

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 02.11.2020
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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.3449 of 2017
and C.M.P.No.21891 of 2017

M/s.Reliance General Insurance Co.Ltd.
Rai's Tower, Plot No.2054
2nd Avenue, 2nd Floor
Anna Nagar, Chennai-600 040. .. Appellant/2nd Respondent

Vs.

1.M.Kala
2.D.Suguna
3.S.Savithiri
4.G.Yasodha
5.R.Suriyagandhi
6.M.Rupavathi
7.M.Manjula ..Petitioners 1 to 7 and
8.Venkatesan .. Respondent/1st Respondent

Appeal filed under Section 173 of Motor Vehicles Act, 1988,
against the judgment and decree dated 18.07.2016 made in
MCOP.No.6093 of 2012 on the file of the Motor Accidents Claims
Tribunal, Special Sub Judge-II, Chennai.

For Appellant : Mr.S.Arunkumar
For Respondents : Mr.M.Gouthaman for R1 to R7
: No appearance for R8

JUDGMENT

This appeal is preferred by the Insurance Company against
the award of a sum of Rs.6,43,000/- by the Tribunal towards
compensation to the respondents 1 to 7 / claimants, due to the
death of the deceased-Neelavathy in a motor vehicle accident.

2.The case in brief, is as follows:

On the fateful day, ie. on 08.03.2012 at about 04.15 a.m.,
the deceased Neelavathi was walking towards the left side of the
ECR Road, Kanathur, Kanchipuram District, opposite to Sub-Corner
Restaurant from South to North direction. At that time, the
lorry bearing Reg.No.TN-21-AB-4606 belonging to the eighth
respondent herein and insured with the appellant Insurance
Company, came from the opposite direction in a rash and
negligent manner at high speed and hit the deceased. Due to the
said impact, the deceased sustained fatal injuries and died on

the spot. The legal heirs of the deceased filed a claim petition before the Tribunal, claiming a sum of Rs.6,00,000/- as compensation. Considering the materials and evidence available on record, the Tribunal has awarded a total compensation of Rs.6,43,000/- with interest at the rate of 7.5% per annum from the date of petition. Challenging the same, the Insurance Company has come up with this appeal.

3.The learned counsel for the appellant Insurance Company has not questioned the manner in which the accident took place. But he submitted that the Tribunal failed to note that the respondents 1 to 7 herein are not the dependants of the deceased and hence they are not entitled to claim loss of dependency; that the Tribunal has erred in fixing Rs.6,500/- per month as income of the deceased, in spite of the fact that the deceased was aged more than 70 years and dependent upon the respondents 1 to 7 herein; that in any event, the Tribunal has erred in fixing the annual dependency at Rs.39,000/- and capitalised the loss for 7 years without any basis. He finally submitted that the Tribunal has erred in awarding Rs.3,50,000/- towards loss of love and affection after granting Rs.2,73,000/- towards loss of income. In all, he submitted that the total compensation awarded by the Tribunal is excessive and exorbitant and hence the same has to be reduced substantially.

4.The learned counsel for the respondents 1 to 7 / claimants has submitted that the Tribunal has rightly considered the materials and evidence and has awarded the compensation which is just, fair and reasonable and therefore, the same need not be interfered with by this Court. It is also submitted that the Tribunal has correctly relied upon Ex.P8-Legal Heirship Certificate and arrived at the conclusion that the claimants are the daughters of the deceased and hence they are entitled to claim compensation.

5.Heard the learned counsel on either side and perused the materials available on record carefully and meticulously.

6.The Tribunal has awarded a compensation of Rs.6,43,000/- with interest at the rate of 7.5% per annum from the date of petition, the details of which are as under:

HEADS

AMOUNT
(Rs.)

Loss of income	2,73,000/-
Loss of love and affection	3,50,000/-
Transport expenses	2,000/-
Damages to clothes and articles	1,000/-
Funeral expenses	17,000/-

TOTAL.....	6,43,000/-
	=====

7.The main contention of the learned counsel for the appellant Insurance Company is that the Tribunal has erred in fixing Rs.6,500/- per month as income of the deceased, in spite of the fact that the deceased was more than 70 years and she was dependent upon the respondents 1 to 7 herein. But, it is seen from the impugned judgment that the Tribunal has taken note of Ex.P6-Post Mortem Report, wherein it is stated that the deceased was 65 years old. Even in Ex.P3-Death Report and Ex.P8-Death Certificate, the age of the deceased was mentioned as 65 years. Considering the same and also giving a finding that when the first claimant was aged 40 years at the time of accident, the age of the deceased cannot be taken as 52, the Tribunal fixed the age of the deceased as 65 years. Thereafter, the Tribunal determined the monthly income of the deceased at Rs.6,500/- earned by way of running a Fish Shop, deducted 50% of the amount towards personal expenses of the deceased, adopted the multiplier of 7, relying upon the judgment of the Supreme Court in Sarla Verma and others vs. Delhi Transport Corporation and another, reported in (2009) 4 MLJ 997 and arrived at Rs.2,73,000/- towards loss of income. The Tribunal has correctly relied upon the materials and evidence and arrived at the compensation towards loss of income at Rs.2,73,000/- and hence, this Court is not inclined to interfere with the same.

