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C.M.A. No.1738 of 2018



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.08.2023

Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

C.M.A. No.1738 of 2018

Reliance General Insurance Company Ltd.,
1st Floor, Geejay Arcade,
141/71, Thiruvankataswamy Road West,
R.S.Puram Post, Coimbatore- 641 002
Coimbatore District

... Appellant

Vs.

1.S.Albonse

2. M/s.O.S.L. Logistics (P) Ltd.,
A.M. Road, Mokochung Post
Kohima District, Nagaland State

3. R.Amalraj

4. M/s.United India Insurance Co. Ltd.
Navier Building (2nd Floor)
P.S.D. Road, Nagarkovil Post
Kanniyakumari District

... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award and decree dated 21.01.2016 made in M.C.O.P. No.771 of 2011 on the file of the Motor Accident Claims Tribunal (Sub Judge), Dharapuram.



For Appellant : M/s. P.Vijayalakshmi for
Mr.S.Arun Kumar

For Respondents : Mr.A.Tamilarasan for R1
Mr.D.Bhaskaran for R4
R3-Notice Served, No Appearance
R2-Given up by order dated 24.07.2023

JUDGMENT

The above Civil Miscellaneous Appeal is filed by the Insurance Company against the award and decree dated 21.01.2016 made in M.C.O.P. No.771 of 2011 on the file of the Motor Accident Claims Tribunal (Sub Judge), Dharapuram.

2. The 1st respondent is the claimant. The 2nd respondent and the appellant herein are the owner and insurer of the car involved in the accident. The 3rd and 4th respondents are the owner and insurer of the lorry involved in the accident.

3. The case of the claimant is that on 26.06.2010 at about 5.45 a.m., her son namely Chowdry, drove the car bearing Regn. No.TN-74-V-1437 belongs to the 3rd respondent in which, one Arunachalam, Raja and Murugan had



travelled. When the car was proceeding from east to north at Coimbatore Bypass L & T Keezhamel Road, near Karpagam College, one Rehamath Khan, who drove the Lorry bearing Regn. No.NL-02-G-0957 in the opposite direction from west to north in a rash and negligent manner, without following the road traffic rules, dashed against the car due to which, the driver of the car namely Chowdry and one Raja who travelled in the car, sustained injuries in the head and also all over the body and died on the spot. A case was registered against the driver of the lorry by the Chettiyar Palayam Police.

4. The mother of the deceased Chowdry filed a claim petition in M.C.O.P. No.771 of 2011 before the Motor Accident Claims Tribunal (Sub Judge), Dharapuram, claiming compensation of Rs.13,00,000/- for the death of the deceased Chowdry.

5. Before the Tribunal, the respondents 1 and 3/respondents 2 and 3 herein were set ex-parte. The 2nd respondent/appellant herein is the contesting party.



6. In order to substantiate the claim before the Tribunal, on the side of the claimants, 2 witnesses were examined as P.W.1 and P.W.2 and 9 documents were marked as Ex.P.1 to Ex.P.9. On the side of the respondents, one witness was examined as R.W.1. However, no documentary evidence was let in.

7. The Tribunal, after hearing the arguments on either side and considering the materials, awarded compensation of Rs.8,23,000/- and directed the 2nd respondent therein who is the insurer of the lorry, to pay the compensation to the claimant with cost and interest at 7.5% per annum from the date of claim petition i.e. 04.07.2011 till deposit.

8. Aggrieved by the Award passed by the Tribunal, the 2nd respondent/Insurance Company has filed the present appeal before this Court challenging the quantum of compensation. The claimant has not filed any appeal.

9. The learned counsel for the appellant/Insurance Company submitted that the Tribunal has adopted multiplier method for awarding compensation.



At the time of accident, the deceased was aged 32 years. As per the guidelines given by the Hon'ble Supreme Court in the case ***National Insurance Co. Ltd. Vs. Pranay Sethi*** reported in (2017) 2 TN MAC 609 (SC), only 40% of the income of the deceased has to be added towards future prospects, whereas, the Tribunal has adopted 50%, which is against the proposition of law. Therefore, the future prospects shall be fixed as 40% instead of 50% and the learned counsel has not disputed the compensation awarded under other heads.

10. Heard the learned counsel for the appellant and the learned counsel for the respondents 1 and 4.

11. As pointed out by the learned counsel for the appellant, it is settled proposition of law that, in case, the deceased was below the age of 40 years and a self-employed or on a fixed salary, only 40% has to be added with the established income, whereas, in this case, the Tribunal has over sighted and adopted 50%. Therefore, this Court fixes 40% future prospects instead of 50% and accordingly, an amount of Rs.,6,72,000/- is awarded towards loss of dependency (Rs.5,000/-40%+50%x12x16).



12. Accordingly, the Award passed by the Tribunal is re-worked as tabulated below;

S. No.	Particulars	Amount Awarded by the Tribunal	Amount awarded by this Court	Award confirmed or enhanced or granted or reduced or set aside
1.	For Loss of dependency	Rs.7,20,000/-	Rs.6,72,000/-	Reduced
2.	For Funeral Expenses	Rs.25,000/-	Rs.25,000/-	Confirmed
3.	For Love and Affection	Rs.75,000/-	Rs.75,000/-	Confirmed
4	Loss of Estate	Rs.3,000/-	Rs.3,000/-	Confirmed
5	Total	Rs.8,23,000/-	Rs.7,75,000/-	Reduced

12. The award of the Tribunal is modified by reducing the compensation amount from Rs.8,23,000/- to Rs.7,75,000/-

13. The appellant/Insurance Company is directed to deposit the reduced award amount of Rs.7,75,000/- to the credit of M.C.O.P. No.771 of 2011 on the file of the Motor Accident Claims Tribunal (Sub Judge), Dharapuram, with cost and interest at the rate of 7.5% per annum, from the date of claim petition i.e. 04.07.2011, till payment as awarded by the Tribunal, less the amount if any already deposited, within a period of six weeks from the date of receipt of copy of this judgment.



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14. On such deposit being made, the Tribunal is directed to calculate the above said compensation, including interest, costs, etc., after adjusting the amount, if any already withdrawn by the claimant, and credit the actual amount, in line with the judgment of a Division Bench of this Court in C.M.A.No.428 of 2016, dated 11.03.2016, reported in 2016 (2) LW 561 (The Divisional Manager, The Oriental Insurance Company Limited, Kannur Vs. Rajesh and others).

15. The appellant/Insurance Company is permitted to withdraw the excess amount, if any already deposited by them before the Tribunal.

16. In the result, this Civil Miscellaneous Appeal is partly allowed. Consequently, connected Miscellaneous Petition is closed. There shall be no order as to costs in the present appeal.

23.08.2023

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Index : Yes / No

Speaking Order : Yes / No

Neutral Citation Case : Yes/No

P.VELMURUGAN. J.



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To

- 1.The Motor Accident Claims Tribunal (Sub Judge),
Dharapuram.
- 2.The Section Officer,
VR Section, High Court, Madras.

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