IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **10.11.2023**

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

and

THE HONOURABLE MR.JUSTICE N.SENTHILKUMAR

Civil Miscellaneous Appeal No.2086 of 2022
and CMP No.16164 of 2022

M/s. Reliance General Insurance Company Ltd.,
Balmer Lawrie House,
No.628, Anna Salai, Teynampet,
Chennai 600 018. ... Appellant

Vs

1. D.Natarajan

2. N.Punitha
   W/o. D.Natarajan

3. R. Sekar

4. M/s. R.R. Fal G Bricks Industries,
   Rep. By its Vehicle Owner,
   R.Inbavali, No.131/4, Kulankacheri Village,
   Padapai Post, Sriperumbudhur Taluk,
   Kancheepuram District.

5. Mangaiyarkarasi
   W/o. Late Vijayakumar ... Respondents

Prayer: This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the decree and judgment dated 01.09.2021 made in MCOP No.5744 of 2013, on the file of Motor Accident Claims Tribunal (in the II Court of Small Causes), Chennai.

For Appellant : Mr. P.Suresh Srinivasan

For Respondents : Mr.K.Nagarajan, for R2

Mr.M.Marudhachalam, for R5

R3 & R4 – No appearance

R1 - Died

J U D G M E N T

The Insurance Company is on Appeal. Challenge iis to the award for a sum of Rs.18,78,800/- for the death of one Vijayakumar in a road accident that occurred on 12.05.2012.

2. According to the claimants, who are the parents of the deceased, while the deceased was riding his TVS Suzuki Samurai 100R Bike bearing Registration No.TN-07-L-1704 from Vandalur to Padappai, the TATA Lorry bearing Registration No.TN-22-CU-2828 driven by its driver in a rash and negligent manner, came from behind and hit against him causing grievous injuries and instantaneous death. Terming the negligence on the part of the driver as the cause of the accident and contending that the claimant was earning a sum of Rs.15,000/- from his employment, as a cashier at a Petrol Bunk, the claimants sought for compensation of Rs.15,00,000/- . The wife of the deceased was impleaded as the fourth respondent.

3. The Insurance Company resisted the claim contending that the accident did not occur in the manner suggested by the claimants. It was also contended that the deceased did not have a valid driving license at the time of the accident and therefore, he had contributed to the accident. The particulars of income and the age of the deceased were denied and the claimants were put to strict proof of the same.

4. At trial, the first claimant, the father of the deceased was examined as P.W.1, one Damodharan was examined as P.W.2 and Exhibits P1 to P13 were marked. The copy of the FIR and Rough Sketch were marked as Exs.P1 and P2. The fourth respondent, the wife of the deceased was examined as R.W.1 and Exhibits R1 to R6 were marked on the side of the fourth respondent. The Insurance Company did not let in any evidence.

5. On the evidence available, the Tribunal concluded that the accident occurred due to the rash and negligent driving of the second respondent's vehicle and as the Insurer of the offending vehicle, the Insurance Company would be liable to pay the compensation. On the quantum, the Tribunal took the monthly income at Rs.6,500/-, since the accident occurred in 2012, it applied the Inflation Index and arrived at the notional income at Rs.9,500/- per month.

6. The Tribunal applied a deduction of 1/3rd for the personal expenses of the deceased, adopted future prospects at 40% and arrived at the monthly loss of dependency at Rs.8,866.67, since the deceased was aged 27 years at the time of the accident, multiplier 17 was applied and the loss of dependency was fixed at Rs.18,08,800.68, which is rounded off to Rs.18,08,800/-. The Tribunal awarded a sum of Rs.15,000/- each for loss of estate and funeral expenses and Rs.40,000/- for loss of love and affection. Thus the total award worked out to Rs.18,78,800/-. Aggrieved, the Insurance Company is on Appeal.

7. We have heard Mr.P.Suresh Srinivasan, learned counsel appearing for the appellant /Insurance Company, Mr.K.Nagarajan, learned counsel appearing for the second respondent and Mr.Marudhachalam, learned counsel appearing for the fifth respondent. The first respondent, the father of the deceased, is no more.

8. Mr.P.Suresh Srinivasan, learned counsel appearing for the appellant /Insurance Company, would vehemently contend that the Tribunal erred in not deducting any amount towards contributory negligence, despite the fact R.W.1, the wife of the deceased has admitted that he did not have a valid driving license. As regards negligence, the learned counsel is unable to pick holes in the award of the Tribunal, inasmuch as the Insurance Company had not let in any evidence. The learned counsel would also contend that the fixation of Rs.9,500/- and adoption of 40% towards future prospects is flawed.

