



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
and
THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.M.A.Nos.3541 and 3288 of 2019
and
C.M.P.No.20665 of 2019

M/s.Reliance General Insurance Co. Ltd.,
"Rai's Tower" Plot No.2054,
2nd Avenue, 2nd Floor,
(Next to Senthil Nursing Home),
Anna Nagar, Chennai-40.

.. Appellant/Petitioner in
C.M.A.No.3541 of 2019

1. Sundari, W/o Baburam @ Baburam Sahani
2. Virat (Minor), S/o Baburam @ Baburam Sahani
3. Raj Kumar (Minor), S/o Baburam @ Baburam Sahani
4. Nirjala (Minor), D/o Baburam @ Baburam Sahani
5. Chandam (Minor), D/o Baburam @ Baburam Sahani
6. Pradip (Minor), S/o Baburam @ Baburam Sahani
(Minor appellants 2 to 6 are represented by their
mother and next guardian Mrs.sundari-first appellant)
7. Gena, W/o Rampat

.. Appellants/Petitioners in C.M.A.No.3288 of 2019

Vs.

1. Sundari, W/o Baburam @ Baburam Sahani
2. Minor Virat, S/o Baburam @ Baburam Sahani
3. Minor Raj Kumar
S/o Baburam @ Baburam Sahani
4. Minor Nirjala, D/o Baburam @ Baburam Sahani
5. Minor Chandam, D/o Baburam @ Baburam Sahani
6. Minor Pradip, S/o Baburam @ Baburam Sahani
(Minor respondents 2 to 6 are represented by their
mother and next guardian Mrs.sundari-first respondent)
7. Gena, W/o Rampat
8. P.Sivakumar, S/o Boologa Pandiyan

.. Respondents/Respondents in C.M.A.No.3541 of 2019

1. P.Sivakumar, S/o Boologa Pandiyan
(since first respondent remained ex-parte
before the Tribunal, his presence is dispensed with)



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2. M/s.Reliance General Insurance Co. Ltd.,
"Rai's Tower" Plot No.2054,
2nd Avenue, 2nd Floor,
(Next to Senthil Nursing Home),
Anna Nagar, Chennai-600 040.

.. Respondents/Respondents in C.M.A.No.3288 of 2019

Civil Miscellaneous Appeal Nos.3541 and 3288 of 2019 filed under Section 173 of the Motor Vehicles Act, against the Order and decree dated 07.12.2018 made in M.A.C.O.P.No.127 of 2014 on the file of the Motor Accidents Claims Tribunal, Special Sub-Court No.1 to deal with MCOP cases, Small Causes Court, Chennai.

For appellant in C.M.A.No.3541 of 2019: Mr.S.Arun Kumar

For appellant in C.M.A.No.3288 of 2019: M/s.M.Malar

For respondents in C.M.A.No.3541 of 2019:

M/s.M.Malar for RR-1 to 7
R-8 - ex-parte before the Tribunal

For respondents in C.M.A.No.3288 of 2019: Mr.S.Arun Kumar for R-2
R-1 ex-parte before the Tribunal

COMMON JUDGMENT

(The Common Judgment of the Court was delivered by R.Subbiah, J)

The appeals are heard through video-conferencing.

2. Not being satisfied with the quantum of compensation awarded by the Tribunal, in and by Award dated 07.12.2018 in M.C.O.P.No.127 of 2014 on the file of the Motor Accidents Claims Tribunal, Special Sub-Court No.1 to deal with MCOP cases, Small Causes Court, Chennai, the claimants have filed C.M.A.No.3288 of 2019.

2.(a) As against the very same Award, the Insurance Company has filed C.M.A.No.3541 of 2019 for reduction of the compensation amount.

3. For the sake of convenience, the parties herein are referred to as they are ranked before the Tribunal, i.e. claimants and Insurance Company. The first respondent before the Tribunal, being the owner of the vehicle in question, (i.e. first respondent in C.M.A.No.3288 of 2019 and eighth respondent in C.M.A.No.3541 of 2019), remained ex-parte before the Tribunal and there is no appearance even before this Court in these appeals.

