BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A(MD)Nos.234 of 2021 & 333 of 2020 and
CMP(MD) No.4355 of 2020

1.Maharajan
2.Esakkiammal
3.Minor.Marikutti
4.Minor.Esakkiammal -- Appellants/Petitioners in CMA(MD)No.234 of 2021

(Minor appellants through their father and next guardian Maharajan)

Reliance General Insurance Company Ltd.,
Through its Branch Manager,
No.10/4/4, Thaha Plaza, 2nd Floor,
South Bypass Road, Vannarapettai,
Tirunelveli. -- Appellant in CMA(MD)No.333 of 2020

Vs

1.Reliance General Insurance Company Ltd,
Through its Branch Manager,
Office at Number 10/4/4,
Thaha Plaza
2nd Floor, South Bypass road,
Vannarapettai, Tirunelveli.

Nagarajan (died)

2.S.Balasundaram
3.B.Paruvathavarthini -- Respondents/Respondents in CMA(MD)No.234/ 2021

1.Maharajan
2.Esakkiammal
3.Minor.Marikutti
4.Minor.Esakkiammal -- Respondents 1 to 4/Petitioners in CMA(MD)No.333 of 2020

Nagarajan(Died)

5.S.Balasundaram
6.Paruvathavarthini -- Respondents 5 & 6/Respondents 3 & 4 in CMA(MD)No.333 of 2020

COMMON PRAYER: Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and decree made in M.C.O.P.No.694 of 2015 on the file of the Motor Accident Claims Tribunal (Special Subordinate Judge dealing with MCOP Cases), Tirunelveli, dated 06.01.2020.

For Appellants :Mr.T.Selvakumaran
For R1 :Mr.V.Sakthivel
For R2 :Mr.G.Kannan
(In CMA(MD) No.234 of 2021)

For Appellants :Mr.V.Sakthivel
For R1 to R4 :Mr.T.Selva Kumaran
For R5 & R6 :Mr.G.Kannan
(In CMA(MD) No.333 of 2020)

COMMON JUDGMENT

The claimants are the appellants in CMA(MD)No. 234 of 2021 and the Insurance Company is the appellant in C.M.A.(MD) No. 333 of 2020. Challenging the award, dated 06.01.2020, made in M.C.O.P. No. 694 of 2015, on the file of the Motor Accident Claims Tribunal (Special Subordinate Judge dealing with MCOP Cases), Tirunelveli, these Civil Miscellaneous Appeals are filed.

2. For the sake of convenience, the parties are referred as per their ranking in C.M.A(MD) No. 234 of 2021.

3.The case of the claimants is that on 22.03.2015, at about 6.15 a.m, when the deceased Maharajan was travelling in a Bajaj Pulsar Motor Cycle bearing Registration No.TN 72 AS 7500, as a pillion rider, which belonged to the first respondent and insured with the second respondent on Anna Fly over, a motor cycle tried to enter into the lower bridge and its rider lost his control and the motor cycle skidded over the road and banged with the bridge pillar and the deceased sustained injuries, due to which, he died on the spot itself. Alleging that the accident had taken place due to the rash and negligent riding of the first respondent, the claim petition in MCOP No.234 of 2021 has been filed by the father, mother, brother and sister of the deceased Maharajan, claiming compensation of Rs.20,00,000/-(Rupees Twenty Lakhs Only).

4.Insofar as CMA(MD) No.333 of 2020 is concerned, challenging the award passed by the Tribunal in MCOP No. 694 of 2015, the Insurance Company has filed the Civil Miscellaneous

Appeal, on the ground that Tribunal failed to consider the fact that at the time of accident, the deceased as well as the rider of the two wheeler did not wear helmets.

5. Before the Tribunal, on the side of the respondents/Insurance Company, it was stated that the insurance coverage for the offending vehicle with the second respondent was not in force at the time of accident. The rider of the two wheeler also died in the accident and he was not having proper driving licence. Hence, the claim petition has to be dismissed. During the pendency of the claim petition, third and fourth respondents, who are the legal heirs of the first respondent added as parties based on the order passed in I.A.No.2985 of 2016, dated 10.03.2017.

6. To prove the case, on the side of the claimants, two witnesses have been examined and six documents have been marked. On the side of the respondents, two witnesses have been examined and three documents have been marked.

7.The learned trial Judge, based on the evidence and available materials, has rendered a finding that though there is a policy violation that at the time of accident, the rider of the vehicle was not having valid driving licence, the second respondent cannot be exonerated on the sole ground of policy violation and fixed the liability on the second respondent and ordered for recovery from the first respondent.

