Adhav(Minor rep.by 1st Appellant)
3.Savithri
4.Sathiyamoorthi

...Appellants in C.M.A.No.2990 of 2019/
Petitioner

Vs

1.Parvathi

2.Reliance General Insurance Co. Ltd.,
Sri Lakshmi Complex, Bharathi Street,
Swarnapuri, Salem-4.

3.Elangovan

4.Oriental Insurance Company Ltd.,
Divisional Office, TP HUB Parimalan Complex,
Erode.

...Respondents C.M.A.No.2990 of 2019/
Respondents

Common Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree dated 09.08.2018 made in MCOP.No.1011 of 2016 on the file of the Motor Accident Claims Tribunal, II Additional District Judge, Special District Court (FAC), Salem.

C.M.A.No.2886 of 2019

For Appellant : Mr.R.Mohanbabu
for Mr.N.Vijayaraghavan

For Respondents: Mr.K.Kuppusamy for R1 to R4
Mr.S.Arunkumar for R7
R5- Died
No Appearance for R6

C.M.A.No.2990 of 2019

For Appellants : Mr.K.Kuppusamy

For Respondents: R1- Died
Mr.N.Vijayaraghavan for R2
Mr.S.Arunkumar for R4

No Appearance for R3

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

(Judgment of the Court was delivered by KRISHNAN RAMASAMY, J.)

These appeals have been filed challenging the order of the Tribunal passed in M.C.O.P.No.1011 of 2016 dated 09.08.2018.

2. C.M.A.No.2886 of 2019 has been filed by the Reliance General Insurance Company challenging both the liability as well as quantum of compensation awarded by the Tribunal. C.M.A.No.2900 of 2019 has been filed challenging the quantum of compensation awarded by the Tribunal.

3. The parties are referred to as per their respective ranks in the claim petitions for the sake of convenience.

4. The brief facts of the case are as follows:

On 24.03.2016 at about 2.35 p.m, when the deceased was riding his motorcycle bearing registration No.TN.30 AU 1830 near Thuraipakkam 200 feet radial road on the way to his office, the first respondent's auto rickshaw bearing registration No.TN. 01 Z 3088, which was parked on the road side, suddenly moved and turned to its right without giving any signal. Due to which the auto rickshaw knocked down the motorcycle and the deceased fell down and when he managed to get up from the spot, the third respondent's Eicher mini lorry bearing registration No. TN. 22 BP 1353 came in the same direction in a rash and negligent manner and it ran over the head of the deceased and he died on the spot. Therefore, the claimants filed the claim petition seeking compensation for a sum of Rs.1,90,00,000/-. According, to the claimants deceased was Team Leader in Cognizant Technology Solution India (P) Ltd., Chennai and earning a sum of Rs.70,000/- per month.

5. The insurer of the auto rickshaw filed a counter stating that the accident was not occurred due to the rash and negligent driving by the driver of the auto rickshaw. The deceased himself drove the vehicle in a rash and negligent manner and he only hit the auto and caused the accident. Even otherwise, investigation reveals that the death of the deceased occurred only due to ran over of the lorry and if the lorry driver took a little care, a death could have been avoided. Therefore, he contended that the insurer of the auto rickshaw is not liable to pay the compensation. On the other hand, the insurer of the Eicher mini lorry filed a counter stating that since the auto driver drove the vehicle in a rash and negligent manner, the accident occurred. Due to the same the deceased fallen down from his vehicle, which the driver of the lorry was not expected. Since it happened all of a sudden, he managed to apply break but he was not able to do so and the lorry ran over the head of the deceased. Therefore, he contended that the driver of the mini lorry is not responsible for the accident.

6. On behalf of the claimants P.W.1 and P.W2 were examined and Exs.P1 to P25 were marked. On behalf of the respondents R.W.1 and R.W2 were examined and Exs.R1 to R8 were examined.

7. After hearing both the parties and perusing the materials available on record, the Tribunal fixed negligenence on the part of both the driver of the auto rickshaw who was primarily responsible for the accident and also on the driver of the mini lorry who was also responsible for the secondary cause of accident. Hence, 60% negligence was fixed against the driver of the auto and remaing 40% negligence was fastened against the driver of the Echier lorry.

