

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.4871 of 2019 and
C.M.P.No.28037 of 2019

M/s.Reliance General Insurance Company Limited,
No.6, 6th Floor, Haddows Road,
Nungambakam, Chennai - 600 006.

.. Appellant/2nd Respondent

Vs.

1.S.Renuga Devi

2.V.Sekar

3.Minor.S.Sobana

.. Respondents1 to 3/ Petitioners

4.T.Kumaresan

..4th Respondent/1st Respondent

(Minor 3rd respondent represented by her next
friend and natural Guardian S.Renuga Devi)

Prayer: This Civil Miscellaneous Appeal is filed under
Section 173 of the Motor Vehicles Act, 1988, against the
Judgment and Decree dated 12.12.2018 made in M.C.O.P.No.4439
of 2015 on the file of the Motor Accident Claims Tribunal, IV
Small Causes Court, Chennai.

For Appellant : Mr.S.Arun Kumar
For RR 1 to 3 : Mr.Amar D.Pandiya
R4 : Exparte before Tribunal

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against
the award dated 12.12.2018 made in M.C.O.P.No.4439 of 2015 on
the file of the Motor Accident Claims Tribunal, IV Small
Causes Court, Chennai.

2.By consent of both the parties, this Civil
Miscellaneous Appeal is taken up for final disposal at the
admission stage itself.

3.The appellant is the second respondent in
M.C.O.P.No.4439 of 2015 on the file of the Motor Accident
Claims Tribunal, IV Small Causes Court, Chennai. According to
the respondents 1 to 3, on 03.03.2015 at about 17.00 hours,
while the deceased was riding in his motorcycle near Reliance
Signal on 200 feet road, Rajamangalam, Kolathur, Chennai from
North to South direction, the Eicher van belonging to the 4th

respondent proceeding in front of the deceased with high speed, suddenly applied break due to which, the deceased was thrown out and sustained head injury and succumbed to death on 05.03.2015. Hence, the respondents 1 to 3 who are the parents and minor sister of the deceased filed the above said claim petition, claiming a sum of Rs.50,00,000/- as compensation for the death of S.Venkatesh, against the 4th respondent and appellant/Insurance Company, being the owner and insurer of the Eicher van respectively.

4.The appellant/Insurance Company filed counter statement and denied all the averments made by the respondents 1 to 3/claimants. According to the appellant/Insurance Company, the accident took place only due to the negligence on the part of the deceased and hence, the appellant is not liable to pay any compensation. The respondents 1 to 3/claimants are bound to prove the age and avocation of the deceased with relevant material evidence. The respondents 1 to 3/claimants have to prove that the Eicher van belongs to the 4th respondent and insured with the appellant and also the driver of the Eicher Van was having valid driving license at the time of accident. The compensation claimed by the respondents 1 to 3/claimants under different heads are excessive and they are not entitled for the same. The total compensation of Rs.50,00,000/- claimed by the respondents 1 to 3/claimants is extremely high and they are not entitled to any amounts as claimed by them and prayed for dismissal of the claim petition.

5.The 4th respondent/owner of the Eicher van was set exparte before the Tribunal.

6.Before the Tribunal, the first respondent examined herself as P.W.1 and eye witness Mr.Raju as P.W.2 and Mr.Praveen, who is the employer of the deceased as P.W.3 and marked fourteen documents as Exs.P1 to P14. The appellant-Insurance Company has not let in any oral or documentary evidence.

7.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the Eicher van belonging to the 4th respondent and directed the appellant-Insurance Company to pay a sum of Rs.24,90,000/- as compensation to the respondents 1 to 3/claimants.

8.Against the said award dated 12.12.2018 made in M.C.O.P.No.4439 of 2015 granting compensation to the respondents 1 to 3/claimants, the appellant-Insurance Company has come out with the present appeal questioning the quantum of compensation alone.

9.The learned counsel appearing for the appellant-Insurance Company contended that the respondents 1 to 3 failed to prove the avocation and income of the deceased. In the absence of material evidence to prove the avocation and income of the deceased, the Tribunal erred in fixing a sum of Rs.10,000/- per month as notional income of the deceased. The deceased was a bachelor at the time of accident and the Tribunal erroneously deducted 1/3rd towards personal expenses of the deceased instead of 50%. The Tribunal has granted 50% enhancement towards future prospects of the deceased, which is excessive. A sum of Rs.3,00,000/- awarded by the Tribunal towards loss of love and affection and the amounts awarded by the Tribunal under different heads are excessive and prayed for setting aside the award passed by the Tribunal.

