

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.3.2021

CORAM:

THE HON'BLE Mr.JUSTICE D.KRISHNAKUMAR

Civil Miscellaneous Appeal No.1707 of 2013

M.P.No.1 of 2013

The New India Assurance Co. Ltd.,
No.4, Muthulinga Reddy street,
West Tambaram, Chennai.

... 2nd Respondent/Appellant

..Vs..

1. Tamilselvi

2. Minor Tharani

3. Minor Sainath

4. G.Kumari

5. Reliance General Insurance

Co. Ltd., Reliance House,
6th Floor, No.6, Haddows Road,
Nungambakkam, Chennai - 6.

... Petitioners 1 to 3/Respondents-1 to 3

... 1st Respondent/Respondent-4

... 3rd Respondent/Respondent-5

Appeal filed under Section 173 of the Motor Vehicles Act, 1988,
against the Judgement and decree dated 28.12.2012 made in M.C.O.P.No.18 of
2009 on the file of Chief Judicial Magistrate, (Motor Accidents Claims Tribunal)
Chengalpattu.

For Appellant

: Ms.A.Salomi

For Respondents 1 to3

: Mr.C.Prabakaran

For Respondent-5

: Mr.S.Arun Kumar

JUDGMENT

Brief facts of the claimants' case is as follows:

On 18.2.2008 at about 12.00 a.m., the deceased Desika was riding a two wheeler TVS XL bearing registration No.TN-21 AB 3362 from Walajabad to his village Amabbakkam after purchasing medicines to his wife, near Nathanallur, opposite of Durai Murugan Dhyana Mandapam on Walajabad Tambaram road at the opposite direction, the 4th respondent's Mahindra Van bearing registration NO.TN-05 B 9882 coming from Padappai to Walajabad in a rash and negligent manner hit the deceased and he fell down, thereby caused accident, resulting in the deceased sustained fatal injuries and died on the spot. The legal heirs of the deceased have filed a claim petition before the tribunal claiming compensation of Rs.8,00,000/- from the appellant and the respondents 4 and 5 being the owner and insurers of the vehicles involved in the accident.

2. The appellant/Insurance Company and the 5th respondent/ Insurance Company defended the case by filing counter affidavit.

3. In the counter affidavit filed by the appellant, the appellant has stated that the two wheeler involved in the accident insured with some other Insurance Company and hence, the appellant is not liable to pay compensation.

Further, driver of the Van did not possess a valid driving licence and therefore, claim against the appellant is liable to be dismissed.

4. In the counter affidavit filed by the 5th respondent, it is stated that the deceased was under the influence of alcohol at the time of accident, thereby violated the terms and conditions of the policy and the petitioners have not complied with the statutory demand and therefore, the claim against the 5th respondent is liable to be dismissed.

5. The owner of the vehicle viz., 4th respondent herein remained exparte before the tribunal. On the side of the claimants, P.W.1 and 2 were examined and Ex.P-1 to P-6 were marked. On the side of the appellant/Insurance company, witness R.W.1 was examined and Ex.R1 and R2 were marked.

6. Tribunal, based on the oral and documentary evidence adduced by both sides, has come to the conclusion that due to rash and negligent driving of the 4th respondent Van, the accident occurred and fastened the liability against the appellant /Insurance Company and awarded a sum of Rs.5,70,000/- as compensation to the claimants along with interest at the rate of 7.5% per annum from the date of claim petition till realization. The total compensation awarded by the tribunal under various heads are as follows:

Heads	Compensation awarded by the tribunal in Rs.
Loss of income of the deceased 3000 x 12 x 15	5,40,000/-
Loss of Consortium to the 1 st petitioner	10,000/-
Love and affection Rs.5000/- each	15,000/-
Funeral expenses	5,000/-
Total	5,70,000/-

7. Challenging the said award, the appellant/Insurance Company has preferred the present appeal both against liability and the quantum of compensation awarded by the tribunal.

8. Heard the learned counsel appearing for the appellant/Insurance Company, learned counsel appearing for the claimants/respondents and perused the materials available on record.

