IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.10.2016

CORAM

THE HONOURABLE MR. JUSTICE M.JAICHANDREN
AND
THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.1117 of 2016

M/s.Reliance General Insurance Company Limited,
Roy Towers, 2nd Floor,
Plot No.2054, 2nd Avenue,
Anna Nagar, Chennai-600 040 ..Appellant/2nd Respondent

vs.

1.Mrs.S.Pramila
2.S.Aswini Theresa (Minor),
3.S.Lian Amaru (minor),
4.Mrs.R.Lily
5.Mr.J.Thomas ..Respondents 1to5/Claimants 1to5
(respondents 2 and 3 minors represented by mother and NF 1st respondent)
6.Srinivasulu Reddy ..6thRespondents/1st Respondent

Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act against the judgement and decree dated 18.06.2015, made in M.C.O.P.No.5866 of 2011, on the file of the Motor Accident Claims Tribunal, VI Court of Small Causes, Chennai.

For appellant : Mr.N.Vijayaraghavan
For Respondents : Mr.Um.Ravichandran, for R1 to R3, R5.
R4 - died
No appearance for R6

JUDGMENT

(Judgement of the Court was delivered by S.BASKARAN,J.)

Questioning the quantum of compensation awarded by the Motor Accidents Claims Tribunal (VI Court of Small Causes), Chennai, in the judgement and decree dated 18.06.2015, made in M.C.O.P.No.5866 of 2011, the present appeal has been filed by the Insurance Company Limited.

2. Respondents 1 to 5 are the claimants, before the Tribunal. The first respondent is the wife of the deceased, second and third respondents are the minor children; the fourth respondent (since passed away) and the fifth respondents are the parents of the deceased, namely, T.Suresh. The sixth respondent is the owner of the vehicle involved in the accident.

3. For the sake of convenience, the parties are referred to hereunder according to their ranks before the Tribunal.

4. The case of the claimants before the Tribunal is that on 21.01.2010, at about 00.30 a.m., when the deceased Suresh was travelling in a Maruthi Swift Car, bearing Registration No.TN.22 AV 6939, belonging to the 6th respondent and insured with the appellant/second respondent/Insurance Company, met with an accident and he succumbed to injuries, subsequently. According to the claimants, the deceased was carrying on the business of buying and selling automobiles and he was the proprietor. It is also stated that the monthly income of the deceased was Rs.50,000/- and he was aged about 41 years, at the time of his death. Hence, the claimants made a claim before the Tribunal, as against the Insurance Company, claiming a sum of Rs.30,00,000/- as compensation, for the unduly demise of the deceased.

5. Resisting the claim petition, the Insurance Company filed a counter affidavit stating that the deceased did not possess valid licence to drive the vehicle, at the time of the accident, and hence, they are not liable to pay the compensation.

6. In order to prove the claim, on the side of the claimants, the first claimant, viz., the wife of the deceased, examined herself as P.W.1, along with two others as P.Ws.2 and 3 and marked 11 documents as Exs.P.1 to P.11. On the side of the respondents, no one was examined and no document was exhibited.

7. The Tribunal, after considering the materials placed before it, has come to the conclusion that the appellant/first respondent/Insurance company is liable to compensate the claimants. By coming to such a conclusion, the Tribunal has awarded a sum of Rs.29,75,000/- with interest at the rate of 7.5% per annum as compensation, as against the claim of Rs.30,00,000/-. Aggrieved over the said quantum of compensation, the Insurance Company has preferred the present appeal.

8. The learned counsel appearing for the appellant/ Insurance Company submitted that the Tribunal has erred in fixing the income of the deceased at Rs.25,000/- and the

multiplier of 14 adopted by the Tribunal is also on the higher side, which resulted in awarding an exorbitant sum of Rs.27,50,000/- under the head of 'loss of dependency'.

9. Per contra, the learned counsel appearing for the claimants/respondents 1 to 5, submitted that the monthly income fixed by the Tribunal cannot be said to be on the higher side, considering the cost of living prevailing in the present day. He has further submitted that the multiplier of 14 adopted by the Tribunal is not on the higher side. He has further submitted that the compensation awarded on the other heads are also very meagre and if all those aspects are taken into consideration, absolutely there is no necessity to interfere with the award of the Tribunal.

