IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 27.01.2021

Coram:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
and
THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

C.M.A.No.70 of 2021
and
C.M.P.No.553 of 2021

M/s.Reliance General Insurance Co. Ltd.,
Represented by its Manager,
No.570, Naigaum Cross Road,
Next to Royal Industrial Estate,
Wadala (W), Mumbai-400 031. ..Appellant/2nd Respondent

Vs.

1. Sudha,
W/o Late Samivel @ Samuvel

2. Minor Kavidharshi,
D/o Late Samivel @ Samuvel

3. Minor Kishor,
S/o Late Samivel @ Samuvel

4. Dhanam,
W/o Late Raja ..Respondents 1 to 4/Petitioners

5. B.Ramesh,
S/o Bujalingaiah ..5th Respondent/1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 17.10.2019 in M.C.O.P.No.332 of 2016 on the file of the Motor Accidents Claims Tribunal, Special District Court, Dharmapuri.

For Appellant : Mr.S.Arun Kumar
For Respondents: Mr.M.Selvam for RR-1 to 4
R-5 - set ex-parte before the Tribunal

JUDGMENT

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

This appeal is filed by the Insurance Company challenging the award dated 17.10.2019 made in M.C.O.P.No.332 of 2016 on the file of the Motor Accidents Claims Tribunal, Special District Court, Dharmapuri.

2. The respondents 1 to 4/claimants, are the wife, two minor children and the mother of the deceased Samivel @ Samuvel. It is the case of the claimants that on 08.01.2016, at about 4.30 p.m., while the deceased was riding Hero Honda Splendour (two-wheeler) bearing Registration No.TN-29-AC-4623 from Nallampatti with one Prabulingam as pillion rider, a lorry bearing Registration No.KA-05-AD-5008 belonging to the fifth respondent herein and insured with the appellant-Insurance Company, was proceeding in front of the two-wheeler. While so, the driver of the lorry, without giving any signal to the vehicles coming from behind, abruptly applied brake. In the said process, the two-wheeler hit the lorry on the rear side of the lorry, as a result of which, the deceased fell down and sustained grievous injuries and died on the spot itself. According to the claimants, the deceased was aged about 27 years at the time of accident and was working as a Mason and earning Rs.20,000/- per month. Since they have lost their only bread-winner of the family, the claimants have made a claim for Rs.30 lakhs as compensation.

3. The case of the claimants was resisted by the Insurance Company by filing counter statement stating that the accident had occurred only due to the negligent driving of the deceased and the lorry driver is no way responsible for the accident. The FIR was lodged against the lorry driver on the basis of the false allegations. The driver of the lorry had no valid driving licence. So also, the deceased was also not having any valid driving licence to ride the two-wheeler. The age, income and the avocation of the deceased was also disputed. Thus, the Insurance Company prayed for dismissal of the Claim Petition filed by the claimants before the Tribunal.

4. In order to prove the claim, on the side of claimants, the wife of the deceased was examined as P.W.1, besides the pillion rider was examined as P.W.2 and one Madhu was examined as P.W.3 who spoke about the avocation of the deceased. Exs.P-1 to P-20 were marked on their side. On the side of Insurance Company, R.Ws.1 and 2, being the Special Sub-Inspector of Police, Mathikonpalayam Police Station and Head Constable attached to the said Police Station, were examined and Exs.R-1 to R-5 were marked on their side.

5. The Tribunal, after analysing the entire evidence on record, came to the conclusion that the accident had occurred due to the negligent act of the driver of the lorry and thus fixed the entire liability on the owner of the lorry. Consequently, the Tribunal directed the appellant/Insurance Company to pay the compensation amount by indemnifying the owner of the vehicle. By coming to such conclusion, the Tribunal awarded a sum of Rs.19,97,800/- as total compensation, the

break-up details of the same are tabulated hereunder:

Sl. No.	*Heads under which the Tribunal awarded the compensation*	*Amount awarded (in Rs.)*
1	Compensation for pecuniary loss	19,27,800
2	Loss of consortium	40,000
3	Loss of Estate	15,000
4	Funeral expenses	15,000
	Total	19,97,800

Challenging the award passed by the Tribunal, the Insurance Company had preferred this appeal.

6. It is the main submission of the learned counsel appearing for the appellant/Insurance Company that the deceased was coming behind the lorry by riding two-wheeler. It was the deceased who had hit the lorry on the rear side and thus, he had wholly contributed for the accident. In order to prove the negligence on the part of the deceased, two witnesses were examined on the side of the Insurance Company and Exs.R-1 to R-5 were marked. It is further submitted that the Motor Vehicle Inspector's Reports show that the damage was caused only on the rear side of the lorry. Though the FIR was registered as against the driver of the lorry on false allegations, the final report was filed by referring the case as 'charge abated', since the rider of the two-wheeler, namely Samivel @ Samuvel died. In such circumstances, having regard to the manner in which the accident had occurred, the Tribunal is not justified in fixing the entire liability on the appellant and therefore, the learned counsel prayed for setting aside the award of the Tribunal.

7. Countering the above submissions, the learned counsel appearing for the respondents 1 to 4/claimants made submissions supporting the award passed by the Tribunal.

