

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.07.2020

CORAM

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

C.M.A.No.3958 of 2019

and

C.M.P.No.22427 of 2019

M/s.Reliance General Insurance Co. Ltd.,
No.73, 1st Floor, Officer's Line,
Vellore -1. Appellant/2nd Respondent

Vs.

1.Poornima
W/o.Late Dhayalan

2.Minor Arjun Dhayalan
S/o.Late Dhayalan

3.Minor Surya Dhayalan
S/o.Late Dhayalan
(minors 2 and 3 are represented by
their mother and next friend Poornima)

...Respondents/Claimants 1 to 3

4.M.Shanthi
W/o.A.Manivel

...Respondent/Ist Respondent

5.ICICI Lombard General Insurance Co. Ltd.,
No.140, Nungambakkam High Road,
Chennai - 34.

...Respondent/3rd Respondent

6.Senguttuvan
S/o.Manickam

...Respondent/4th Respondent

7.Vanaja
W/o.Senguttuvan

... Respondent/5th Respondent

Prayer: Civil Miscellaneous Appeal filed u/s.173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 06.03.2019 passed in M.C.O.P.No.99 of 2016 on the file of Motor Accident Claims Tribunal, III Additional District Judge, Tirupattur.

For Appellant : Mr.S.Arunkumar

For Respondents: Mr.D.Balachandran

JUDGMENT

[Judgment of the Court was made by R.SUBBIAH, J]

[Heard through Video Conference]

This appeal has been filed by the appellant insurance company challenging the award dated 06.03.2019 passed in M.C.O.P.No.99 of 2016 on the file of Motor Accident Claims Tribunal, III Additional District Judge, Tirupattur.

2. Respondents 1 to 3 are wife and two minor sons and respondents 6 and 7 are parents of the deceased Dhayalan. On 09.07.2014 at about 10.30 p.m., while the deceased was proceeding towards Krishnagiri on the National Highways Road in his Mahindra Scropio Car bearing Registration No.TN-24-D-3421, a lorry, belonging to fourth respondent and insured with the appellant insurance company, bearing Registration No.TN-52-B-2745, came in the opposite direction in a rash and negligent manner and dashed against the Car, owing to which the deceased sustained grievous injuries and met his instantaneous death. Fifth respondent is the insurer of the Car driven by the deceased. Respondents 1 to 3, 6 and 7 filed M.C.O.P.No.99 of 2016 on the file of Motor Accident Claims Tribunal, III Additional District Judge, Tirupattur, seeking compensation in a sum of Rs.2,00,00,000/-.

3. Before the Tribunal, to prove their case, claimants examined 2 witnesses and marked 23 exhibits. Appellant insurance company examined 3 witnesses and marked 7 exhibits. On appreciation of materials, the Tribunal, under judgment dated 06.03.2019, has rendered a finding that both the deceased and the driver of the lorry were negligent and both of them were responsible for the accident and hence, fixed 50% contributory negligence on the deceased and held that appellant insurance company is liable to pay 50% of the compensation. The award of the Tribunal is as follows:

Sl. No.	Compensation awarded under the head	Amount (in Rs.)
1.	Loss of Income	99,27,264.00
2.	Future Prospects	39,70,905.60

Sl. No.	Compensation awarded under the head	Amount (in Rs.)
3.	Love and affection	80,000.00
4.	Loss of consortium	40,000.00
5.	Funeral expenses	15,000.00
6.	Transportation	5,000.00
	Total	1,40,38,169.60
	(-) 50% contributory negligence	70,19,850.00
	Compensation payable	70,19,850.00

The said amount was directed to be paid with interest at 7.5% p.a. from the date of claim petition. Challenging the quantum of compensation, appellant insurance company has preferred the present appeal.

4. Heard learned counsel for appellant insurance company and learned counsel for respondents. Perused the materials on record.

