IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 12.09.2023

Coram:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

C.M.A.No.2445 of 2018 and
C.M.P.No.18618 of 2018

M/s.The Reliance General Insurance Co. Ltd.,
Branch Office, Sri Lakshmi Complex, First Floor,
Bharathi Street, Omalur Main Road,
Swarnapuri, Salem – 636 004. ...Appellant

Vs.

1. R.Eswari
2. R.Sumathi
3. R.Murugan
4. P.Ayyanar ...Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, challenging the fair and decreetal order dated 17.07.2017 made in M.C.O.P.No.1488 of 2014 passed by the Motor Accident Claims Tribunal/Special District Judge, Salem.

For Appellant : Mr.S.Arunkumar

For Respondents : Mr.S.P.Yuvaraj for RR1 to 3
R4 - No Appearance

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JUDGMENT

This appeal is filed challenging the fair and decreetal order dated 17.07.2017 made in M.C.O.P.No.1488 of 2014 passed by the Motor Accident Claims Tribunal/Special District Judge, Salem.

2 The appellant is the Insurance Company, respondents 1 to 3 are claimants and 4th respondent is owner of the offending vehicle.

3 The respondents 1 to 3/claimants filed claim petition in M.C.O.P.No.1488 of 2014 claiming compensation of Rs.25,00,000/- for the death of Rangasamy, who is husband of the first respondent/1st claimant and father of the respondents 2 & 3/claimants 2 & 3.

4 The claim petition was contested by the appellant/Insurance Company and they filed detailed counter denying all the allegations apart from disputing the liability.

5 Before the claims Tribunal, on the side of the respondents 1 to 3/claimants, P.Ws.1 to 5 were examined and Exs.P1 to P8 were marked besides X1 to X5. On the side of the appellant/Insurance Company, R.W.1 to R.W.3 were examined and Exs.R1 to R3 were marked, besides X6.

6 The Tribunal, on an assessment of the entire evidence on record, fixed the liability on the appellant/Insurance Company and awarded a sum of Rs.8,87,320/- as compensation along with 7.5% interest and directed the appellant/Insurance Company to pay the award amount. Not being satisfied with the compensation ordered by the Tribunal and aggrieved in directing the appellant/Insurance Company to pay the award amount, the Insurance Company has filed the present appeal.

7 Learned counsel appearing for the appellant/Insurance Company would submit that the Driver of the offending vehicle was examined as R.W.2, who has clearly deposed that his vehicle was not involved in the accident, and initially FIR has been registered against an unknown vehicle, but, subsequently, the case was registered against the Driver of the offending vehicle, which clearly proves that the vehicle was not involved in the accident. Further, there is no whisper about how they traced the vehicle and subsequently added the Driver of the vehicle as party to the FIR. The learned counsel further submits that as far as the quantum of compensation is concerned, the age of the deceased was 58 years at the time of accident and the correct multiplier would be 9, but the Tribunal erroneously applied the multiplier 13, which warrants interference. Further the deceased was working as Driver during relevant point of time, but the Tribunal fixed the income of the deceased as Rs.7,500/- without even any proof, which is erroneous.

8 Learned counsel appearing for the respondents 1 to 3/claimants would submit that the fourth respondent, who is a Driver and Owner of the offending vehicle himself admitted that his vehicle involved in the accident. The Tribunal considered all the oral and documentary evidence and fixed the liability on the insured vehicle and awarded the compensation, which does not call for any interference.

9 Heard the learned counsel appearing on either side and perused the materials available on record.

10 From the evidence of eye witnesses, it is clear that the Driver of the offending vehicle due to his rash and negligent driving caused the accident, in which the deceased died. Even though initially the vehicle was not able to trace, but, subsequently, during the investigation, it came to know that the offending vehicle involved in the accident and hence fixed the liability on the insurer of the offending vehicle.

11 It is contended by the learned counsel appearing for the appellant/Insurance company that initially the case was registered against unknown vehicle, but subsequently the case was registered against the fourth respondent's vehicle, which creates doubt. It is settled proposition of law that FIR is not an encyclopedia and it is only a tool to set the law into motion. In this case the subsequent investigation revealed that the offending vehicle was involved in the accident. Hence the contention of the learned counsel for the appellant/Insurance Company is not acceptable. There is no perversity in the findings of the Tribunal.

12 Coming to the quantum of compensation, admittedly at the time of accident, the deceased was 59 years and as per the decision of the Hon'ble Supreme Court in the case of *Sarala Varma and Others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121*, for the age group of 56-60, the multiplier would be 9 only, but, the Tribunal wrongly applied the multiplier as 13. Hence this Court fix the multiplier as 9 and the amount under the head of Loss of future earning of the deceased is calculated as follows:

Notional income of the deceased as fixed by the Tribunal is Rs.7500/- and after deducting 2/3rd towards personal expenses Rs.5000/- has been fixed.

Rs.5000/- x 12 x 9 = Rs.5,40,000/-

There is no reason to interfere with the compensation awarded by the Tribunal towards other heads.

13 In the light of the above discussion, the award of the Tribunal is modified as follows:

Sl. No.	***Various Heads***	***Award of the Tribunal***	***Award of this Court***
1.	Loss of future prospects of the deceased	7,80,000.00	5,40,000.00
2.	Funeral Expenses	25,000.00	25,000.00
3.	Loss of consortium for 1st respondent/wife	25,000.00	25000.00
4.	Loss of love and affection for the respondents 2 & 3/married daughter and son	20,000.00	20,000.00
5.	Medical Expenses as per Ex.P8	37,320.00	37,320.00
TOTAL COMPENSATION		**8,87,320.00**	**6,47,320.00**

14 The claimants are therefore entitled to compensation of Rs.6,47,320/- along with 7.5% interest. The appellant/Insurance Company is directed to deposit the compensation along with 7.5% interest less the amount already deposited within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the claimants shall be entitled to withdraw the same as per the apportionment fixed by the Tribunal by making proper application before the Tribunal.

15 Accordingly the appeal is partly allowed. Connected miscellaneous petition is also closed. There shall be no order as to costs.

12.09.2023

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Index: Yes/No
Speaking Order: Yes/No
Neutral citation: Yes/No

To

1. The Motor Accident Claims Tribunal/
   Special District Judge, Salem.

2. The Section Officer, V.R.Section,
   High Court, Madras.

P.VELMURUGAN. J.,

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