8.However, this Court accepts the submission of the learned counsel for the appellant that the amount awarded towards loss of love and affection at Rs.3,50,000/- is on the higher side, when already a sum of Rs.2,73,000/- has been awarded towards loss of income. It would only be appropriate to award a sum of Rs.1,75,000/- towards loss of love and affection at the rate of Rs.25,000/- per claimant and accordingly it is modified. Further, it would be appropriate to award a sum of Rs.15,000/- towards loss of estate and enhance the amounts awarded by the Tribunal towards transport expenses from Rs.2,000/- to 5,000/-, towards funeral expenses from Rs.17,000/- to Rs.20,000/- and towards damage to clothes and articles from Rs.1,000/- to Rs.2,000/- and the same are accordingly modified.

9.The details of the modified compensation are as under:

HEADS	AMOUNT (Rs.)
Loss of income	2,73,000/-
Loss of love and affection	1,75,000/-
Loss of estate	15,000/-
Transport expenses	5,000/-
Damages to clothes and articles	2,000/-
Funeral expenses	20,000/-

TOTAL.....	4,90,000/- =====

Thus, the compensation awarded by the Tribunal stands reduced to Rs.4,90,000/- with interest at the rate of 7.5% per annum from the date of petition.

10.In the result, the Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, the connected miscellaneous petition is closed.

11.It is submitted by the learned counsel for the appellant insurance company that as directed by this Court, the appellant insurance company has deposited the entire award amount along with proportionate interest and costs. In view of the same, the respondents 1 to 7 / claimants are permitted to withdraw their respective shares as per the ratio of apportionment made by the Tribunal, on making proper application. The appellant insurance company is also permitted to withdraw the excess amount lying in the deposit.

Sd/-

Asst.Registrar (CO)

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Sub Asst. Registrar

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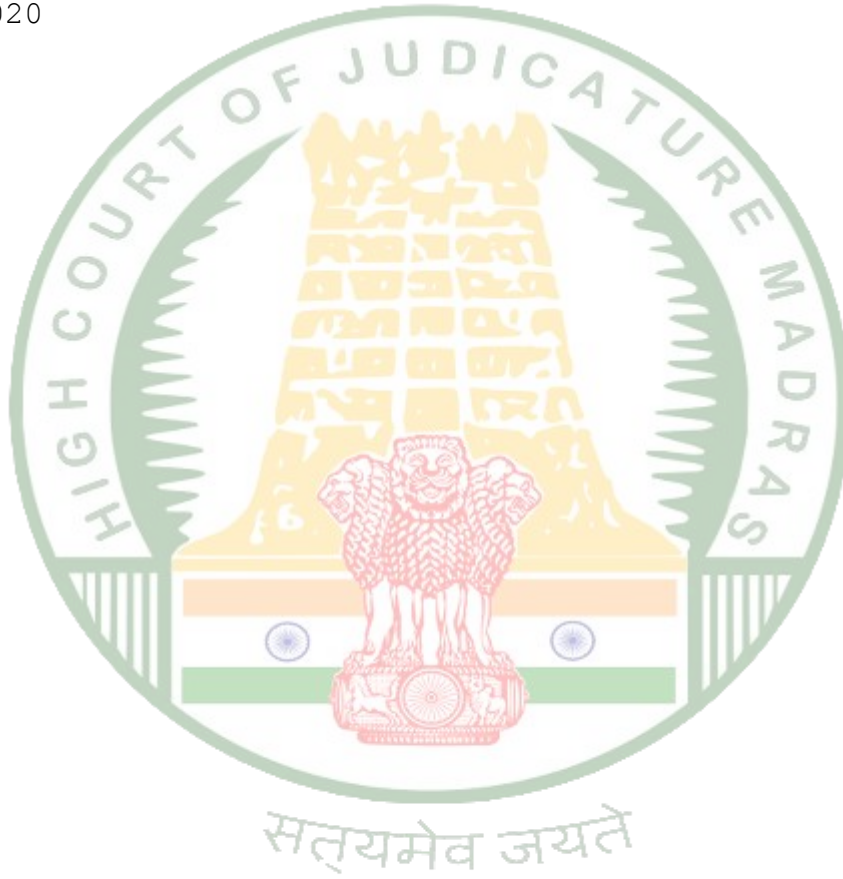
1.The Special Sub Judge-II,
Motor Accidents Claims Tribunal,
Chennai.

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

+1cc to Mr.M.Gouthaman, Advocate, SR.No.35514 (11/12/2020)
+1cc to M/s.S.Arunkumar, Advocate, SR.No.35498 (11/12/2020)

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and C.M.P.No.21891 of 2017

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