IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.08.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.1833 of 2024

Alagesan (Died)
1. Balaji
2. Jamunarani ... Appellants
(Amended as per order in
I.A.No.723/2023 dated 23.02.2023)

vs.

1. S.Ramkumar
2. M/s.Reliance General Insurance Company Ltd.,
Lakshmi Complex, 1st Floor,
Bharathi Street, Omalur main road,
Swarnapuri, Salem. ... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment dated 01.07.2023 in M.C.O.P.No.568 of 2022 on the file of the Special District Judge, MCOP Tribunal at Salem.

For Appellant	:	Mr.L.Ramanathan
R1	:	*Ex parte*
For R2	:	Ms.G.Sukumari

J U D G M E N T

The appellants are the claimants in M.C.O.P.No.568 of 2022 on the file of the Special District Judge, MCOP Tribunal, Salem and they filed the said claim petition under Section 166 of the Motor Vehicles Act, seeking compensation of Rs.20,00,000/- for the death of their mother, in a road accident that took place on 12.03.2022.

2. The brief case of the appellants / claimants are as follows :

On 12.03.2022, Kalaiyarasi (deceased) was walking along Butterfly bridge on Kandampatti Byepass Road. At about 10.15 a.m., a speeding motorcycle bearing Registration Number TN-90-E-5526, belonging to the first respondent and insured with the second respondent hit Kalaiyarasi, as a result of which, she fell down and sustained injuries all over her body and was rushed to Government Hospital, Salem. However, she died on the way to the hospital.

3. According to the claimants, the rash and negligent driving of the driver of the motorcycle was the cause of the accident and that since the owner of the motorcycle had insured his vehicle with the second

respondent / the Reliance General Insurance Company Limited, the owner and the insurer of the motorcycle are jointly and severally liable to pay compensation.

4. The first respondent remained absent and was set *ex parte* in the Tribunal. The second respondent resisted the claim petition on all the grounds available to the insurer under Section 170 of the Motor Vehicles Act.

5. The trial Court after analysing the evidence on record, awarded a compensation of Rs.5,40,000/- to the appellants 2 and 3 (claimants 2 and 3) together with interest at the rate of 7.5% per annum from the date of petition till the date of realization. The Tribunal also directed the second respondent, the Reliance General Insurance Company Limited to pay the said award amount and then recover the same from the owner of the vehicle, the first respondent, since it was proved that the driver of the vehicle did not have a valid driving licence on the date of the accident. Aggrieved over the quantum of compensation awarded by the tribunal, the appellants / claimants have filed the present appeal under

Section 173 of the Motor Vehicles Act, seeking enhancement of compensation amount.

6. Heard Mr.L.Ramanathan, learned counsel appearing for the appellants and Ms.G.Sukumari, learned counsel appearing for the second respondent.

7. Mr.L.Ramanathan, learned counsel appearing for the appellants contended that the Tribunal had deducted a sum of Rs.2,70,000/- since one of the claimants died during the pendency of the claim petition which is wrong and that the Award amount ought to have been given to the surviving legal heirs of the deceased Kalaiyarasi. He also contended that the multiplier adopted by the Tribunal is not in accordance with the decision of the Hon'ble Supreme Court in ***Sarla Verma and others vs. Delhi Transport Corporation and another*** reported in ***(2009) 6 SCC 121.***

8. It is also stated that the deceased Kalaiyarasi was an agricultural labourer and also doing Cattle Business. In the absence of income proof, the Tribunal fixed the monthly income of the deceased as

Rs.10,000/-. It is pertinent to point out that the accident took place in the year 2022 and in the facts and circumstances, this Court is of the opinion that fixing the notional monthly income of the deceased at Rs.15,000/- would meet the ends of justice. As per the decision of the Supreme Court of India in ***National Insurance Co. vs Pranay sethi and others*** reported in ***2017 (2) TNMAC 601****,* 10% should be added towards future prospects of the deceased. Since there are two dependents, 1/3rd of the deceased's income should be deducted towards her personal expenses. The proper multiplier to be adopted in the instant case is 9 as per the decision rendered in ***Sarla Verma and others vs. Delhi Transport Corporation and another*** reported in ***(2009) 6 SCC 121.***

Calculation :

Notional Income = Rs.15,000/-

10% Future Prospects = Rs.1,500/-

Total = Rs.15,000/- + Rs.1,500/- = Rs.16,500/-

After 1/3 deduction = Rs.11,000/-

Loss of dependency :

= Rs.11,000/- x 12 x 9

= Rs.11,88,000/-

In addition to that the claimants are entitled to Rs.44,000/-, Rs.16,500/- and Rs.16,500 for Loss of Consortium, Loss of Estate and Funeral Expenses respectively as per the decision in ***National Insurance Co. vs Pranay sethi and others*** (cited supra). Thus, the claimants are entitled to a total compensation of Rs.13,09,000/- (11,88,000 + 88,000 + 16,500 + 16,500= 13,09,000) which is extracted here under.

S.No.	***Head***	***Amount granted by this court***
1.	Loss of dependency	Rs.11,88,000/-
2.	Loss of consortium (Rs.44,000/- x 2)	Rs.88,000/-
3.	Funeral expenses	Rs.16,500/-
4.	Loss of Estate	Rs.16,500/-
Total		Rs.13,09,000/-

9. Thus, the compensation awarded by the Tribunal is enhanced from Rs.5,40,000/- to Rs.13,09,000/- which would carry interest at the rate of 7.5% per annum.

10. In the result,

i. The Civil Miscellaneous Appeal is partly allowed. No costs.

ii. The compensation awarded by the Tribunal is enhanced from Rs.5,40,000/- to Rs.13,09,000/-.

iii. The appellants / claimants are directed to pay court fee for the enhanced compensation amount, if any, within a period of four weeks from the date of this order and the Registry is directed to draft the decree only after receipt of the Court fee.

iv. The second respondent / Reliance General Insurance Company Limited is directed to deposit the enhanced compensation amount i.e., Rs.13,09,000/- (less the amount already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit within a period of four weeks from the date of receipt of a copy of this order to the credit of M.C.O.P.No.568 of 2022 on the file of the Special District Judge, MCOP Tribunal, Salem and recover the same from the first respondent on the same cause of action.

v. On such deposit being made, the appellants / claimants are at liberty to withdraw the same as per the orders passed by the Tribunal after following due process of law. The ratio of apportionment made by the Tribunal shall be kept intact. However, it is made clear that the appellants are not entitled for interest for the period of delay in filing this appeal on the amount enhanced by this Court.

05.08.2024

Index : Yes/No
Speaking/Non-speaking order
mtl

To

1.The Motor Accidents Claims Tribunal,
Special District Judge, MCOP Tribunal at Salem.

2. M/s.Reliance General Insurance Company Ltd.,
Lakshmi Complex, 1st Floor,
Bharathi Street, Omalur main road,
Swarnapuri, Salem.

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

R.HEMALATHA, J.

mtl

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