IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.12.2016

CORAM

THE HON'BLE MR.JUSTICE M.JAICHANDREN
and
THE HON'BLE MR.JUSTICE T.MATHIVANAN

C.M.A.No.2805 of 2016

Royal Sundaram Alliance Insurance Company Limited
Sorrento Building, 1st Floor
No.6, Lattice Bridge Road
Adyar, Chennai - 600 020 ...Appellant/2nd Respondent

Vs

1.B.Jayanthi
2.B.Archana
3.B.Priya (Minor)
4.B.Deepika (Minor) ...Respondent 1 to 4/Petitioners
5.D.M.Srinivasan ...Respondents/1st Respondent
(Respondents 3&4 minors represented
by mother & Next friend R1)

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 22.04.2016 and made in M.C.O.P.No.6282 of 2013 on the file of the Motor Accidents Claims Tribunal, II Court of Small Causes, Chennai.

For Petitioner : Mr.N.Vijayaraghavan

For Respondents 1 to 4 : Mr.S.Ravikumar

JUDGMENT

(Judgment of the Court was made by T.MATHIVANAN,J.)

Questioning the quantum of compensation to the extent of 28,36,000/- as against the claim of Rs.50,00,000/-, the appellant Insurance Company, who is the second respondent in the claim petition in M.C.O.P.No.6282 of 2013 on the file of the Motor Accident Claims Tribunal (II Court of Small Causes), Chennai, has filed this Civil Miscellaneous Appeal.

2. The respondents 1 to 4 herein had moved the Motor Accident Claims Tribunal (II Court of Small Causes), Chennai with a claim petition in M.C.O.P.No.6282 of 2013 claiming totally a sum of Rs.50,00,000/- for the death of first respondent/first claimant's husband and the father of the respondents 2 to 4/claimants 2 to 5 in a Road Traffic Accident said to have been taken place on 08.08.2013, at about 03.30pm, involving a car bearing Registration No.TN 10-X-5306 belonging to the 5th respondent herein.

3. This claim was contested by the appellant Insurance Company by filing their counter statement. On appreciation of evidences, both oral and documentary, the Claims Tribunal had proceeded to award a sum of Rs.28,36,003/- (Rounded off to Rs.28,36,000/-) directing the appellant Insurance Company/second respondent and the 5th respondent/first respondent, being the owner of the offending vehicle, to pay the above said amount jointly and severally along with interest at the rate of 7.5% per annum.

4. It is revealed from the records that on 08.08.2013, at about 03.30 pm, the car bearing Registration No.TN 10-X-5306, belonging to the 5th respondent, had hit against the deceased R.Balakrishnan when he was proceeding by walk at Sidco Nagar 4th Main Road and 45th Street Junction, Villivakkam, Chennai and subsequently on 13.08.2013, he had succumbed to injuries while he was on treatment. 5th respondent, being the owner of the vehicle, remained ex parte as he had not contested the claim. The appellant Insurance Company, being the second respondent, had contended that as per the claim of the claimants, the deceased had succumbed to injuries only on 13.08.2013 i.e, after 6 days from 08.08.2013 (date of accident). They have also contended that no satisfactory medical proof was produced to show that the deceased was admitted in the Government General Hospital, Chennai and that he had passed away while he was on treatment on 13.08.2013. Secondly, the appellant Insurance Company has contended that the deceased person, without using the pedestrian path, was walking on the middle of the road and on account of this reason, he himself had invited the accident.

5. The first respondent had examined himself as PW1. One eye witness Srinivasan was examined as PW2 and one Satheesh was examined as PW3. During the course of their examination, as nearly as 10 documents were exhibited as Exs.P1 to P10. On the other hand, one Suganya was examined as RW1 on the side of the appellant Insurance Company and during the course of her examination, three documents were exhibited as Exs.R1 to R3.

6. The Tribunal, while answering the issues with regard to rashness and negligence and liability to pay the compensation, had held that the 5th respondent, being the owner of the vehicle, was liable to answer for the claim and since the offending vehicle was insured with the appellant Insurance Company at the relevant point of time, the appellant Insurance Company was also vicariously liable to indemnify the loss of the owner of the vehicle.

7. As aforestated, since the appeal itself has been filed by the appellant Insurance Company on the ground of quantum alone, we find that the issues with regard to the negligence and liability need not be traversed.

8. In the claim petition, the claimants have stated that at the time of accident, the deceased was working as plant operator at Central Asphalt Plant, Corporation of Chennai and as such he was earning a sum of Rs.22,000/- per month. They have also claimed that the deceased was aged about 50 years at the time of accident. In this connection, the Tribunal, for the purpose of quantifying the compensation, had determined the age of the deceased at 52 years based on Ex.P9-Service Register of the deceased. Ex.P6 is the legal heir certificate wherein it is shown that the first respondent is the wife of the deceased and the second respondent is the daughter and the 3rd and 4th respondents are the minor daughters of the deceased. Ex.P10 is the salary slip. Ex.P8 is the employment related document and based on these documents, the Tribunal had concluded that on the date of accident i.e., on 08.08.2013, the deceased was drawing a sum of Rs.21,500/- towards his monthly salary.