10.Per contra, the learned counsel appearing for the respondents 1 to 3/claimants contended that the deceased was working as a Delivery Associate in IKYA Human Capital Solutions, Chennai and was earning a sum of Rs.25,000/- per month. To prove the same, the claimants examined P.W.3, Manager of IKYA Human Capital Solutions Limited, Chennai and also produced Ex.P12/Authorization letter, Ex.P13/Employment contract copy and Ex.P14/pay slip of the deceased. The Tribunal, without accepting the above evidence and deposition of P.W.3, fixed a meagre sum of Rs.10,000/- as monthly income of the deceased. There are four dependants of the deceased. Hence, the Tribunal has rightly deducted 1/3rd towards personal expenses and rightly granted 50% enhancement towards future prospects. The Tribunal after analyzing the entire materials on record, has awarded a sum of Rs.24,90,000/- as compensation to the respondents 1 to 3/claimants, which is just and reasonable. The total compensation awarded by the Tribunal is not excessive and prayed for dismissal of the appeal.

11.Heard the learned counsel appearing for the appellant-Insurance Company as well as the learned counsel appearing for the respondents 1 to 3/claimants and perused the entire materials on record.

12.From the materials available on record, it is seen that the respondents 1 to 3 have contended that at the time of accident the deceased was aged 23 years and was working as a Delivery Associate in IKYA Human Capital Solutions, Chennai and was earning a sum of Rs.25,000/- per month. To prove the same, the claimants examined Mr.Praveen as P.W.3, who is the Manager of IKYA Human Capital Solutions Limited, Chennai and also produced Ex.P12/Authorization letter, Ex.P13/Employment contract copy and Ex.P14/pay slip of the deceased. The Tribunal considering the above evidence and deposition of

P.W.3, fixed a sum of Rs.10,000/- per month as notional income of the deceased, which is not excessive. The deceased was a bachelor at the time of accident and the deduction of 1/3rd towards personal expenses of the deceased is not correct. The Tribunal has granted 50% enhancement towards future prospects of the deceased, which is excessive. The respondents 1 to 3/claimants are entitled to only 40% enhancement towards future prospects. In view of the above, the compensation awarded by the Tribunal towards loss of income is modified to Rs.15,12,000/- {[Rs.10,000/- + Rs.4,000/- (40% of Rs.10,000/-) X 12 X 18 X ½]}.

13.From the award of the Tribunal, it is seen that the Tribunal has awarded a sum of Rs.3,00,000/- towards loss of love and affection to the respondents 1 to 3/claimants, which is excessive and the same is modified as the respondents 1 to 3 are entitled to only a sum of Rs.50,000/- each towards loss of love and affection. The amounts awarded by the Tribunal towards loss of estate and funeral expenses are just and reasonable and hence they are confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

Sl .N o	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of income	21,60,000/-	15,12,000/-	Reduced
2.	Loss of love and affection	3,00,000/-	1,50,000/-	Reduced
3.	Loss of estate	15,000/-	15,000/-	Confirmed
4.	Funeral expenses	15,000/-	15,000/-	Confirmed
	Total	Rs.24,90,000/-	Rs.16,92,000/-	reduced by Rs.7,98,000/ -

14.In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.24,90,000/- is hereby modified to Rs.16,92,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant/Insurance Company is directed to deposit the modified award amount now determined by this Court, together with proportionate interest and costs, less the amount if any, already deposited to the credit of M.C.O.P.No.4439 of 2015 on the file of the Motor Accident Claims Tribunal, IV Small Causes Court, Chennai. On such deposit, the respondents

1 and 2/claimants are permitted to withdraw their respective share of the modified award amount now determined by this Court as per the ratio of apportionment fixed by the Tribunal, along with proportionate interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. The share of the minor 3rd respondent is directed to be deposited in any one of the Nationalized Banks, till she attains majority. On such deposit, the 1st respondent, mother of the minor 3rd respondent is permitted to withdraw the accrued interest once in three months for the welfare of the minor 3rd respondent. The appellant-Insurance Company is permitted to withdraw the excess amount, if any, lying in the deposit to the credit of M.C.O.P.No.4439 of 2015 on the file of the Motor Accident Claims Tribunal, IV Small Causes Court, Chennai, if the entire amount has already been deposited by them. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1.The IV Judge,
Motor Accident Claims Tribunal,
Small Causes Court,
Chennai.

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

+lcc to Mr.S.Arun Kumar , Advocate SR.No. 1517

+lcc to Mr. S.Ravi Kumar, Advocate SR.No. 700

C.M.A.No.4871 of 2019

RSI co

A.SK(01/12/2020)