4. The claimants are the wife and five minor children and the mother of the deceased Baburam @ Baburam Sahani.



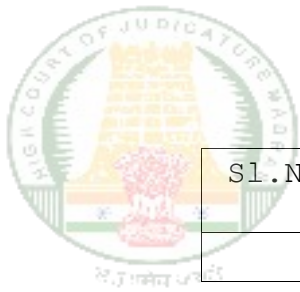
5. It is the case of the claimants before the Tribunal that on 22.03.2013 at about 19.20 hours, while the deceased was standing in front of the GSH Company, Mannur, a Tata City Rider (van) bearing Registration No.TN-21-AK-6181, came in a rash and negligent manner and dashed against the deceased Baburam @ Baburam Sahani, son of Rampat, as a result of which, the victim (deceased) sustained grievous/fatal injuries and thus, he died on the spot. It is the further case of the claimants that the deceased was a Driver by avocation and earning a sum of Rs.15,000/- per month. Hence, the claimants have made a claim for a sum of Rs.50,00,000/- as compensation.

6. The claim petition of the claimants before the Tribunal, was resisted by the Insurance Company by filing a detailed counter statement, denying the rash and negligent driving of the insured vehicle, namely the van bearing Registration No.TN-21-AK-6181. The Insurance Company had taken a specific defence that, at the time of accident, the driver of the insured van did not possess driving licence and permit, and therefore, there are breach of terms and conditions of the Insurance Policy and thus, the Insurance Company prayed for dismissal of the Claim Petition.

7. In order to prove the claim, Mrs.Sundari, the first claimant/wife of the deceased, was examined as P.W.1. One Mr.Rakesh, who was an eye-witness to the accident, was examined as P.W.2. One Mr.V.Ganapathy, who was the employer of the deceased, was examined as P.W.3. The claimants have marked Exs.P-1 to P-22 on their side. On the side of Insurance Company, the Legal Manager of the Insurance Company, was examined as R.W.1 and Exs.R-1 and R-2 were marked on their side.

8. The Tribunal, on analysing the entire evidence on record, came to the conclusion that the accident had occurred only due to the rash and negligent driving of the driver of the said van and thus, passed an award for a sum of Rs.23,66,000/-. The break-up details of the amounts awarded by the Tribunal are as follows:

Sl.No.	Head under which the amount was awarded by the Tribunal	Amount (in Rs.)
1	Loss of income/dependency	20,16,000
2	Loss of consortium to the first claimant	40,000
3	Loss of Love and Affection to the claimants 2 to 7	2,75,000
4	Loss of Estate	15,000
5	Transportation	5,000
6	Funeral expenses	15,000



Sl.No.	Head under which the amount was awarded by the Tribunal	Amount (in Rs.)
	Total	23,66,000

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9. Since the present appeals have been filed only challenging the quantum of compensation, we are not dealing with the other aspects of the impugned Award of the Tribunal.

10. It is the case of the claimants that the Tribunal, while calculating the compensation under the head "Loss of Income", had taken only a sum of Rs.10,000/- as the notional monthly income of the deceased, as against the claim of Rs.15,000/- per month in the claim petition, which had resulted in awarding an inadequate compensation of Rs.20,16,000/- under the head "loss of income". Hence, by fixing a sum of Rs.25,000/- as the monthly income of the deceased, the amount under the head "loss of income" had to be re-calculated, which would meet the ends of justice.

11. Per contra, it is the submission of the learned counsel appearing for the Insurance Company that no documentary evidence was produced in respect of the income of the deceased, and under such circumstances, the sum of Rs.10,000/- as fixed by the Tribunal, as the notional monthly income of the deceased, appears to be on the higher side and hence, by fixing lesser amount of monthly income, the amount awarded by the Tribunal has to be reduced.

12. Keeping in mind the submissions made on either side, this Court perused the materials available on record.

13. It is seen that the accident in this case had occurred on 22.03.2013. Considering the cost of living prevailing at that point of time, we are of the opinion that Rs.11,000/- could be fixed as the monthly income of the deceased, taking into consideration the facts and circumstances of the case. Hence, the submission made by the learned counsel appearing for the claimants that a sum of Rs.25,000/- may be taken as the monthly income of the deceased, is rejected.

14. Accordingly, Rs.11,000/- is fixed as the monthly income of the deceased and to this, the annual income works out to Rs.1,32,000/- and if 40% is added towards future prospects, the amount works out to Rs.1,84,800/- (Rs.1,32,000 + 40% of 1,32,000). As observed by the Tribunal, 1/5 has to be deducted towards the personal expenses of the deceased. If done so, the actual loss of dependency works out to Rs.1,47,840/- (Rs.1,84,800 - 1/5 of 1,84,800). Since the deceased was 36 years old at the time of accident, the actual multiplier to be adopted



in this case is "15". Accordingly, the actual loss of income/dependency works out to Rs.22,17,600/- (Rs.1,47,840 x 15).