8.Insofar as the quantum of compensation is concerned, though the claimants claimed the monthly income of the deceased as Rs.15,000/-, (Rupees Fifteen Thousand Only) they have not produced any proof to that effect. Hence, the Tribunal has fixed the monthly income of the deceased at Rs.7,500/- (Rupees Seven Thousand Five Hundred Only). Further, the Tribunal based on the judgment in the case of ***National Insurance Company Limited Vs Pranay Sethi and others***, reported in ***2017 (2) TNMAC 609***, 40% of the income has been added towards future prospects and arrived at Rs.10,500/- (Rupees Ten Thousand Five Hundred only) as monthly income of the deceased and deducted 1/4th of the income towards his personal expenses and applied multiplier 18, and awarded Rs.17,01,000/-(Rupees Seventeen Lakhs one thousand only) towards loss of income. Further, the Tribunal has awarded Rs.40,000/-, Rs.15,000 and Rs.15,000/- respectively, towards loss of consortium towards the first petitioner, loss of estate and towards funeral expenses respectively, totalling to Rs.17,71,000/-. Being not satisfied with the quantum of compensation, the claimants are before this Court in CMA(MD)No.234 of 2021. In the meantime, challenging the liability, the Insurance Company has filed CMA(MD) No.333 of 2020.

9.The learned counsel for the claimants submits that the Tribunal ought to have fixed the monthly income of the deceased as Rs.12,000/- + 40% future prospects. He further submits that the Tribunal ought to have granted Rs.1,00,000/- each to the claimants 1 & 2, towards loss of love and affection and the Tribunal failed to award any compensation under the head of transport expenses.

10.The learned counsel appearing for the Insurance Company submits that the Tribunal has erroneously ordered for recovery from the deceased Nagarajan, who was the rider of the offending vehicle. The Tribunal failed to note the fact that the deceased did not wear helmet at the time of accident and hence contributory negligence has to be fixed on the deceased also. The Tribunal erred in fixing the notional income of the deceased as Rs.7,500/- per month. Since the deceased is a bachelor, 50% of his income has to be deducted towards his personal income. Hence, the compensation awarded by the Tribunal has to be interfered with.

11.Heard the learned counsel appearing for the claimants and the learned counsel appearing for the Insurance Company and perused the materials placed on record.

12.On perusal, it is seen that though the rider of the offending vehicle was not having any valid driving licence at the time of accident, considering the fact that the vehicle was insured with the Insurance Company, the Tribunal has fixed the liability on the second respondent Insurance Company and ordered for pay and recovery from the first respondent. It is also brought to the notice of this Court that the deceased failed to wear helmet at the time of accident and contributory negligence also has to be fixed at 10%. Moreover, it is the specific contention of the learned counsel for the Insurance Company that the deceased, being a bachelor, 50% of his income has to be deducted towards his personal income, whereas, the Tribunal has deducted only 1/4th of his income.

13. Considering all the above, this Court is inclined to modify the compensation awarded by the Tribunal under the head of loss of income as under:-

Monthly Income	=Rs.7,500/-
Add: 40% towards future prospects	=Rs.3,000/-
Total	=Rs.10,500/-
Less:50% towards his personal expenses	=Rs. 5,250/-
	Rs. 5,250/-
	= Rs.5250 X 12 X 18
Towards Loss of Income	**= Rs.11,34,000/-**

HEADS	AWARD GIVEN BY THE TRIBUNAL	MODIFIED BY THIS COURT	REMARKS
Loss of income	Rs.17,01,000/-	Rs.11,34,000/-	Reduced
Loss of consortium to the first claimant	Rs.40,000/-	Rs.40,000/-	Confirmed
Loss of love and affection to the second claimant	-	Rs.40,000/-	Granted
Loss of Estate	Rs.15,000/-	Rs.15,000/-	Confirmed
Funeral Expenses	Rs.15,000/-	Rs.15,000/-	Confirmed
Total	**Rs.17,71,000/-**	**Rs.12,44,000/-**	**Reduced**

Since this Court is inclined to fix contributory negligence at 10% on the deceased, the Insurance Company is directed to pay **Rs.12,44,000/-, less 10% = Rs.11,19,600/-** along with proportionate interest and costs to the claimants.

14.Accordingly, Civil Miscellaneous Appeal in CMA(MD)No.333 of 2020 is partly allowed to the extent as indicated above and CMA (MD) No.234 of 2021 stands dismissed. The rate of interest remains unchanged. Since the Tribunal fixed the liability on the Insurance Company and ordered to pay and to recover from the first respondent without considering the fact that the first respondent also died in the accident, this Court directs the Insurance Company to pay the award amount and recover from the fifth and sixth respondents in CMA (MD) No.333 of 2020. The claimants are permitted to withdraw their share of award amount with accrued interest and costs, as apportioned by the Tribunal. The Tribunal is directed to refund the excess award amount with accrued interest to the Insurance Company, if any deposited by the Insurance Company. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

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Sub Assistant Registrar(CS)

vrn

To

The Motor Accident Claims Tribunal,
(Special Subordinate Judge dealing with MCOP Cases),
Tirunelveli.

COPY TO:-

The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+1 CC to M/s.V.SAKTHIVEL, Advocate (SR-5879[F] dated 14/02/2022)

+1 CC to M/s.T.SELVAKUMARAN, Advocate (SR-6413[F] dated 16/02/2022)

JUDGMENT MADE IN
C.M.A(MD)Nos.234 of 2021 & 333 of 2020 and
CMP(MD) No.4355 of 2020
14.02.2022

ss(CO)
GC(26.04.2022) 6P 6C