IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.03.2016

CORAM:

THE HONOURABLE MR. JUSTICE R.SUDHAKAR

AND

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

C.M.A. Nos.2287 and 2399 of 2015
and
M.P. No. 1 of 2015 and CMP No.4863 of 2016 in C.M.A. Nos.2287/2015

M/s. Reliance General Insurance Co. Ltd.,
Rai's Towers, 2nd floor, Plot No.2054
2nd Avenue, Anna Nagar
Chennai - 600 040. ... Appellant in C.M.A. No.2287/2015
/2nd Respondent in C.M.A. No.2399/2015
(2nd Respondent before the Tribunal)

vs.

1. V. Gayathri
2. Minor V. Prethiban
3. Minor V. Sudhendran
(represented by Mother and natural guardian, 1st respondent)

4. D. Devagiammal ... Respondents 1 to 4 in C.M.A. No.2287/2015
Appellants in C.M.A. No.2399/2015
(Claimants)

5. N. Mani ... 5th Respondent in C.M.A.No.2287/2015
/1st Respondent in C.M.A. No.2399/2015
(1st Respondent before the Tribunal)

These Civil Miscellaneous Appeals are filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree dated 06.03.2015 passed by the Motor Accidents Claims Tribunal, IV Court of Small Causes, Chennai, in M.C.O.P.No.3353 of 2011.

For Appellant in C.M.A. No.2287/2015 For Respondent 2 in C.M.A. No.2399/2015	: :	Mr.S. Arunkumar
For Respondents 1 to 4 in C.M.A. No.2287/2015 Appellants in C.M.A. No.2399/2015	:	Mr.S.Ravikumar

COMMON J U D G M E N T

(Judgment of the Court delivered by S.VAIDYANATHAN,J.)

Heard the learned counsel for the Insurance Company and the learned counsel appearing for the claimants.

2. Challenging the quantum of compensation awarded by the Motor Accidents Claims Tribunal (IV Court of Small Causes), Chennai, by its judgment dated 06.03.2015 in M.C.O.P.No.3353 of 2011, the Insurance Company has come before this Court with the Appeals in C.M.A. No.2287 of 2015 and the claimants in C.M.A. No.2399/2015.

3. This is a case of fatal accident. On 12.06.2011, about 01.45 p.m., when the deceased D.Velmurugan was riding the motor cycle bearing Registration No.TN-10-T-3818 at New Avadi Road, opposite to Corporation Middle School, a Tata Ace Van bearing Registration No.TN-01-AH-1227 proceeding from East to West direction in a rash and negligent manner and hit the motorcycle of the deceased, thereby he fell down and sustained grievous head injuries and died on the way to Hospital. Alleging that the accident took place only due to the negligence of the van driver, the owner of the van and the appellant Insurance Company, with which the van is insured are liable to compensate them, the claimants filed a claim petition before the Tribunal seeking a sum of Rs.20,00,000/- as compensation, as the deceased was the only bread-winner of the family.

4. The Tribunal based on the oral evidence of the witnesses, the F.I.R. and also taking note of the fact that the deceased was having valid driving licence to drive the two wheeler came to the conclusion that the driver of the van was rash and negligent and was responsible for the accident and consequently liability was fixed on the Insurance Company, being the insurer of the van. On this issue, learned counsel for the appellant has no serious objection with regard to the finding of the Tribunal as no material has been placed to come to a different conclusion from that of the conclusion arrived at by the

Tribunal. However, the owner of the van remained ex-parte before the Tribunal. The Insurance Company resisted the claim petition before the Tribunal questioning the liability and the quantum of compensation claimed by the claimants.

5. Before the Tribunal, in support of the claim, the 4th claimant, viz. Mrs.Devagiammal, mother of the deceased was examined as P.W.1 and an eye-witness to the accident, viz. Mr.Ram was examined as P.W.2; and Exs.P1 to P7 were marked, the details of which are as follows:

Ex.P-1	Copy of FIR
Ex.P-2	Copy of Post-mortem Certificate
Ex.P-3	Copy of Death Certificate
Ex.P-4	Legal Heir Certificate
Ex.P-5	Driving License of the deceased
Ex.P-6	Authorisation Letter
Ex.P7	Deceased salary related document

6. On the side of the Insurance Company, R.W.1 and R.W.2 were examined; and Exs.R1 to R4 were marked.

Ex.R-1	Authorisation letter
Ex.R-2	Driving licence extract
Ex.R-3	Insurance Policy
Ex.R-4	Notice with returned cover

7. The Tribunal, taking note of the oral evidence of P.W.1 and the corroborating evidence of P.W.2, an eye-witness to the accident coupled with Ex.P1-F.I.R., held that the accident took place due to the rash and negligent driving of the driver of the van and awarded a sum of Rs.17,27,000/- as compensation to the claimants with interest at 7.5% per annum, from the date of filing of the claim petition till the date of deposit, under the following heads:

Loss of income	Rs. 11,52,000.00
Loss of Consortium	Rs. 1,00,000.00
Funeral expenses	Rs. 25,000.00
Loss of Love and Affection	Rs. 4,50,000.00
Total compensation	Rs.17,27,000.00

8. According to the learned counsel for the Insurance Company, the compensation awarded by the Tribunal is exorbitant and not in consonance with the facts and circumstances of the case.

