IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.09.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.Nos.2225 of 2019 and 1167 of 2020 and
C.M.P. No.7328 of 2020

C.M.A. No.2225 of 2019

1. Soundari
2. Palaniappan ... Appellants

vs.

1. M. Deepan Raj Kumar

2. The Branch Manager,
Reliance General Insurance Company Limited,
Sakthi Super Market Building,
3rd Floor, 406, Perundurai Road, Erode 638 011 ...Respondents

C.M.A. No.1167 of 2020

M/s. Reliance General Insurance Company Limited,
Door No. 406, 3rd Floor,Sakthi Super Market Building,
Perundurai Road, Erode 638 011. ... Appellant

vs.

1. P. Soundari
2. P. Palaniappan
3. M. Deepan Raj Kumar ...Respondents

COMMON PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award dated 30.08.2016 in M.C.O.P.896/2010 on the file of the Motor Accident Claims Tribunal, Subordinate Court, Sathyamangalam.

Appearance In C.M.A. No.2225 of 2019

For Appellants	:	Mr. R. Nalliyappan
For R1	:	Notice dispensed with
R2	:	Mr. K. Moorthy

Appearance in C.M.A. No.1167 of 2020

For Appellant	:	Mr. K. Moorthy
For R1	:	Mr. R. Nalliyappan
R2	:	Insufficient address.
R3	:	Left

COMMON JUDGMENT

The appellants in C.M.A.2225 of 2019 are the claimants in M.C.O.P.896/2010 on the file of the the Motor Accident Claims Tribunal, Subordinate Court, Sathyamangalam, while the appellant Reliance General Insurance Company Limited, in C.M.A.1167 of 2020 is the second respondent in the said petition.

2. The claimants filed the abovesaid claim petition under Section 166 of the Motor Vehicles Act, seeking compensation of Rs.20,00,000/- for the death of their son Mohan in a road accident that occurred on 06.10.2010.

3. The case of the claimants in a nutshell is as follows:

3.1. On 06.10.2010, C.P. Mohan (since deceased) was travelling in a TATA Indigo car bearing Registration number TN-33-AR-9133 on Thalavadi-Erode Road. The driver of the car drove the vehicle rashly and negligently and hit a lorry bearing Registration Number RH-14-GA-0621 that was coming in the opposite direction as a result of which C.P. Mohan sustained injuries all over his body. He was immediately rushed to the Government Hospital, Sathyamangalam. However he succumbed to injuries on the same day.

3.2. According to the claimants the rash and negligent driving of the driver of the TATA Indigo car bearing Registration number TN-33-AR-9133, was the cause of the accident and that since the said vehicle was insured with the Reliance General Insurance Company Limited, both of them are jointly and severally liable to pay compensation to them.

4. In the Tribunal, the owner of the car remained absent and was set exparte. The Reliance General Insurance Company Limited, 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, framed the following issues.

1) *Who is responsible for the accident?*
2) *Who has to pay compensation to the claimants?*
3) *What is the amount of compensation?*

While answering issue number 1, the Tribunal had held that the driver of TATA Indigo car bearing Registration number TN-33-AR-9133 was the wrong doer. However, while answering issue number 2, the Tribunal fastened composite negligence on the part of the driver of both the vehicles in the ratio 50:50. Since the driver of the car bearing Registration number TN-33-AR-9133 did not have a valid driving licence on the date of accident, the Tribunal directed the Reliance General Insurance Company Limited to pay Rs.13,93,700/- (50% of the Award amount) to the claimants together with interest at the rate of 7.5% per annum from the date of the petition till the date of realisation, in the first instance and then recover the same from the owner of TATA Indigo car bearing Registration number TN-33-AR-9133, under the same cause of action (pay and recover), vide its orders dated 30.08.2016.

6. Aggrieved over the orders passed by the Tribunal, the claimants as well as the Insurance Company have filed the present appeals.

7. Heard Mr. R. Nalliyappan, learned counsel for the appellants in C.M.A. No.2225 of 2019 and Mr. K. Moorthy, learned counsel for the respondent Insurance Company.

8. Mr. R. Nalliyappan, learned counsel appearing for the claimants contended that the Tribunal though had come to a conclusion that the driver of the car bearing Registration number TN-33-AR-9133

was responsible for the accident, had also fastened composite negligence on the part of the drivers of both the vehicles in the ratio 50:50 and therefore, the same has to be set aside.