9. According to the learned counsel appearing for the appellant/Insurance Company, the deceased was a tortfeasor, as the accident occurred due to rash and negligent driving of the deceased. Further, F.I.R. relied upon by the petitioners, also registered against the deceased and in the absence of any negligence on the part of the driver of the Mahindra Van, the tribunal ought not

have made the appellant/ Insurance Company liable to pay compensation. The findings of the tribunal in this regard is unsustainable in law. Insofar as quantum of compensation, 15 multiplier adopted by the tribunal is not justified and the same is contrary to the decision rendered by the Hon'ble Supreme Court in **Sarala Varma** case. Therefore, the award insofar as quantum of compensation, required modification.

10. The learned counsel appearing for the claimants/respondents submitted that the tribunal based on the oral and documentary evidence, has rightly fixed the liability on the appellant/Insurance Company and insofar as the quantum of compensation, the learned counsel appearing for the claimants/respondents seeks enhancement of compensation.

11. On perusal of the award, the contents of the petition as well as F.I.R. was well corroborated by the evidence of P.W.2 and no contradiction in the evidence of P.W.2 and further, no contrary evidence has been placed by the appellant/Insurance Company before the tribunal to disprove the claim made by the petitioners. Therefore, based on the oral and documentary evidence, the tribunal has rightly fastened the liability on the appellant/Insurance Company. Insofar as the quantum of compensation, according to the petitioners, the deceased was a Carpenter earning Rs.10,000/- per month, the tribunal has rightly fixed

Rs.4500/- as monthly income of the deceased. Considering the facts and circumstances of the case and the decision of the Hon'ble Supreme Court, 25% should be added to the monthly income of the deceased and as per the decision of the Hon'ble Supreme Court in **Sarala Varma** case, 14 multiplier should be adopted. Accordingly, monthly income of the deceased would be Rs.4500 + 25% (Rs.1125/-) = Rs.5625/- After deducting 1/3rd towards personal expenses, contribution of the deceased to his family comes to Rs.3750/- x 12 x 14 = Rs.6,30,000/-. Insofar as non pecuniary heads also, it requires modification. Therefore, this Court is of the view that the award passed by the tribunal is required to be modified as follows:

Heads	Compensation awarded by the tribunal Rs.	Compensation enhanced/ awarded by this Court Rs.
Loss of dependency	3000 x 12 x 15 5,40,000/-	3750 x 12 x 14 6,30,000/-
Loss of Consortium to the 1 st petitioner	10,000/-	10,000/-
Love and affection Rs.15,000/- each to petitioners 2 & 3	15,000/-	30,000/-
Funeral expenses	5,000/-	15,000/-
Loss of estate	--	15,000/-
Total	5,70,000/-	7,00,000/-

The compensation awarded by the tribunal is enhanced from Rs.5,70,000/- to Rs.7,00,000/-. Except the above modification, the award passed by the tribunal is confirmed.

12. The claimants/respondents are entitled to compensation of Rs.7,00,000/- (Rupees seven lakh only) along with interest at the rate of 7.5% p.a. from the date of petition till realization. The appellant/Insurance company is directed to deposit the award amount of Rs.7,00,000/- along with interest at the rate of 7.5% p.a. from the date of petition till realization, after deducting the amount if any, already deposited before the tribunal, within a period of six weeks from the date of receipt of copy of the judgment. On such deposit being made by the appellant/Insurance Company, the claimants/respondents are entitled to withdraw the amount as per the direction of the tribunal by filing appropriate application.

13. Consequently, the appeal stand dismissed. No costs. Connected miscellaneous petition is closed.

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25.03.2021

Speaking/Non Speaking order

Index: Yes/No

Internet: Yes/No

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D.KRISHNAKUMAR, J.

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To

1. The Chief Judicial Magistrate, (Motor Accidents Claims Tribunal) Chengalpattu.
2. The New India Assurance Co. Ltd., No.4, Muthulinga Reddy street,
West Tambaram, Chennai.
3. The Section Officer, V.R.Section, Madras High Court, Chennai-104.



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