5. Learned counsel for appellant insurance company submits that on the date of accident, the deceased was proceeding in his Car on the Salem to Krishnagiri road. Since repairing work was going on, one side of the road was closed. Despite noticing the same, the deceased had driven the Car on the right side of the road in a hectic speed and dashed against the lorry, which was coming from the opposite direction. Learned counsel submits that the driver of the lorry was proceeding rightly on the left side of the road and it was only the deceased, a tort-feasor, who came on the right side of the road and dashed against the lorry. In the aforesaid circumstance, directing payment of 50% of the compensation is unsustainable and in fact, the Tribunal ought to have exonerated the appellant insurance company from paying compensation. Learned counsel submits that the First Information Report was registered only against the deceased. Subsequently, the case was closed as charge stood abated on the death of deceased. In such circumstance, fixing of 50% negligence on the part of the driver of the lorry is unsustainable. Further, learned counsel submits that the amount awarded under different heads is on the higher side and as such, the same needs proper reduction. Submitting as above, learned counsel prays for allowing the appeal.

6. Per contra, learned counsel for claimants submits that he has filed an appeal seeking enhancement of compensation and the same is yet to be numbered. Since the accident had occurred on

the middle of the road, the Tribunal has correctly fixed 50% negligence on the part of the deceased and deducted 50% of the compensation amount. Further, the amount awarded by the Tribunal is also reasonable. Thus, learned counsel submits that though he has filed an appeal seeking enhancement of compensation, he is not going to pursue the same. Submitting as above, learned counsel prays for confirming the award.

7. This Court has considered the rival submissions.

8. On a persual of the records and the judgment under challenge, this Court finds that the Tribunal, on the basis of Ex.R2 - S.O.C. Map, found that the occurrence took place in the middle of the road and hence, held that it is a case of contributory negligence. Though it was the contention of appellant insurance company that the Tribunal erred in fixing 50% negligence on the part of the driver of the lorry, this Court finds that the Tribunal rightly has arrived at the conclusion that the accident took place in the middle of the road and hence, both of them were responsible. Further, the finding of the criminal Court has no binding on the Tribunal in deciding the Motor Accident Claim cases and the Tribunal can always decide the claim petition independently by analysing materials. Insofar as the quantum of compensation is concerned, this Court finds that the case of the claimants that the deceased was earning Rs.76,208/- p.m. by working as a Lead Engineer was proved by claimants, marking Ex.P12, copy of payment slip for the month of June 2014, Ex.P21 - copy of identity card and Ex.P23 - income tax returns of the deceased. The tribunal has taken the annual income of the deceased at Rs.8,53,085/- based on Ex.P23 - income tax returns and deducted Rs.25,813/-, amount paid towards income tax. Since the dependents are 5 in number, deducted 1/4th towards personal expenses and as the deceased was aged 33 at the time of accident, applied the multiplier '16' and arrived at the loss of income at Rs.99,27,264/- $[(853085 - 25813) - 206818) * 16]$. The Tribunal has also rightly awarded 40% towards future prospects. This Court finds that the amount awarded under the other heads is also just and reasonable.

9. The Tribunal has rightly found that it is a case of contributory negligence and directed the appellant insurance company to pay only 50% of the compensation. This Court does not find any infirmity in the order passed by the Tribunal and hence, there is no scope for reduction of compensation or exoneration of the insurance company from making payment.

Accordingly, the Civil Miscellaneous Appeal is dismissed. The appellant insurance company is directed to deposit the award amount, less that already deposited, with interest at 7.5% p.a.

from the date of petition till the date of deposit, within a period of six weeks from the date of receipt of this judgment. On deposit being made by appellant insurance company, respondents 1, 6 and 7 are entitled to withdraw their respective shares as apportioned by the Tribunal. Insofar as the shares of respondents 2 and 3/minors are concerned, the same shall be deposited in any nationalised bank in fixed deposit till they attain majority. First respondent/mother of the minors is entitled to receive interest once in three months. No costs. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

gm

To

The Motor Accident Claims Tribunal,
III Additional District Judge,
Tirupattur.

Copy to

The Section Officer,
VR Section, High Court, Madras.

C.M.A.No.3958 of 2019

rsv[co]
srg 03/11/2020

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