9. Per contra K. Moorthy, learned counsel for the Insurance Company contended that the claimants had failed to implead the driver of the lorry bearing Registration Number RH-14-GA-0621 and the insurer as parties to the claim petition and in the circumstances, they are entitled to pay only 50% of the Award amount passed by the Tribunal. He further contended that the Tribunal had added 50% towards future prospects though the Hon'ble Supreme Court of India in ***National Insurance Co. vs Pranay sethi and others*** reported in ***2017 (2) TNMAC 601*** has laid down that 40% alone can be added towards future prospects as the deceased was not permanently employed. His further contention was that the deceased was a bachelor and the Tribunal had wrongly deducted 1/3 towards his personal expenses. He therefore prayed for setting aside the order of the Tribunal.

10. A perusal of the records shows that the Sub Inspector of Police, Hasanur Police Station, registered FIR in Crime No.53/2010 against the driver of the car bearing Registration number TN-33-AR-9133 for the offences punishable under Sections 279 and 337 IPC. The Rough Sketch (Ex.P3) shows the place of occurrence as the western side of North-South Road. The lorry was proceeding towards northern side while the car was coming in the opposite direction. Since the accident had happened on the western side of the road, it is clear that the driver of the car was rash and negligent in driving his vehicle. The eye witness account is also clear as to the rash and negligent driving of the driver of the car. The Tribunal also concluded that the driver of the car was responsible for the accident while answering issue number 1. However, the Tribunal got confused and fixed composite negligence on the part of drivers of both the vehicles in the ratio 50:50 while answering issue number 2.

10.1. It is well settled that when there are two tortfeasors, the claimant can proceed against anyone of the tortfeasors and in the instant case, the claimant had chosen to proceed against the owner of the car and his Insurance Company. In the circumstances, the Tribunal was wrong in deducting 50% from the total compensation awarded to the claimants. Therefore, the same is liable to be set aside. However, since the driver of the car did not have a valid driving licence on the date of accident, the Insurance Company shall pay the award amount at the first instance and then recover the same (pay and recover) from the owner of the vehicle on the same cause of action.

Quantum:

10.2. The Income Tax Returns (Ex.P10 and Ex.P13) show that the deceased was earning a sum of Rs.13,016/- per month. The Tribunal had wrongly added 50% towards future prospects. 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***, 40% should be added towards future prospects of the deceased. Since the deceased died as a bachelor, 1/2 should be deducted towards his personal expenses. However, the Tribunal had wrongly deducted 1/3 towards the personal expenses of the deceased especially when there are no minor siblings depending on his income. The proper multiplier to be adopted in the instant case is 17 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.13,016/-

40% Future Prospects = Rs.18,222/-

After 1/2 deduction = Rs.9,111/-

<u>Loss of dependency</u>

= Rs.9,111/- x 12 x 17

= Rs.18,58,644/-

In addition to that the claimants are entitled to a sum of Rs.80,000/- (40,000 x 2), 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).

10.3. The modified amount under the different heads are detailed hereunder:

S.No.	***Head***	***Amount granted by this court (Rs.)***
1.	Loss of dependency	18,58,644/-
2.	Loss of consortium (Rs.40,000/- x 2)	80,000/-
3.	Funeral expenses	15,000/-
4.	Loss of Estate	15,000/-
	Total	19,68,644/-

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 appeals in C.M.A. No.2225 of 2019 and C.M.A. No.1167 of 2020 are partly allowed. No costs. Consequently connected miscellaneous petition is closed.

ii. The order of the Tribunal fixing composite negligence on the part of the offending vehicles in the ratio 50:50 is set aside.

iii. The compensation awarded by the Tribunal is enhanced to Rs.19,68,644/-.

iv. The appellant, the Reliance General Insurance Company Limited, in C.M.A. No. 1167 of 2020 is directed to deposit the compensation amount of Rs.19,68,644/- (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, in the first instance, within a period of four weeks from the date of receipt of a copy of this order/uploading of this order, to the credit of M.C.O.P.No.896/2010 on the file of the Motor Accident Claims Tribunal, Subordinate Court, Sathyamangalam, and then recover the same (pay and recover) from the third respondent in C.M.A.1167/2020, the owner of TATA Indigo car bearing Registration number TN-33-AR-9133, under the same cause of action.

v. On such deposit being made, the claimants are at liberty to withdraw their share as per the apportionment made by the Tribunal after filing a proper petition for withdrawal.

vi. The appellants/claimants in C.M.A. No.2225 of 2019 is not entitled to claim interest for the period of delay of 399 days in filing the appeal.

24.09.2024

Index : Yes/No
Speaking/Non-speaking order

bga

To

1. Motor Accident Claims Tribunal,
   Subordinate Court, Sathyamangalam.

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

R.HEMALATHA, J.

bga

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