IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 01.12.2016

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A. No.2648 of 2016 and

C.M.P. No.18918 of 2016

M/s.Reliance General Insurance Company Ltd.,
Next to Senthil Nursing Home,
Anna Nagar, Chennai-600 040. .. Appellant/2nd Respondent

Versus

1.M.Lakshmi
2.D.Amirtham
3.Dhakshina
4.G.Karthikeyan .. Respondents/Petitioners and 1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 01.07.2016 made in M.C.O.P. No.1054/2013 on the file of the Motor Accidents Claims Tribunal, (III Additional District Court), Tiruvallur @ Poonamallee.

For Appellant : Mr.N.Vijayaraghavan

J U D G M E N T

M/s.Reliance General Insurance Company Limited, has brought this appeal, challenging the correctness of the impugned award dated 01.07.2016 made in M.C.O.P. No.1054/2013 on the file of the Motor Accidents Claims Tribunal, (III Additional District Court), Thiruvallur @ Poonamallee, awarding a sum of Rs.8,95,360/- as against Rs.10 lakhs for the loss of life of sole breadwinner of the claimants' family.

2.Learned counsel for the appellant/Insurance Company would submit that on 08.12.2012 at about 9.00 p.m., when the deceased was riding his motor cycle bearing Registration No.TN -20-BJ-4983 from Tiruninravur to Periyapalayam Road, near Kavanur single palm tree, a lorry bearing Registration No.TN-28-AL-9525 was wrongly parked on the left side of the road, since the driver of the lorry wanted to take water. But it was only the deceased Mohan riding his motor cycle without even taking note of the lorry that has been parked on the left side of the road, hit behind the lorry and consequently, he sustained multiple injuries and subsequently, he died and this has been properly brought to the notice of the Tribunal, requesting to fix the negligence only on the deceased as 'tort-feasor'. The Tribunal, overlooking the vital arguments advanced by the appellant/Insurance Company, has fixed the negligence on the part of the driver of the lorry bearing Registration No.TN-28-AL-9525 stating that the lorry driver had suddenly applied the brake, as a result the deceased riding his motor cycle hit behind the lorry and suffered the accident. As the question of negligence has not been properly considered by the Tribunal, the appellant/Insurance Company, who has taken Insurance Policy on the lorry, has been wrongly saddled with the liability. Such a finding is required to be interfered with. Coming to the quantum of compensation, learned counsel for the appellant/Insurance Company would further submit that the claimants claimed a sum of Rs.10 lakhs as compensation on the ground that the deceased was working as Fitter and he was earning a sum of Rs.6,000/- as monthly income. But the Tribunal, fixing a sum of Rs.5,000/- and applying the multiplier '18' and deducting 1/3rd towards his personal expenses, has worked out a sum of Rs.7,20,360/- towards loss of dependency, which is on the higher side.

3.As per the ratio laid down by the Hon'ble Apex Court in Santhosh Devi vs. National Insurance Company Limited reported in 2012 (6) SCC 421, the addition towards future prospects also to be included along with income of the deceased. In the case on hand, the deceased, aged about 28 years had worked as Fitter. Though the claimants claimed a sum of Rs.6,000/- as his monthly salary, the Tribunal has fixed only a sum of Rs.5,000/- as the notional monthly income, in the absence of any documentary evidence. But the Tribunal has applied the multiplier '18', instead of '17' since the deceased aged about 28 years, is falling in the age group of 25-30. Further, in the light of the ratio laid down by the Hon'ble Apex Court in Rajesh and others v. Rajbir Singh reported in 2013 9 SCC 54, considering the age of the deceased, who is aged 28 years, an addition of 50% of the actual salary has to be added towards future prospects. But the same has not been done by the Tribunal. Therefore, this Court is not inclined to interfere with the impugned award passed by the learned Tribunal, as the same cannot be construed as un-reasonable or exorbitant. Moreover, the Tribunal has rightly rejected the contention of the appellant that the deceased alone was responsible for the accident, after considering the evidence of the eye witness/PW2 and the contents of the FIR, as to the negligence and liability.

4.Accordingly, the Civil Miscellaneous appeal fails and the same is dismissed. No costs. Consequently, connected Miscellaneous Petition is also dismissed.

5.Since the learned counsel for the appellant/Insurance Company submitted that the appellant has deposited Rs.25,000/- towards statutory deposit, the balance amount is directed to be deposited within a period of four weeks from the date of receipt of a copy of this order, failing which the interest payable would become 12% p.a. for the delayed period. On such deposit, it is for the claimants to move a petition before the learned Tribunal for withdrawing of the said amount.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The III Additional District Judge,
The Motor Accidents Claims Tribunal,
Thiruvallur @ Poonamallee.

+1cc to Mr.M.B. Gopalan Associates, Advocate, S.R.No.71535

GJ(CO)
md(23/03/2017)

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