8. Aggrieved by the said order, the insurer of the auto rickshaw/Reliance General Insurance Company Limited filed C.M.A.No.2886 of 2019, challenging the liability as well as quantum of compensation awarded by the Tribunal and the claimants filed C.M.A.No.2900 of 2019, challenging the quantum of compensation awarded by the Tribunal.

Liability:

9. The learned counsel appearing for the Reliance General Insurance Company would contend that the deceased/rider of the two wheeler is responsible for the cause of accident, since he was driving the vehicle in a rash and negligent manner and hit on the auto, he fell down and after that due to negligence on the part of the driver of the mini lorry, the lorry ran over on the head of the deceased and rider of the two wheeler died on the spot. Therefore, he submits that no negligence can be fastened against the driver of the auto rickshaw and the same should have been fastended against the deceased/rider of the two wheeler and the driver of the Echier mini lorry. Therefore, he contended that the entire liability should have been fastened against the deceased rider of the two wheller as well as the owner of the mini lorry. Further he contended that the liability fastened against the owner of the auto as well as the Insurance Company is liable to be set aside.

10. The learned counsel appearing for the claimants would contend that FIR was registered against both the driver of the mini lorry as well as the driver of the auto. Though the second respondent/Reliance General Insurance Company made a contention that at the time of cross examination, PW2 deposed that the accident occurred due to rash and negligence on the part of the deceased and the driver of the mini lorry but no witness was examined and no document was marked to prove the said contention, RW2/ the driver of the mini lorry in his evidence deposed that the driver of the auto suddenly turned to left side therefore auto hit the motorcycle and thereafter the deceased fallen down and left rear wheel of the mini lorry ran over the head of the deceased. Therefore, he contended the finding of the Tribunal that both the driver of the mini lorry as well as the auto rickshaw is responsible for the cause of accident is just and proper which does not require any interference by this Court.

11. Heard the learned counsel for both sides and perused the material available on record.

12. We have also perused the material available on FIR, it clearly appears that the cause of accident was due to rash and negligence on the part of the mini lorry as well as the auto rickshaw. Therefore, FIR filed against both the driver. Though the learned counsel appearing for the 2nd respondent/Reliance General Insurance Company opposed the liablity on the part of the driver of the auto rickshaw, they have not examined any witnesses in order to prove their statement. Further, they have also not produced documentary proof to substantiate their contention. Even at the time of cross examination of PW2, the second respondent/Reliance General Insurance Company was not able to bring out anything to substantiate their contention. Further, the mini lorry

driver examined as eye witness by the insurer of the mini lorry who clearly deposed that the driver of the auto only hit the two wheeler and therefore accident was occurred. If the auto driver would have taken due care while turning his vehicle to the left to right, certainly the deceased could not have hit by auto rickshaw and fallen down on the road. Therefore, we are of the considered view that the Tribunal has rightly fixed the liability which does not require any interference by this Court. Therefore, fixation 60% liability against the owner of the auto as well as its insurer and remaining 40% liability against the owner of the mini lorry as well as the its insurer by the Tribunal stands confirmed. Despite notice served on the owner of the auto rickshaw to produce the driving license of the driver of the autorickshaw, he has not produced the same. Hence, the Tribunal came to the conclusion that the owner of the auto rickshaw breached the policy condition by allowing the driver to drive the auto without possessing driving license and ordered pay and recovery. We do not find any infirmity in the order passed by the Tribunal. Accrodingly, pay and recovery ordered by the Tribunal stands confirmed.

Quantum:

13. Both the claimants as well as the second respondent/Reliance General Insurance Company challenged the quantum of compensation awarded by the Tribunal. The Insurance Company has challenged stating that the amount awarded by the Tribunal is on the higher side. On the other hand, the claimants filed the appeal challenging the quantum of compesantion awarded by the Tribunal is on the lower side. The Tribunal has awarded a sum of Rs.87,76,250 as compensation to the claimants in the manner stated below:

Heads	Amount
Loss of dependency	Rs.86,06,250/-
Loss of Love and Affection	Rs.1,00,000/-
Loss of Consortium	Rs.40,000/-
Loss of Estate	Rs.15,000/-
Funeral Expenses	Rs,15,000/-
Total	Rs.87,76,250/-

