IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.10.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.595 of 2023

Sakunthala .... Appellant

vs.

1. K. Thangadurai

2. The Reliance General Insurance Company Limited,
B1, NTG Complex,
No.14, Rangaswamy Street,
West Tambaram, Chennai 45. ... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award dated 31.07.2019 in M.C.O.P.No.116/2016 on the file of the Motor Accident Claims Tribunal, III Additional District Court, Tiruvallur at Poonamallee.

For Appellant	:	Mr.K. Varadha Kamaraj
R1	:	No appearance
For R2	:	Mrs. C. Bhuvanasundari

JUDGMENT

The appellant is the claimant in M.C.O.P.No.116/2016 on the file of the Motor Accident Claims Tribunal, III Additional District Court, Tiruvallur at Poonamallee. She filed the claim petition under Section 166 of the Motor Vehicles Act 1988 and Rule 3 of the MACT Rules seeking compensation of Rs.10,00,000/- for the death of her mother, in a road accident that occurred on 14.07.2015.

2. According to the claimant, on 14.07.2015, Bagyammal (since deceased) was walking along CTH Road, Ambattur and at about 8 a.m a speeding Yamaha Bike bearing Registration Number TN 13 B 2993 hit her resulting in her instantaneous death.

3. According to the claimant, the rash and negligent driving of the rider of the motorcycle bearing Registration Number TN 13 B 2993, was the cause of the accident and that since the said vehicle was insured with the second respondent, the Reliance General Insurance Company Limited, Chennai, the owner and the insurer are jointly and severally liable to pay compensation to her.

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

5. The Tribunal, after analysing the evidence on record, fastened negligence on the part of the rider of the motorcycle bearing Registration Number TN 13 B 2993, and directed the second respondent, insurer of the said motorcycle, to pay compensation of Rs.2,35,000/- to the claimant together with interest at the rate of 7.5% per annum from the date of petition till the date of realisation. The Tribunal also held that the liability of the Insurance Company and the owner of the motorcycle is joint and several.

6. Aggrieved over the quantum of compensation awarded by the Tribunal, the claimant has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

7. Heard Mr.K. Varadha Kamaraj, learned counsel appearing for the appellant and Mrs. C. Bhuvanasundari, learned counsel appearing for the second respondent Insurance Company.

8. Mr.K. Varadha Kamaraj, learned counsel appearing for the appellant contended that the Tribunal had deducted 1/2 towards the personal expenses of the deceased instead of 1/3. He therefore, prayed for enhancement of compensation.

9. Per contra, Mrs. C. Bhuvanasundari, learned counsel appearing for the second respondent/Insurance Company contended that the claimant was aged 55 years and the deceased was aged 75 years. In the circumstances, deduction of 1/2 towards the personal expenses of the deceased cannot be said to be wrong. She, therefore, prayed for dismissal of the present appeal.

10. The deceased, in the instant case, was aged 75 years and according to the claimant, she was working as a servant maid earning a sum of Rs.6,000/- per month. The Tribunal fixed the notional monthly

income of the deceased as Rs.6,000/- and deducted 1/2 towards her personal expenses. It is pertinent to point out that the claimant is aged about 55 years and therefore, deduction of 1/2 towards the personal expenses of the deceased by the Tribunal cannot be said to be wrong. The deceased was aged 75 years on the date of the accident and therefore, she is not entitled to get future prospects as per the decision in ***National Insurance Co. vs Pranay sethi and others*** reported in ***2017 (2) TNMAC 601*** and the proper multiplier to be adopted in the instant case is 5 as per the decision rendered in ***Sarla Verma and others vs. Delhi Transport Corporation and another*** reported in ***(2009) 6 SCC 121.***

<u>Calculation</u>

Notional Income = Rs.6,000/-
After 1/2 deduction = Rs.3,000/-

<u>Loss of dependency</u>

= Rs.3,000/- x 12 x 5
= Rs.1,80,000/-

In addition to that the claimant is entitled to Rs.40,000/-, Rs.15,000/- and Rs.15,000/- 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).

10.1. The enhanced amount under the different heads are detailed hereunder:

S.No.	***Head***	***Amount granted by this court (Rs.)***
1.	Loss of dependency	1,80,000/-
2.	Loss of consortium	40,000/-
3.	Funeral expenses	15,000/-
4.	Loss of Estate	15,000/-
	Total	2,50,000/-

This amount shall carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

11. In the result,

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

ii. The compensation awarded by the Tribunal is enhanced to Rs.2,50,000/-.

iii. The appellant / claimant is 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, The Reliance General Insurance Company Limited,Chennai, is directed to deposit the enhanced compensation amount of Rs.2,50,000/- (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 to the credit of M.C.O.P.No.116/2016 on the file of the Motor Accident Claims Tribunal, III Additional District Court, Tiruvallur at Poonamallee, within a period of four weeks from the date of receipt of a copy of this order/uploading of this order.

v. On such deposit being made, the appellant is at liberty to withdraw the same after filing a proper petition for withdrawal.

vi. The claimant is not entitled to claim interest for the period of delay of 137 days in filing this appeal, as per the orders of this Court dated 21.02.2023 in C.M.P. No.15490 of 2021.

21.10.2024

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

To

1. Motor Accident Claims Tribunal,
   III Additional District Court, Tiruvallur at Poonamallee

2. The Reliance General Insurance Company Limited,
   B1, NTG Complex,
   No.14, Rangaswamy Street,
   West Tambaram, Chennai 45.

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

R.HEMALATHA, J.

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