



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.09.2020

CORAM

THE HON'BLE MR.JUSTICE M.SATHYANARAYANAN

AND

THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

C.M.A. (MD)No.341 of 2020

and C.M.P. (MD)No.4460 of 2020

(Through Video Conferencing)

WEB COPY

Manager [Legal]
Reliance General Insurance Company
Reliance House, No.6
Haddows Road, Nungambakkam
Chennai.

... Appellant/Respondent No.2

-Vs-

1.Jeya

2.Sangavi

3.Gowsalya

4.Pushpavalli

... Respondents 1 to 4/Petitioners

5.Jainulabudeen

... 5th Respondent/Respondent No.1

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, praying to set aside the judgment and decree dated 16.07.2019 passed in M.C.O.P.No.102 of 2016 on the file of the Motor Accident Claims Tribunal, Ramanathapuram.

For Appellant : Mr.V.Sakthivel

For Respondents : Mr.D.Balamurugapandi for R1 to R4

JUDGMENT

[Judgment of the Court was delivered by **M.SATHYANARAYANAN, J.**]

The second respondent insurance company in M.C.O.P.No.102 of 2016 on the file of the Motor Accident Claims Tribunal, Ramanathapuram, is the appellant.

2. Respondent Nos.1 to 4 had filed M.C.O.P.No.102 of 2016 on the file of the Motor Accident Claims Tribunal, Ramanathapuram, claiming compensation of Rs.30,00,000/- (Rupees Thirty Laksh only) with interest at the rate of 12% p.a., on account of the demise of



one Sekar-husband of the first respondent. The Tribunal, after contest, has awarded a sum of Rs.20,80,000/- (Rupees Twenty Lakhs Eighty Thousand only) at the rate of 7.5% p.a. from the date of claim petition till the date of full deposit and also apportioned the compensation among the claimants. The Second respondent/Insurance Company has filed this Civil Miscellaneous Appeal challenging the findings and negligence as well as the quantum of compensation.

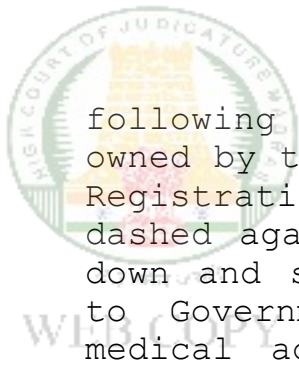
3. The learned counsel appearing for the appellant/Insurance company has drawn the attention of this Court to the impugned order and would submit that the deceased was a rider of the two-wheeler TVS Sports, bearing Registration No.TN 65 Y 8739, and he had also carried two persons and on account of his own negligence, he had fallen down and sustained fatal injury and that apart he was also under the influence of alcohol and the said aspect has been completely overlooked by the Tribunal while arriving at a finding on negligence. Insofar as the compensation is concerned, though it is the case of the respondents 1 to 4/claimants that the deceased was running a Tea shop and was earning a sum of Rs.20,000/- (Rupees Twenty Thousand only) per month, the Tribunal has found that no proof for such occupation and therefore, fixed the notional monthly income at Rs.6,5000/- and by applying multiplier, arrived the loss of income at Rs.18,90,000/-

4. It is the further submission of the learned counsel appearing for the appellant that according to the evidence of P.W.1-wife of the deceased, there is a difference of five years between her and the age of her husband and in that event, the age of the husband should be 47 at the time of the accident, but whereas, the Tribunal went by the Postmortem certificate, marked as Ex.P2 fixed the age of the deceased as 45 and accordingly, applied the decision of the Hon'ble Supreme Court of India in **Sarala Verma and others Vs. Delhi Transport Corporation and another**, reported in **2009 (2) TN MAC 1 (SC)** and he would further contend that the compensation awarded by the Tribunal, at any rate, is highly excessive and prays for interference.

5. This Court has carefully considered the rival submissions and also perused the materials placed before this Court.

6. The sole question arises for consideration is whether the findings recorded by the Tribunal on negligence as well as quantum of compensation warrant interference.

7. The accident happened at about 11.00 a.m. on 25.12.2015 at Madurai-Rameshwaram National Highways. P.W.2 is the brother-in-law of the deceased and while the deceased was riding his two-wheeler bearing Registration No.TN 65 Y 8739, he was forcibly



following the another two wheeler and at that time, the vehicle owned by the 5th respondent and insured with the appellant, bearing Registration No.TN 11 P 3353, has come from West to East and dashed against the two wheeler of the deceased and he had fallen down and sustained grievous injuries and initially, he was taken to Government Hospital, Ramanathapuram for first aid and on medical advice, he was shifted to Government Rajaji Hospital, Madurai and on the way to the hospital, he died.

