IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.12.2022

CORAM

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

C.M.A.No.3125 of 2017
and
C.M.P.No.19232 of 2017

M/s.Reliance General Insurance Co.Ltd.,
2nd Floor, Jackson,
Manorama JN Chelliyuzhukkam Road,
Kottayam, Kerala,
Also at M/s.Reliance General Insurance Co.Ltd.,
1st Floor, Dhanam Towers, No.1,
Binny Main Road, Park Road,
Tiruppur. ... Appellant

Vs.

1. K. Gopal
2.S.Kannammal
3.S. Thangamani
4.S. Sreejith
5.Sukumaran ... Respondents

<u>Prayer</u>: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Award and Decree dated 15.12.2015 made in M.C.O.P.No.472 of 2010 on the file of the Motor Accident Claims Tribunal, (Additional Subordinate Judge), Tiruppur.

For Appellant : Mr.S.Arun Kumar
For Respondents : Mr.Ma.P.Thangavel for R1 to R3
R5 - No appearance
R4 - Dispense with

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the Insurance Company against the award of a sum of Rs.8,87,600/- towards compensation to the respondents 1 to 3, due to the death of one Rajammal in the accident.

2. The case of the appellant, in brief, is as follows:

On the fateful day, i.e. on 17.03.2010, at about 8.30 p.m., when the deceased Rajammal was crossing the road from Perumanallur Erode NH-47, the 1st respondent who was riding the Innova Car bearing Registration No.KL-29-B-0900, came from West direction, backside of her in a rash and negligent manner and dashed on her. Due to the said impact, the deceased fell down and sustained grievous injuries all over the body. Immediately, she was admitted in the Government Hospital, Tiruppur. After examination by Doctor, she was declared dead. The legal heirs of the deceased filed a claim petition before the Tribunal. On consideration of the materials and evidence available on record, the Tribunal awarded a total compensation of

Rs.8,87,600/- with interest at the rate of 7.5% per annum from the date of the petition. Questioning the liability fixed on the appellant Insurance Company, the present appeal came to be filed.

3. The learned counsel for the appellant/Insurance Company has submitted that due to the carelessness and negligence of the deceased, this accident has occurred. The compensation claimed by the legal heirs of the deceased is excessive. The fifth respondent has wilfully violated the policy condition by plying the vehicle without valid permit. Hence, he alone is liable to pay the compensation. The Tribunal has erred in fixing the entire liability on the appellant/Insurance Company. The respondents 1 to 3 are not the dependants of the deceased. The Tribunal ought not to have assumed Rs.6000/- as income and granted future prospects relying on interested testimony of PW1 and PW3. The Tribunal erred in applying multiplier inspite of the fact that respondents 1 to 3 have failed to produce age proof. Hence, the Insurance Company is not liable to pay any compensation to the respondents/claimants. He further submitted the multiplier adopted by the tribunal is incorrect.

4. The learned counsel for the respondents 1 to 3 has submitted that it would be relevant to refer the judgment in ***National Insurance Co. Ltd., Vs.Pranay Sethi and Others*** reported in ***(2017) 16 SCC 680 , Spl. Leave Petiton (Civil) No. 25590 of 2014*** wherein it was held that in case of the deceased was between the age of 50 to 60 years, the addition should be 15%. The Tribunal has rightly considered the materials and evidence and has awarded the just and fair compensation and hence, the same does not require any interference in the hands of this Court.

5. Heard the learned counsel for the appellant and the learned counsel for the respondents and perused the materials available on record carefully and meticulously.

6. Now the question to be decided is only with regard to the multiplier fixed by the Tribunal.

7. On the side of the respondents/petitioners, 3rd respondent examined himself as PW1 and marked exhibits Ex.P1 to Ex.P14. On the side of the the appellant herein/Insurance Company, one Kishore was

examined as RW1 and marked exhibits as Ex.R1 to Ex.R3.

8. A perusal of the award would reveal that Ex.P1-First Information Report was registered against the rider of the Car bearing Regn.No.KL-29-B-0900 stating that he was responsible for the accident, which corroborated the evidence of P.W.1/claimant. Further, Ex.P5 charge sheet was also filed against him. Placing reliance on those materials and evidence, the Tribunal came to the conclusion that the accident had occurred only due to the rash and negligent act on the part of the rider of the vehicle bearing Regn.No. KL-29-B-0900 insured with the appellant/Insurance company. Stating so, the Tribunal fixed the liability on the part of the Appellant / Insurance Company. This Court is of the opinion that while coming to such conclusion, the Tribunal failed to note that the rider of the car bearing Regn.No. KL-29-B-0900 was not possessing valid driving licence at the time of accident. In such circumstances, the Tribunal ought to have permitted the appellant Insurance Company to pay the compensation to the claimants and thereafter recover the same from the owner of the vehicle, as there was a breach of policy conditions, by not possessing the valid driving licence by the rider of the car bearing Regn.No.KL-29-B-0900. Therefore,

this Court is inclined to modify the finding of the Tribunal in respect of multiplier adopted by it. Except the same, there is no modification with regard to the quantum of compensation awarded by the Tribunal. This Court is of the opinion that it would be appropriate to take '10' as multiplier instead of '15' while calculating the loss of income. It would be thus:

6000X10x100= 600; (6000 + 600) = Rs.6600/-

6600 x 1/3 personal expenses= Rs.2200/-

6600-2200= Rs.4400/-

4400x12x13 = Rs.6,86,400/-

9. Insofar as love and affection and funeral expenses are concerned, the respondents 1 to 3 are awarded Rs.50,000/- each for love and affection totalling to a sum of Rs.1,50,000/- and Rs.20,000/- is awarded towards funeral expenses by the Tribunal which in the considered opinion of this court, are just and reasonable and hence same do not warrant interference of this court and they are confirmed as such.

10. For the foregoing reasons, the compensation awarded by the Tribunal under the impugned award is modified in the following manner:

Heads	*Amount awarded by the Tribunal (Rs.)*	*Award Amount by this Court (Rs.)*
Loss of income	7,17,600/- (4600 x 12 x13)	Rs.6,86,400/- (4400x12x13)
Love and affection to the respondents 1 to 3 (50000x3)	150000/-	1,50,000/-
Funeral expenses	20,000/-	20,000/-
Total	**8,87,600/-**	**8,56,400/-**

11. In the result,

(i) the Civil Miscellaneous Appeal is partly allowed. Consequently, the connected miscellaneous petition is closed. No costs.

(ii) the Appellant / Insurance Company is directed to deposit the modified award amount i.e, Rs.8,56,400/- along with interest at the rate of 7.5% per annum and costs, after deducting the amount already deposited, if any, to the credit of MCOP.No..472 of 2010 within a period of one month from the date of receipt of a copy of this judgment and thereafter, recover the same from the owner of the vehicle, in accordance with law. On such deposit by the appellant/Insurance company, the Tribunal shall transfer the same to the savings bank account of the respondents/claimants as per their respective shares through RTGS within a period of one week thereafter.

15.12.2022

Index : Yes/No
Internet : Yes/No
Speaking /Non – speaking order
gv

To

1. The Motor Accidents Claims Tribunal
(Additional Subordinate Judge),
Tiruppur.

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

A.A.NAKKIRAN.,J.

gv

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