8. Keeping the submissions made on either side, we have carefully perused the materials available on record.

9. It is an admitted case that at the time of accident, the lorry was proceeding in front of the two-wheeler driven by the deceased. It is claimed that the driver of the lorry applied sudden brake without giving any signal and as a result of which, the deceased hit the lorry from behind. In the impact, the deceased died on the spot. These facts are not disputed by the claimants. Above all, the fact that the deceased had hit the rear side of the lorry has also been proved through documentary evidence by the appellant-Insurance Company before the Tribunal. Having regard to the above admitted fact, we are of the opinion

that the Tribunal ought not to have fixed the entire liability on the part of the driver of the lorry. At the same time, we are of the view that, had the lorry driver exercised some caution while applying brake, he could have averted the accident. The negligent could therefore be fixed equally on the part of the driver of the lorry and the deceased who rode the two-wheeler without exercising basic prudence. Accordingly, we fix 50% liability on the part of the deceased and the other 50% liability on the part of the driver of the lorry.

10. So far as the quantum of compensation awarded by the Tribunal is concerned, it is the case of the claimants before the Tribunal that the deceased was working as Mason and earning a sum of Rs.20,000/- p.m. In order to prove the avocation and earning of the deceased, the General Secretary of the Tamil Manila Makkal Kattida Tholilar Matrum Amaippu Sara Tholilalar Peravai was examined as P.W.3, who had stated in his evidence that the deceased was a member of the said Federation and the deceased was earning Rs.700/- as daily wages from his Masonry work. Ex.P-7, copy of the Identity Card of the deceased, was marked through PW3. But the Tribunal did not accept the evidence of P.W.3 that the deceased was earning Rs.700/- as daily wages. On the other hand, the Tribunal, on its own accord, had fixed a sum of Rs.9,000/- as the notional monthly income of the deceased, added 40% towards future prospects and by applying the multiplier "17" awarded compensation under the head "pecuniary loss" at Rs.19,27,800/-. But, in our view, considering the cost of living prevalent at the relevant point of time, the sum of Rs.9,000/- fixed by the Tribunal is extremely on the lower side. Hence, we are of the opinion that a sum of Rs.14,000/- shall be fixed as the monthly notional income of the deceased. Accordingly, the amount awarded by the Tribunal under the head "pecuniary loss" could be modified. If so fixed and 40% is added towards future prospects, the monthly income would be Rs.19,600/- (Rs.14,000 + 40% of 14,000). The annual monthly loss of income is arrived at Rs.2,35,200/- (Rs.19,600 x 12). The Tribunal applied correct multiplier of 17 taking note of the fact that the deceased was 27 years at the time of accident. Accordingly, we re-determine the compensation payable to the deceased towards loss of income at Rs.39,98,400/- (2,35,200 x 17). Out of this amount, if 1/4 is deducted towards personal expenses of the deceased, the total loss of income can be arrived at Rs.29,98,800/- (i.e. 39,98,400 - 9,99,600). Thus, the amount of Rs.19,27,800/- awarded by the Tribunal under the head "pecuniary loss" is hereby enhanced to Rs.29,98,800/-.

11. Further, we find that the Tribunal had not awarded any amount towards the loss of love and affection to the respondents 2 to 4 being the minor children and the mother of the deceased. Accordingly, a sum of Rs.1,20,000/- (Rs.40,000/- each) is

awarded towards loss of love and affection to the respondents 2 to 4.

12. Except the above modification, the amounts awarded by the Tribunal under the other heads are confirmed.

13. Accordingly, we re-determine the compensation awarded by the Tribunal as follows:-

Sl. No.	*Heads under which the amounts are awarded*	*Amounts awarded by the Tribunal (in Rs.)*	*Amounts awarded by this Court (in Rs.)*
1	Compensation for pecuniary loss	19,27,800	29,98,800
2	Loss of consortium	40,000	40,000
3	Loss of Estate	15,000	15,000
4	Funeral expenses	15,000	15,000
5	Loss of love and affection to respondents 2 to 4 (@ Rs.40,000/- each)	--	1,20,000
	Total	19,97,800	31,88,800 rounded off to Rs.32,00,000/-

14. Since this Court had fixed contributory negligence at 50% on the part of the driver of the lorry and the deceased, the actual amount of compensation payable to the claimants will be Rs.16,00,000/-.

15. In the result, the Civil Miscellaneous Appeal is partly allowed, fixing the compensation to be awarded to the claimants at Rs.16,00,000/- (Rupees sixteen lakhs only), which shall carry interest @ 7.5% per annum from the date of claim petition till the date of payment. The appellant/Insurance Company is directed to deposit the said sum of Rs.16,00,000/- before the Tribunal, with interest, and costs as awarded by the Tribunal, less the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. The excess amount, if any lying in deposit after such calculation of total deposit, is permitted to be withdrawn by the appellant/Insurance Company. On such total deposit by the appellant/Insurance Company, the respondents 1 and 4 herein are permitted to withdraw their respective shares including accrued/proportionate interest, and costs as awarded by the Tribunal, less the amount if any already withdrawn by them. As far as the share of the minor respondents 2 and 3 are concerned, their respective shares be invested in any Fixed Deposit scheme in any nationalised Bank initially for a period of three years and renewable thereafter till they attain majority and the interest accrued on such fixed

deposit shall be withdrawn by the mother being the first respondent herein once in three months. The proportion of allocation of shares as adopted by the Tribunal is hereby confirmed. No costs. Consequently, C.M.P. is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

The Motor Accidents Claims Tribunal,
Special District Judge, Dharmapuri.

Copy to : The Section Officer, V.R.Section,
High Court, Madras.

AKM/20.04.21/6P-3C/

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Judgment delivered on 27.01.2021