8. The primordial submission of the learned counsel appearing for the appellant that the deceased had also carried two persons in the two wheeler, which lead to the imbalance of the vehicle and that apart, he was also under the influence of alcohol. The Tribunal has taken note of the fact that in the cross examination of P.W.2, who witnessed the accident, nothing useful to the claimant was elicited and that apart has also gone through the Postmortem certificate, marked as Ex.P2 and found that there was no indication in the said postmortem certificate as the deceased was under the influence of alcohol.

9. The Tribunal has also taken note of the fact that in Ex.P.1, FIR, dated 01.09.2016, the 5th respondent is shown as an accused and having taken note of the said materials and evidence available on record, has rightly reached the conclusion that the driver of the four wheeler viz., the 5th respondent was the sole accused of the accident and as such, the insurer viz., the appellant is liable to pay the compensation.

10. Now coming to the quantum of compensation, though it is the case of the claimants that the deceased was running a Tea shop and was earning a sum of Rs.20,000/- (Rupees Twenty Thousand only) per month, the Tribunal found that except the testimony of P.W.1, there was no evidence available to show that he was running a Tea shop and was earning a sum of Rs.20,000/- (Rupees Twenty Thousand only) per month.

11. The Tribunal, taking into consideration the various pronouncement of the judgment of the Hon'ble Supreme Court of India, has fixed the notional income at Rs.6,500/- per month and for the calculation also taken note of the judgment rendered by this Court in **Andal and others Vs. Avinav Kannan** reported in **2019 (1) TNMAC 54** and in **Humraj Vs. Oriental Insurance Company Ltd.**, reported in **2017 (2) TNMAC 75 (A) SCC**. It is also the submission of the learned counsel appearing for the appellant that it is the evidence of P.W.1 that the age different between her and her husband is five years and in that event, the age of the deceased would be 47 years and therefore, the application of the calculation in terms of **Sarala Verma's Case (cited supra)** should



12. In the considered opinion of this Court, the said submission is also liable to be rejected for the reason that P.W.1 is a rustic lady, having a rural background and the Tribunal has also taken note of the Postmortem report, marked as Ex.P2 given by the Doctor, who conducted the autopsy and rightly found that the deceased was aged about 45 years and by applying the principal laid down in **Sarala Verma's Case (cited supra)** fixed the annual income at Rs.1,35,000/- (Rupees One Lakh and Thirty Five Thousand only) and awarded the compensation of Rs.18,90,000/- (Rupees Eighteen Lakhs and Nineteen Thousand only) as loss of income. Insofar as the sums awarded for funeral expenses, loss of love and affection and consortium are concerned, they are also in tune with the judgments rendered by the Hon'ble Supreme Court in **National Insurance Company Limited vs. Pranay Sethi and Others** reported in **2017 (6) CTC 493 (SC)** and in **The New India Assurance Company Ltd., Vs. Somwati & Others** reported in **CDJ 2020 SC 709**. A sum of Rs.15,000/- (Rupees Fifteen Thousand only) is awarded for loss of damages to cloth and it can be awarded under loss of estate, instead of loss of damages to cloth and articles.

13. In the considered opinion of this Court, the compensation awarded by the Tribunal is just, fair and reasonable compensation. This Court, on an independent application of mind to the entire materials and on going through the impugned judgment, is of the view that no interference is warranted in exercise of its appellate jurisdiction.

14. In the result, this Civil Miscellaneous Appeal is dismissed confirming the award dated 16.07.2019 passed in M.C.O.P.No.102 of 2016. The appellant is directed to comply with the award as confirmed in this appeal within a period of eight (8) weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

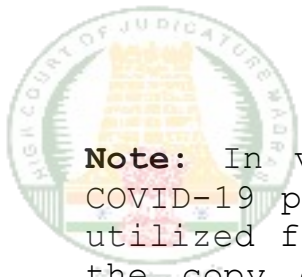
Assistant Registrar (CS-III)

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Sub Assistant Registrar (CS)

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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To
The Judge, Motor Accident Claims Tribunal,
Ramanathapuram.

+1 CC to Mr.D.BALAMURUGAPANDI, Advocate (SR-17033
[F] dated 16/09/2020)

+1 CC to Mr.V. SAKTHIVEL, Advocate (SR-17208[F]
dated 17/09/2020)

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MR (CO)
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