14.The claim petition was filed by four petitioners. Though the Tribunal has fixed a sum of Rs.87,76,250/-, Mr.S.Arunkumar, learned counsel appearing for the Oriental Insurance Company filed a calculation memo, which reads as under:

"Annual Income = Rs.6,71,521/- x 50% = Rs.10,07,281/-

Rs. 2,50,000/- No Tax

Rs. 2,50,000/- to 5,00,000/- Tax 10%

Rs. 5,00,000/- to 10,00,000/-Tax 20%

Rs.10,00,000/- above Tax 30%

Rs.2,50,000/- x 10% (Tax)	= Rs.25,000/-
Rs. 5,00,000/- x 20% (Tax)	= Rs.1,00,000/-
Rs. 7,281 x 30% (Tax)	= Rs.2,184/-
	Rs.1,27,184/-
Rs.10,07,281 - Rs.1,27,456 (Tax)	Rs. 8,80,097/-
Loss of Income	
Rs.8,80,097 x ¼ x17	Rs.1,12,21,234/-
Loss of Love and Affection	Rs. 1,00,000/-
Loss of Consortium	Rs.Rs.40,000/-
Loss of Estate	Rs.15,000/-
Funeral Expenses	Rs.15,000/-
Total	Rs.1,13,91,234/-"

15. The learned counsel appearing for the claimants also filed a calculation memo for a sum of Rs.1,16,38,615/-. Whereas, the calculation memo filed by the counsel appearing for the Oriental Insurance Company is for a sum of Rs.1,31,91,234/-.

16. Therefore, the learned counsel appearing for the claimants as well as the learned counsel appearing for the Reliance Insurance Company fairly submits that the calculation memo filed by Mr.Arunkumar, who is appearing for the Oriental Insurance Company is just and fair and the same may be taken on record and appropriate order may be passed.

17. Taking into consideration the submission made by the learned counsel appearing for both the Insurance Company and claimants, this Court is inclined to award a sum of Rs.1,13,91,234/- as stated in the calculation memo filed by Mr.Arunkumar, learned counsel appearing for the Oriental Insurance Company. In fine, compensation awarded by the Tribunal for a sum of Rs.87,76,250/- stands increased to a sum of Rs.1,13,91,234/-.

18. In the result, this Civil Miscellaneous Appeal filed by the Insurance Company in C.M.A.No.2886 of 2019 is dismissed and C.M.A.No.2900 of 2019 is partly allowed and the compensation awarded by the Tribunal at Rs.87,76,250/- is hereby enhanced to Rs.1,13,91,234/- with interest at the rate of 7.5% per annum from the date of petition till the date of realisation. The appellant in C.M.A.No.2900 of 2019/claimants shall pay necessary Court fee, if any, on the enhanced compensation. Since we have confirmed the liabilities fixed by the Tribunal without any modification, we direct the second respondent/Reliance General Insurance Company to deposit 60% of the enhanced award amount and recover the same from the first respondent/owner of the vehicle and respondents 3 and 4/ Owner of the mini lorry and Oriental Insurance Company to deposit jointly and severally 40% of the enhanced award amount with interest and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this judgment.

19. Further, we direct the Tribunal to transfer the entire amount as increased by this Court to the claimant's Bank account by way of RTGS within three weeks from the date of deposit without awaiting for any application from the claimants. The share of the minor/ second claimant in M.C.O.P.No.1011 of 2016 is directed to be deposited in any one of the nationalised banks till he attains majority. The 1st claimant being the mother of the 2nd claimant is permitted to withdraw the interest once in six months for the welfare of the minor. In case, if the Bank account details are not available, the appellant is directed to furnish the details to the Court below duly within a week from the date of receipt of a copy of this order. No costs. Consequently, connected civil miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

rst

To

1. The Motor Accident Claims Tribunal,
   II Additional District, Special District Court (FAC),
   Salem.

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

+2cc to Mr.K.Kuppusamy, Advocate SR.10913, 10914
+2cc to Mr.N.Vijayaraghavan, Advocate SR.11524,11525
+1cc to Mr.S.Arunkumar, Advocate SR.11023

C.M.A.Nos.2886 & 2900 of 2019
and C.M.P.No.15261 of 2019

SSI(CO)
CB(23/12/2020)