



C.M.A.(MD).No.26 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.11.2023

CORAM:

**THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN
AND
THE HONOURABLE MR.JUSTICE P.B.BALAJI**

**CMA(MD) No.26 of 2018 and
CMP(MD) No.339 of 2018**

Reliance General Insurance Co., Ltd.,
No.91A East Veli Street
Madurai
represented by its General Manager

...appellant/
respondent No.3

Vs.

1.Sutha Devi

2.Prajin

3.Chellammal

... Respondents/
Petitioners

4.Saleem Mohammed

5.Asin Roadways
Rep. by its Managing Partner
Door No.4/2155/2 Mundak Road
Mahe 673310
Pondicherry (Union Territory)

... Respondent Nos.1&2/

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the fair and decreetal order dated



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14.06.2017 in MCOP No.104 of 2013 on the file of the Motor Accident Claims Tribunal, Sub Judge, Sankarankovil.

For Appellant : Mr.S.Srinivasa Raghavan

For Respondents : Mr.P.Subbiah for R1 to R3

No appearance for R4 and R5

J U D G M E N T

P.B.BALAJI, J.

This Civil Miscellaneous Appeal is directed against the award and decree dated 14.06.2017 made in MCOP No.104 of 2013 by the Motor Accident Claims Tribunal, Sub Judge, Sankarankovil.

2.The claim petition in MCOP No.104/2013 has been filed by the wife and two minor sons of the deceased Iyyappan, who died in a motor accident, which occurred on 10.09.2013. Alleging that the driver of the second respondent vehicle drove the vehicle in a rash and negligent manner and caused the accident, which resulted in the death of the deceased, the claimants sought for a compensation of Rs.65,78,277/-.



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3. The appellant insurance company filed a counter stating that the deceased contributed to the accident and therefore, contributory negligence has to be applied. Apart from that, the compensation sought on other heads is also stated to be excessive. On these grounds, the petition was contested.

4. Before the Tribunal, on the side of the claimants, P.W.1 to P.W.3 were examined. The first claimant/wife was examined as P.W.1. P.W.3 was the occurrence witness, who accompanied the deceased and Ex.P1 to Ex.P11 were marked. However, no documents were adduced on the side of the insurance company. On considering the oral and documentary evidence, the Tribunal came to the conclusion that the accident had occurred only due to the rash and negligent driving of the first respondent, the vehicle owned by the 2nd respondent and insured with the 3rd respondent and arrived at a finding that the respondents were jointly and severally liable to pay compensation. The Tribunal awarded a compensation at Rs.36,59,434/- with interest with interest at 7.5% p.a. Aggrieved over the said award, the insurance company is before this Court.



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5. We have heard the learned counsel for the appellant, the learned counsel for the respondents 1 to 3 and perused the materials available on record.

6.As far as the negligence is concerned, the tribunal has come to the conclusion that since the driver of the lorry had driven the vehicle in a rash and negligent manner, he alone caused the accident. In the said accident, apart from the deceased Iyyappan, one Gopi is alleged to have also died on the spot. As per the evidence of the occurrence witness P.W.3 coupled with the documentary evidence, the tribunal has rightly fixed the negligence on the part of the driver of the vehicle insured with the appellant insurance company. Therefore, on the point of negligence, we feel that no interference is warranted.

7. As far as the quantum of compensation is concerned, the Tribunal, taking note of the age of the deceased, arrived at the age of the deceased at 29 and relied on Ex.X4 service register of the deceased to arrive at the age and hence, we do not find any infirmity in the said



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finding of the Tribunal.

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8. Insofar as the income, the Tribunal has relied on Ex.X3 and arrived at an income of Rs.16,994/- and has calculated the future prospects at the rate of 50% considering the fact that the deceased was a Government Servant. There is no infirmity in this finding also. However, the learned counsel for the appellant would state that the income tax has not been deducted. We find that the Tribunal has rightly deducted the income tax payable by the deceased. Therefore, the said contention of the learned counsel for the appellant cannot be countenanced.

9. With regard to multiplier, considering the age of the deceased, the tribunal has rightly applied the multiplier 17. However, the award of compensation with regard to conventional heads, the same stands modified as infra.

10. Loss of Consortium is reduced to Rs.40,000/- from Rs.1,00,000/-. For funeral expenses, the amount of Rs.25,000/- is



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reduced to Rs.15,000/- . As under the head of loss of estate, there is no compensation awarded, a sum of Rs.15,000/- is awarded towards loss of estate and for loss of love and affection, it is reduced to Rs.1,00,000/- from Rs.1,25,000/-. As far as transport expenses and for damage to clothes, the amount awarded remains unaltered.

11. Accordingly, the award amount granted by the tribunal is reassessed as follows:

Heads	Awarded by the tribunal (Rs.)	Modified/reduced	Final Compensation (Rs.)
Loss of income	34,03,434	(confirmed)	34,03,434
Loss of consortium	1,00,000	(reduced)	40,000
Loss of love and affection	1,25,000	(reduced)	1,00,000
Funeral expenses	25,000	(reduced)	15,000
Transport expenses	5,000	(Confirmed)	5,000
For damage to clothes	1,000	(Confirmed)	1,000
For loss of estate	-	-	15,000
Total	36,59,434	Reduced	35,79,434

The compensation is reduced from Rs.36,59,434/- to Rs.35,79,434/-. The respondents 1 to 3 are entitled for the compensation of Rs.35,79,434/-



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(Rupees thirty five lakhs ninety nine thousand four hundred and thirty four only) with interest at 7.5% from the date of petition till the date of realization.

12. It is represented by the learned counsel for the appellant that a sum of Rs.30,00,000/- (Rupees thirty lakhs only) has already been deposited before the Tribunal. The insurance company is directed to deposit the balance amount along with interest within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit being made, the claimants/respondents, namely, the first respondent being the widow of the deceased and the third respondent being the mother of the deceased are permitted to withdraw their respective shares with proportionate interest and costs as apportioned by the Tribunal. As far as the minor share of the respondent No.2 is concerned, his share shall be deposited in a nationalised bank till he attains majority. and the interest accrued thereon shall be withdrawn by the 1st respondent/natural guardian mother once in three months directly from the bank only for the welfare of the minor.



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13. In the result, the civil miscellaneous appeal is allowed in part with the above modifications. No costs. Consequently connected Miscellaneous Petition is closed.

(T.K.R.,J.) (P.B.B.,J.)
10.11.2023

NCC : Yes/No
Index : Yes/No

RR

To

1.The Motor Accident Claims Tribunal,
Sub Judge,
Sankarankovil

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



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RR

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