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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 03.03.2016

CORAM

THE HONOURABLE MR. JUSTICE R.SUDHAKAR
AND
THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

C.M.A. NO. 81 OF 2015

AND

M.P. NO. 1 OF 2015

M/s.Royal Sundaram Alliance
Insurance Co. Ltd.
Sundaram Towers
No.45 & 46, Whites Road
Chennai 600 004.

... Appellant/2nd Respondent

- Vs -

1. Inbavalli
2. R.Pavithra (Minor)
3. R.Balakrishnan (Minor)
4. R.Surya (Minor)
5. R.Vijakanth (Minor)
(RR-2 to 5 rep. by mother
& natural guardian R-1)

6. C.Nagesh

... Respondents/Petitioners
and 1st Respondent

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 18.12.2013, passed by the Motor Accident Claims Tribunal, Special District Court, Krishnagiri, made in MCOP No.570 of 2013.

For Appellant : Mr. N.Vijayaraghavan

For Respondents : Mr. S.Murugan for RR-1 to 5
R-6 - Died

JUDGMENT

(DELIVERED BY R.SUDHAKAR, J.)

Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondents/claimants.



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2. The appellant/insurer of the vehicle has filed the appeal challenging the award dated 18.12.2013, passed by the Motor Accident Claims Tribunal, Special District Court, Krishnagiri, made in MCOP No.570 of 2013.

3. It is a case of fatal accident. On 28.03.2010, at about 11.00 a.m., when the deceased Raman, aged around 50 years, was travelling in the Mahindra Pickup Van bearing Regn. No.TN-24-F-1455 belonging to the sixth respondent herein, and proceeding near Kalikoil Forest Check Post on the Krishnagiri-Kuppan Road towards Kuppan, the driver of the van, driving the same in a rash and negligent manner, hit the iron post of the check post due to which the deceased sustained grievous injuries to his vital organs. The deceased was immediately taken to the Government Hospital, Krishnagiri from where he was referred to Bangalore and enroute to the hospital at Bangalore, the deceased died. A case was registered against the driver of the Mahindra Pickup Van under Section 279 and 304 (A) IPC by the Kandhikuppam Police.

4. The deceased, on the date of accident, was working in the Sindagampalli Primary Agricultural Co-operative Thrift & Credit Society and earning a salary of Rs.10,114/= per month. The respondents, viz., the wife and minor children of the deceased have filed the claim petition claiming a sum of Rs.15,00,000/= as compensation.

5. In support of the claim, the first claimant, viz., the wife of the deceased was examined as P.W.1. One Muthusamy, eye witness to the occurrence was examined as P.W.2 and Balasubramanian, co-employee was examined as P.W.3 to prove the income of the deceased and Exs.P-1 to P-7 were marked, the details of which are as follows:-

Ex.P-1	-	Copy of the FIR
Ex.P-2	-	Copy of the Post-mortem certificate of deceased Raman
Ex.P-3	-	Copy of insurance policy of the Mahindra Pickup Van
Ex.P-4	-	Copy of the legal heir certificate
Ex.P-5	-	Copy of the salary certificate of the deceased attested by P.W.3
Ex.P-6	-	Copy of service register of deceased attested by P.W.3
Ex.P-7	-	Copy of Government Order duly attested by P.W.3



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6. On the side of the respondents, one Prabhu was examined as R.Ws. 1 & 2 and Vinoth Kumar was examined as R.W.3 and Exs.R-1 to R-8 were marked, the details of which are as follows:-

Ex.R-1	-	Driving licence of G.Nagesh
Ex.R-2	-	Driving license of Moorthy
Ex.R-3	-	Copy of Policy Schedule of Royal Sundaram Insurance Ltd.
Ex.R-4	-	Letter with acknowledgement sent to Sundaram Insurance
Ex.R-5	-	Acknowledgement card sent to the first respondent by Royal Sundaram Insurance Ltd.
Ex.R-6	-	Letter to L.Moorthy along with acknowledgement sent by Royal Sundaram Insurance Ltd.
Ex.R-7	-	Copy of the motor vehicle inspection report of motor vehicle involved in the accident
Ex.R-8	-	Charge sheet

7. The Tribunal based on the oral evidence of the P.W.1, the F.I.R. and also taking note of the corroborating evidence in the form of the evidence of P.W.2, eye witnesses to the occurrence, which has been adduced to prove that the van was driven in a rash and negligent manner and also taking into account the evidence of P.W.3 to prove the income of the deceased coupled with the documentary evidence and further there being no satisfactory evidence adduced on behalf of the appellant to refute the eye witness testimony as to the rash and negligent driving of the van, came to the conclusion that the accident was caused due to the rash and negligent driving by the driver of the van and, therefore, the liability was fixed on the appellant herein and consequently the appellant was directed to compensate the claimants. Accordingly, the Tribunal awarded compensation under the following heads :-