9. The Tribunal, after placing reliance upon the decision of the Apex Court in Smt.Sarala Varma and Others Vs. Delhi Transport Corporation and another reported in 2009 (2) TNMAC 1 (SC), had held that towards the future prospects of the deceased, 15% of the monthly income, which was drawn by the deceased at the time of death, could be taken into account. Since it was determined that the deceased was drawing a sum of Rs.21,500/- per month, a sum of Rs.3225/-per month (15%) was added towards future prospects. Therefore, a sum of Rs.24,725/- was arrived at after the inclusion of the future prospects of Rs.3225/-. Accordingly, the annual income of the deceased was quantified at Rs.2,96,700/- (Rs.24,725/- x 12). Thereafter, a sum of Rs.10% was given deduction towards the income tax. After giving deduction of 10%, the remaining balance would be Rs.2,67,030/-.

10. Further, as per the decision of the Apex Court in Sarala Verma Case cited supra, since there are four dependants, $1/4^{th}$ deduction was given towards the personal and living expenses of the deceased. After deducting $1/4^{th}$ under the above said head, the remaining balance comes to Rs.2,00,273/- per annum. Since the age of the deceased was determined as 52 years, as per the second schedule to Section 163-A of the Motor Vehicles Act, the multiplier of 11 was selected. Accordingly, the annual dependency of the family i.e., 2,00,273/- was multiplied with the multiplier of '11' and the multiplicand was arrived at Rs.22,03,003. Apart from this the Tribunal had also granted compensation under the following heads:

Pecuniary Loss of the Family	:	Rs.22,03,003/-
Loss of Love and Affection	:	Rs. 4,00,000/-
Consortium	:	Rs. 1,00,000/-
Loss of Estate	:	Rs. 50,000/-
Pain and Suffering	:	Rs. 50,000/-
Attender Charges	:	Rs. 3,000/-
Transportation	:	Rs. 10,000/-
Funeral Expenses	:	Rs .25,000/-
Total		Rs.28,36,003/-

Rounded off to Rs.28,36,000/-.

11. Mr.M.B.Gopalan, learned counsel appearing for the appellant has submitted that the compensation awarded by the Tribunal was absolutely on the higher side and that the Tribunal had not taken into account of the gross income of the deceased without proper deduction including tax. He has also added that since the deceased was aged about 50 years at the time of his death, future prospects to the extent of 15% ought not to have been taken into account. Further, Mr.M.B.Gopalan has also contended that the Tribunal had committed a serious error in awarding Rs.4,00,000/- towards loss of love and affection.

12. On the other hand, Mr.Ravikumar, learned counsel appearing for the respondents 1 to 4/claimants has submitted that the Claims Tribunal had meticulously analyzed the evidences which were placed before it and ultimately, had concluded that the respondents 1 to 4 / claimants were entitled to get a sum of Rs.28,36,003/- (rounded off to Rs.28,36,000/-) and since the Tribunal had correctly arrived at the compensation after following Sarla Verma's case cited supra, the award need not be disturbed as it was within the bounds of the settled principle of law.

13. We have carefully considered the submissions made on behalf of both sides and we are of the view that the pecuniary loss of the family to the extent of Rs.22,03,003/- which was arrived at by the Tribunal can be maintained. Insofar as the compensation under the head of love and affection to the extent of Rs.4,00,000/ is concerned-, we feel that it is exorbitant and can be reduced to Rs.1,50,000/- (Rs.50,000/- each to claimants 2, 3 and 4). The Tribunal had awarded a sum of Rs.1,00,000/- towards consortium to the first respondent/first claimant. According to our view it is reasonable and need not be disturbed. Towards the loss of estate, the Tribunal had awarded a sum of Rs.50,000/-, which could be reduced to Rs.10,500/-. Under the head of pain and suffering, the Tribunal had awarded a sum of Rs.50,000/- each, which could also be reduced to Rs.15,000/-. Under the head of Attendant charges (from 08.08.2013 to 13.08.2013), the Tribunal had awarded a sum of Rs.3,000/-, which could also be reduced to Rs.1,500/-. Apart from this, the Tribunal had awarded a sum of Rs.10,000/- towards transportation. We find that Rs.5,000/- would be very reasonable and accordingly, we allow Rs.5,000/- towards transportation. With reference to funeral expenses, the Tribunal had awarded a sum of Rs.25,000/-. This could also be reduced to Rs.15,000/-.

Accordingly, the Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal to the extent of Rs.28,36,003/- is hereby reduced to Rs.25,00,003/- (Rounded off to Rs.25,00,000/-). We direct the appellant Insurance Company to pay this amount on behalf of the 5th respondent, as the vehicle was insured with the appellant Insurance Company at the relevant point of time, with interest at the rate of 7.5% per annum, less the amount already deposited, if any within a period of six weeks from the date of receipt of a copy of this order. On such deposit being made, the first petitioner, being the wife of the deceased, is entitled to get Rs.10,00,000/- and the 2nd petitioner, being the daughter of the deceased, is entitled to get Rs.5,00,000/- and 3rd and 4th petitioners, being the minor daughters of the deceased, are entitled get Rs.5,00,000/- each. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gpa

To

The Motor Accidents Claims Tribunal
II Court of Small Causes, Chennai

+1cc to M/s.Gopalan Associates, Advocate, S.R.No.76027
+1cc to Mr.Ravikumar, Advocate, S.R.No.74729

GJ(CO)
RS(03/02/2017)

C.M.A.No.2805 of 2016