15. Further, the amount of Rs.40,000/- awarded by the Tribunal under the head "loss of consortium" is hereby confirmed, the same being just and proper.

16. The amount of Rs.2,75,000/- awarded by the Tribunal under the head "loss of love and affection" to the claimants 2 to 7 is hereby reduced to Rs.1,50,000/- being restricted to the children, namely the minor claimants 2 to 6. (Rs.30,000 x 5 (i.e. claimants 2 to 6)).

17. Though the Tribunal included the amount under the head "love and affection" to the mother of the deceased also, being the 7th claimant, the same is set aside and a sum of Rs.50,000/- is hereby awarded under the head "filial compensation" to the mother of the deceased.

18. As no medical bills are produced before the Tribunal, no amount was awarded by the Tribunal under the head "medical expenses". This view of the Tribunal is hereby confirmed being just and proper.

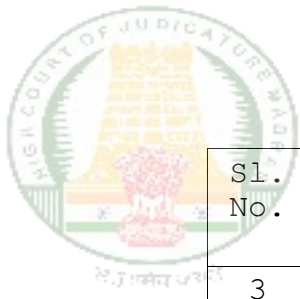
19. The amount awarded by the Tribunal under the head "loss of estate" at Rs.15,000/- is hereby confirmed.

20. The amount awarded by the Tribunal towards transportation is hereby enhanced to Rs.10,000/- by adding another sum of Rs.5,000/-.

21. Considering the facts and circumstances of the case, the sum of Rs.15,000/- awarded by the Tribunal under the head "funeral expenses", is hereby enhanced to Rs.30,000/- by adding another sum of Rs.15,000/-.

22. Thus, the break up details of the amounts now awarded by this Court are tabulated hereunder in comparison with the amounts awarded by the Tribunal :

Sl. No.	Head under which the amount is awarded by the Tribunal	Amount awarded by the Tribunal	Amount awarded by this Court
1	Loss of income/dependency of	20,16,000	22,17,600
2	Loss of consortium	40,000	40,000



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Sl. No.	Head under which the amount is awarded by the Tribunal	Amount awarded by the Tribunal	Amount awarded by this Court
3	Loss of love and affection	2,75,000 (to claimants 2 to 7)	1,50,000 (to claimants 2 to 6)
4	Filial compensation	-	50,000
5	Loss of estate	15,000	15,000
6	Transportation	5,000	10,000
7	Funeral expenses	15,000	10,000
	Total	23,66,000	24,92,600 (rounded off to Rs.25,00,000)

23. Thus, the total amount of compensation awarded by the Tribunal at Rs.23,66,000/- is hereby enhanced to Rs.25,00,000/-, which shall carry interest at the rate of 7.5% per annum from the date of claim petition till the date of payment. The Insurance Company is directed to deposit the compensation now computed by this Court, within a period of eight weeks from the date of receipt of a copy of this judgment, after deducting the amount if any already deposited. The apportionment of the compensation amount shall be as ordered by the Tribunal. On such deposit being made by the Insurance Company, the first claimant/wife of the deceased and the seventh claimant/mother of the deceased are permitted to withdraw their respective shares. As far as the share of the minor claimants 2 to 6 are concerned, the Tribunal is directed to invest the same in any one of the Nationalised Bank in an interest bearing Fixed Deposit Scheme, until they attain majority and the interest accrued thereon is permitted to be withdrawn by the mother being the first claimant, once in three months and the said Fixed Deposit shall be renewed periodically till the minor claimants attain majority.

24. In fine, the appeal filed by the claimants in C.M.A.No.3288 of 2019 is partly allowed and the appeal filed by the Insurance Company in C.M.A.No.3541 of 2019 is dismissed. No costs. Consequently, C.M.P. is closed.

Sd/-

Assistant Registrar(CS-VIII)

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Sub Assistant Registrar



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To

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1. Presiding Officer,
Motor Accidents Claims Tribunal,
Special Sub-Judge No.1 to deal with MCOP cases,
Small Causes Court, Chennai.
2. The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to M/s.M.Malar, Advocate, S.R.No.30294

+1cc to Mr.S.Arun Kumar, Advocate, S.R.No.30379

C.M.A.Nos.3541 and 3288 of 2019

NMI (CO)
CB(24/08/2021)