9. Contending contra the learned counsel for the respondents would submit that the deceased was working in a Petrol Bunk earning a decent sum of Rs.9,500/- per month, the adoption of Inflation Index is also a recognised method of fixing the notional income, which has been approved by the Hon'ble Supreme Court in ***Syed Sadia vs. United India Insurance Company,*** reported in ***2014 (1) TANMAC 459***. The learned counsel would also contend that the Tribunal erred in granting only Rs.40,000/- towards loss of love and affection. Drawing inspiration in the judgement of the Hon'ble Supreme Court in ***National Insurance Co. Ltd. v. Pranay Sethi,*** reported in ***2017 (16) SCC 680,*** the learned counsel would contend that the compensation under the head of loss of love and affection and loss of consortium should have been Rs.40,000/- to each of the claimants i.e. Rs.1,20,000/-.

10. We have considered the rival submissions.

11. The accident had occurred on 12.05.2012. The Tribunal has taken the monthly income at Rs.6,500/- applied the Inflation Index and had fixed the monthly income at Rs.9,500/-. We do not think we could fault the Tribunal for having adopted Inflation Index, which is also a method approved by the Hon'ble Supreme Court in arriving at the notional income. As regards adoption of future prospects also, we do not think the Tribunal could be said to be wrong. The Tribunal has adopted 40% based on the judgment of the Hon'ble Supreme Court in ***Pranay Sethi,*** *supra*, and we do not see any reason to interfere with the said fixation.

12. We, however, find that grant of Rs.40,000/- only for loss of love and affection cannot be justified. There are three dependants, each one of them viz. the parents and the wife will be entitled to Rs.40,000/- each towards loss of love and affection and loss of consortium. Hence, the award under the head of loss of love and affection and loss of consortium is increased to Rs.1,20,000/-. We must, at this juncture, examine the contention of the learned counsel for the appellant/Insurance Company on the ground of absence of license. We have been taken through the evidence of R.W.1, in which there is a very clear admission that the deceased did not have the driving license.

13. The Tribunal has brushed aside the contention of the Insurance Company on the ground of absence of driving license, since it had concluded on evidence that the driver of the offending vehicle, viz. the lorry was responsible for the accident. May be there is no evidence for establishing contributory negligence by the deceased. However, the very fact that the deceased was not possessed of a driving license itself, is a circumstance which should be taken into account by the Court in deciding the compensation. We therefore, find that the Tribunal should have atleast deducted 10% towards contribution. Thus calculated the total compensation payable by the Insurance Company would be as follows:

Description of the Heads	***Amount (Rs.)***
Loss of Dependency	18,08,800/-
Loss of Estate	15,000/-
Loss of Love and affection	1,20,000/-
Funeral Expenses	15,000/-
Total	19,58,800/-

If we are to deduct 10% towards contributory negligence, the total compensation payable would be Rs.17,62,920/-, which we round off to Rs.17,63,000/-.

14. It is stated that the first respondent father is no more, even under the Hindu Law, a widowed daughter-in-law will be the heir of the father-in -law along with his wife. Hence the compensation that has been directed to be paid to the father will be taken by the wife of the deceased and the mother of the deceased equally. It is stated that though 50% of the compensation was deposited by the Insurance Company, the claimants have not been allowed to withdraw.

15. We therefore apportion the compensation awarded equally among the wife of the deceased and the mother of the deceased, the second and the fifth respondents in the Appeal. The claimants are permitted to withdraw the amount that is already deposited. The Insurance Company will have eight weeks time to deposit the balance award amount along with interest, as awarded by the Tribunal and on such deposit the claimants will be permitted to withdraw the said amount also.

16. The Appeal is partly allowed, the award is modified as aforesaid. We make no order as to costs in the Appeal. Consequently, the connected miscellaneous petition is closed.

(R.SUBRAMANIAN, J.) (N.SENTHILKUMAR, J.)
10.11.2023

jv
Index: No
Internet: Yes
Speaking order
Neutral Citation: No

To

1.The Judge, II Court of Small Causes
Motor Accident Claims Tribunal,
Small Causes Court, Chennai.

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

R.SUBRAMANIAN, J.
and
N.SENTHILKUMAR, J.

jv

Civil Miscellaneous Appeal No.2086 of 2022
and CMP No.16164 of 2022

10.11.2023