9. While so, learned counsel appearing for the claimants would submit that the compensation awarded by the Tribunal is just and reasonable.

10. Heard the submissions of the learned counsel for both the Insurance Company and the Claimants and carefully perused the materials available on record.

11. Admittedly, there are four dependants, left behind by the deceased. The owner of the van, remained ex-parte before the Tribunal. It has been stated that the driver of the van did not possess driving license on the date of accident and two witnesses have been examined in this regard. In the absence of material evidences, the Tribunal has fixed the monthly income of the deceased as Rs.8000/-. From the reading of the above grounds, we find that the Tribunal has erred in fixing the income of the deceased as Rs.8000/- per month, when there is no proper evidence to that effect. For an accident which took place in the year 2008 the Apex Court in Syed Sadiq vs. Divisional Manager, United India Insurance Company Limited, (2014) 2 SCC 735, fixed a sum of Rs.6500/- as notional monthly income of the injured claimant, who was a vegetable vendor. In view of the said decision and taking note of the escalating prices this Court finds it appropriate to fix a sum of Rs.7000/- as the notional monthly income of the deceased. However, as per the ratio laid by the Apex Court in the case of Sarla Verma (Smt) and others vs. Delhi Transport Corporation and another, (2009) 6 SCC 121, the Tribunal ought to have granted 30% of the income towards future prospects. Since the main objection raised by the Insurance Company is the fixation of the monthly income of the deceased, this Court is inclined to modify the compensation towards "Loss of income". Taking the monthly income of the deceased at Rs.7,000/- and the annual income as Rs.84,000/- and adding 30% of the same towards future prospects, a sum of Rs.1,09,200/- (84,000/- + Rs.25,200/-) is arrived and after deducting 1/4th (Rs.27,300/-) towards personal expenses, a sum of Rs.81,900/- is fixed as the annual contribution to the family. Applying the multiplier of '15' to the annual income (Rs.81,900 x 15), a sum of Rs.12,28,500/- is arrived as compensation towards "Loss of income". Further, we feel that the amount granted towards "loss of love and affection" to the claimants 2 to 4, being the children and the mother of the deceased, is too high and the same is reduced to Rs.75,000/- each.

12. Since the compensation awarded by the Tribunal under other heads, viz. "Loss of Consortium" to the 1st claimant and "Funeral expenses" are found to be reasonable, they are

confirmed. Break-up details of the revised award would run thus:

Heads	Award of the Tribunal	Revised Award of this Court
Loss of income	Rs. 11,52,000.00	Rs. 12,28,500.00
Loss of Consortium	Rs. 1,00,000.00	Rs. 1,00,000.00
Funeral expenses	Rs. 25,000.00	Rs. 25,000.00
Loss of Love and Affection (Rs.75,000 x 3)	Rs. 4,50,000.00	Rs. 2,25,000.00
Total compensation	Rs.17,27,000.00	Rs.15,78,500.00

13. In fine, the total compensation awarded by the Tribunal is modified as above and the claimants are entitled to a sum of Rs.15,78,500/- (Rupees Fifteen Lakhs Seventy Eight Thousand and Five Hundred only) as compensation. Of the above said amount, the first claimant is entitled to a sum of Rs.5,50,000/- and the second and third minor claimants are entitled to a sum of Rs.4,70,000/- each and the fourth claimant is entitled to a sum of Rs.88,500/-. The rate of interest awarded by the Tribunal at 7.5% per annum is confirmed. The Insurance Company is directed to deposit the entire award amount as ordered by this Court, together with accrued interest from the date of the claim petition till the date of deposit, less the amount already deposited, to the credit of M.C.O.P.No.3353 of 2011 on the file of the Motor Accidents Claims Tribunal (IV Court of Small Causes), Chennai, within a period of six weeks from the date of receipt a copy of this judgment.

14. On such deposit being made, the major claimants are permitted to withdraw the award amount. As far as the minor 2nd and 3rd claimants are concerned, their proportionate share of the award amount shall be initially deposited in any one of the Nationalised Banks under reinvestment scheme, initially for a period of three years renewable thereafter and the interest accrued on such deposit shall be withdrawn by their natural guardian, once in three months, till they attain majority. It is also made clear that the award amount shall be paid to the major claimants in the form of a crossed Account Payee Cheque, favouring only the claimants and it should not be issued in favour of any other person/Company. In the case of minor claimants, the award amount shall be paid to them in the form of a crossed Account Payee Cheque, once they attain majority.

Hence, the C.M.A. No. 2287 of 2015 is partly allowed with the above modification and C.M.A. No. 2399 of 2015 is dismissed. No costs. Consequently, connected Miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To:

The Registrar,
The Motor Accidents Claims Tribunal,
(IV Court of Small Causes),
Chennai.

+1cc to Mr.M.Selvam, Advocate Sr.20207
+1cc to Mr.S.Arunkumar, Advocate sr.20144

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srg 13/06/2016