Loss of Income	-	Rs.16,24,500/=
Loss of consortium for first claimant	-	Rs. 50,000/=
Loss of Love & Affection for claimants 2 to 5 (Rs.25,000 X 4)	-	Rs. 1,00,000/=
Funeral Expenses	-	Rs. 25,000/=
Transport to Hospital	-	Rs. 10,000/=
Total Compensation	-	Rs.18,09,500/=

8. In all the Tribunal awarded a compensation of Rs.18,09,500/=. In the award, it was observed that if the award amount is not deposited within one month from the date of the



award/order, the appellant was directed to pay penal interest at 9% per annum on expiry of one month from the date of the award/order till the date of deposit of the award amount before the Tribunal. Aggrieved by the said award, the insurer of the vehicle is before this Court by filing this appeal.

9. The only point raised by the learned counsel appearing for the appellant is that the multiplier of 13 adopted by the Tribunal is erroneous and the proper multiplier would be 11 considering the age of the deceased at 50 years.. On the above point, this Court heard the learned counsel for the claimants, who submitted that very meagre amounts have been awarded under the other heads and enhancement of the same in lieu of the multiplier would offset the amount that would fall in excess on account of the erroneous multiplier.

10. This Court has given its careful consideration to the above contentions advanced by either parties. The deceased is aged 50 years, as is accepted by the parties and the proper multiplier to be adopted is 11. The Tribunal has fixed the contribution of the deceased to the family at Rs.10,414/=. Adopting the multiplier of 11, the compensation towards "Loss of Income" would be Rs.13,74,648/= (Rs.10,414 X 12 X 11). Accordingly, this Court awards a compensation of a sum of Rs.13,74,648/= under the head "Loss of Income".

11. Insofar as the compensation awarded under the other heads is concerned, this Court finds that the compensation of Rs.50,000/= awarded under the head "Loss of Consortium" to the first claimant is on the lower side and, accordingly, this Court enhances the amount awarded under the said head to Rs.1,00,000/=. Similarly, the compensation of Rs.1,00,000/= awarded to claimants 2 to 5 on the head "Loss of Love & Affection" is also on the lower side and, accordingly, this Court enhances the same to Rs.3,00,000/= (Rs.75,000 X 4). The compensation of Rs.10,000/= awarded under the head "Transportation Expenses" is also on the lower side and, accordingly, this Court enhances the compensation under the said head to Rs.20,000/=. Similarly, the compensation of Rs.25,000/= awarded under the head "Funeral Expenses" is on the higher side. Accordingly, this Court reduces the compensation under the said head to Rs.15,000/=.

12. Accordingly, this Court modifies the award as under :-

	Amount awarded by the Tribunal	Amount awarded by this Court
Loss of Income	Rs.16,24,500/=	Rs.13,74,648/=
Loss of consortium for first claimant	Rs. 50,000/=	Rs. 1,00,000/=



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Loss of Love & Affection for claimants 2 to 5	Rs. 1,00,000/=	Rs. 3,00,000/=
Funeral Expenses	Rs. 25,000/=	Rs. 15,000/=
Transport to Hospital	Rs. 10,000/=	Rs. 20,000/=
Total Compensation	Rs.18,09,500/=	Rs.18,09,648/=

13. The penal/default interest granted at 9% cannot be justified as per the decision of the Apex Court in National Insurance Co. Ltd. - Vs - Keshav Bhahadur & Ors. (2004 ACJ 648). Therefore, the penal/default interest granted at the rate of 9% per annum by the Tribunal is set aside.

14. In the result, this Civil Miscellaneous Appeal is disposed of with the above modification. However, the penal interest granted at 9% per annum is set aside. This Court, while granting stay, directed the appellant to deposit the entire award amount along with interest to the credit of MCOP No.570/2013. In such circumstances, the major claimants are permitted to withdraw the amount in deposit as per the apportionment made by the Tribunal in consonance with the modification made by this Court. The share of minor claimants are directed to be deposited in any one of the Nationalised Banks till they attain majority. The claimants are directed to pay the deficit court fee immediately. Consequently, connected miscellaneous petition is closed. However, in the circumstances of the case, there shall be no order as to costs.

Sd/-
Assistant Registrar(CS IV)

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GLN
To

Sub Assistant Registrar

The District Judge
Special District Court
(Motor Accident Claims Tribunal)
Krishnagiri.

Copy To

The Section Officer,
V.R.Section, High Court, Madras.

+1cc to Mr.N.Vijayaraghavan, Advocate, S.R.No.14186
+1cc to Mr.S.Murugan, Advocate, S.R.No.14046

C.M.A. NO. 81 OF 2015

SAI (CO)
CA(31/03/2016)