10. However, when the appeal is taken up today, the learned counsel for the claimants filed a memo of calculation and conceded that the monthly income of the deceased can be fixed at Rs.15,000/- and on that basis, the amount of compensation can be calculated.

11. The learned counsel appearing for the appellant/Insurance Company, even though questioned the monthly income of the deceased fixed at Rs.25,000/-, has not produced any oral or documentary evidence to dispute the same.

12. Keeping the submissions made by the learned counsel on either side, we have carefully gone through the entire materials available on record.

13. Admittedly the deceased was carrying on the business of purchasing and selling the automobiles, in the address mentioned, in the claim petition. The said factum of business carried on by the deceased is not contradicted by the appellant/Insurance company. In such circumstances, it is clear that the deceased was carrying on the above said business and earning monthly income. The claimants produced Ex.P7, the bank statement, in support of their claim relating to the earning of the deceased. However, no income tax return of the deceased is produced. In such circumstances, taking into consideration, the above said fact and also the claim of the claimants before this Court that the monthly income of the deceased can be fixed at Rs.15,000/- and the same not being strongly contradicted by the Insurance Company, the monthly income of the deceased is re-fixed as Rs.15,000/-, instead of Rs.25,000/-. On that basis, the loss of dependency of the deceased is calculated as follows.

Annual income (15,000 X 12)	:	Rs.1,80,000/-
30% future prospects	:	Rs. 54,000/-
	:	Rs.2,34,000/-
Less 1/4th towards personal expenses	:	Rs. 58,500/-
		Rs.1,75,500/-
by applying multiplier 14 Loss of dependency (Rs.1,75,500/- X 14)	:	Rs.24,57,000/-

14. The Tribunal has granted a sum of Rs.25,000/- towards funeral expenses, a sum of Rs.1,00,000/- towards consortium and a sum of Rs.1,00,000/- towards loss of love and affection and mental agony. The appellant/Insurance Company has not opposed the provision of such amounts under the said heads, by the Tribunal.

15. In such circumstances, taking into consideration the fact that the claimants have come forward with a memo, conceding to fix the monthly income of the deceased at Rs.15,000/- per month, and the amount fixed by the Tribunal on the other aspects not being disputed by the appellant/Insurance Company, the award passed by the Tribunal is modified as under:

Loss of Dependency	:	Rs.24,57,000/-
Funeral expenses	:	Rs. 25,000/-
Loss of Consortium	:	Rs. 1,00,000/-
Loss of Love and affection and mental agony	:	Rs. 1,00,000/-
		Rs.26,82,000/-

The interest awarded by the Tribunal at 7.5% is confirmed.

16. Since the fourth claimant, namely, the mother of the deceased, has passed away, the fifth claimant, namely, the father of the deceased, is entitled to 10% of the award amount. As far as the shares of claimants 1, 2 and 3 are concerned, the amounts as apportioned by the Tribunal is confirmed.

17. The Appellant/Insurance Company is directed to deposit the entire amount, as awarded in this judgement, together with proportionate costs and interest from the date of claim petition, to the credit of M.C.O.P.No.5866 of 2011, on the file of the Motor Accidents Claims Tribunal, VI Court of Small Causes, Chennai, if not deposited already, within a period of six weeks from the date of receipt of a copy of this order and on such deposit being made, the first claimant, the wife of the deceased and the fifth claimant/the father of the deceased are permitted to withdraw their respective shares. As far as the shares of the minor claimants, namely, claimants 2 and 3 are concerned, the same shall be deposited in a fixed deposit, in a Nationalised bank, initially for a period of three years, renewable thereafter from time to time till the minors attain majority. The first claimant, the mother of the minor claimants, is permitted to withdraw the interest accrued on such deposit, once in three months.

18. The civil miscellaneous appeal is disposed of accordingly. No costs. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

msk

To

The Motor Accident Claims Tribunal,
VI Court of Small Causes, Chennai.

+2ccs to Mr.V.M. Ravichandran, Advocate, S.R.No.59774
+1cc to Mr.M.B. Gogpalan Associates, Advocate, S.R.No.59989

VD(CO)
EU(17/11/2016)