IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.04.2016

C O R A M

THE HONOURABLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

C.M.A.Nos.1149 and 1978 of 2013
and
M.P.No.1 of 2013

M/s.Royal Sundaram Alliance Insurance Co.Ltd., No.45 and 46, Whites Road Chennai 600 014. .. Appellant in CMA No.1149 of 2013 and 2nd respondent in CMA No.1978 of 2013

-Vs.-

1. Mrs.K.Manjula
2. K.Satheesh (Minor)
3. K.Chandralekha (Minor) .. Respondents 1 to 3 in CMA No.1149 of 2013 and Appellants in 1 to 3 in CMA No.1978 of 2013

[Respondents 2 and 3 minors rep. by mother and natural guardian 1st respondent].

4. G.Suma .. 4th respondent in CMA No.1149 of 2013 and 1st respondent in CMA No.1978 of 2013

[4th respondent remained exparte in lower court]

Civil Miscellaneous Appeals against the decree and judgment dated 30.03.2012 passed by the learned III Judge, Court of Small Causes [Motor Accidents Claims Tribunal] Chennai in MCOP No.2005 of 2009.

For Appellant in CMA No.1149 of 2013 and 2nd respondent in CMA No.1978 of 2013 ... Mr.N.Vijayaraghavan

For Respondents 1 to 3 in CMA No. 1149 of 2013 and Appellants in 1 to 3 in CMA No.1978 of 2013 ... Mr.K.Varadha Kamaraj

... 4th respondent in CMA No.1149 of 2013 and 1st respondent in CMA No.1978 of 2013 remained exparte before lower court.

COMMON JUDGMENT

(Judgment of the Court was delivered by Huluvadi G.Ramesh, J.,)

The widow aged 35 years and two minor children aged 17 years and 15 years respectively of deceased M.Kasivelu, who died in a motor vehicles accident that took place on 16.05.2009 at about 8.45 hours has moved the Motor Accident Claims Tribunal, Chennai in M.C.O.P.No.2005 of 2009 claiming a compensation of Rs.16 lakhs. The Tribunal awarded a sum of Rs.13,65,064/-, which award is in challenge before this Court both by the Insurance Company questioning only the quantum in CMA No.1149 of 2013 and by the claimants seeking enhancement of the compensation awarded by the Tribunal in CMA No.1978 of 2013.

2. Learned counsel representing the Insurance Company submits that the Tribunal has awarded a sum of Rs.12,80,064/- towards pecuniary loss by fixing the monthly income of the deceased at Rs.10,000/-, in the absence of any positive proof being produced to show that the deceased was earning a sum of Rs.2,00,000/- per annum from the agriculture work, as the same is on the higher side. He further submits that the amount awarded under other heads such as "loss of consortium" in a sum of Rs.25,000/- and Rs.50,000/- for loss of love and affection are also excessive.

3. Per contra, the learned counsel appearing for the claimants submits that the Tribunal has erred in fixing the monthly income only at Rs.10,000/- when the claimants have produced documents to show that the deceased was earning more than Rs.30,000/- per month. Further no amount has been awarded towards future prospects. He would further submit that awarding a sum of Rs.25,000/- towards loss of consortium to the widow and Rs.25,000/- each to the minor children towards loss of love and affection are on the lower side. He would also submit that no amount has been awarded towards transport expenses. Accordingly, he would pray for enhancement of the same.

4. Heard the learned counsel representing the respective parties.

5. Since the issue raised is only with regard to the quantum of compensation, we are not inclined to go into the aspect of negligence.

6. It is an admitted fact that the deceased was aged 40 years at the time of the accident. Further it is seen that the deceased was working as a Crane Operator and was earning a sum of Rs.5,000/- per month. Finding that there are no documentary evidence produced to support the claim that the deceased was also earning a sum of Rs.2,00,000/- per annum by doing agriculture work, the Tribunal has fixed the monthly income of the deceased at Rs.10,000/- per month and has awarded a sum of Rs.12,80,064/- towards pecuniary loss. The fixation of monthly income as done by the Tribunal in the absence of any documentary evidence is on the higher side. Further the Tribunal has also awarded a sum of Rs.25,000/- towards loss of consortium to the widow; Rs.10,000/- towards funeral expenses and a further sum of Rs.25,000/- each to the minor children towards loss of love and affection, in all totalling to a sum of Rs.13,65,064/- as compensation to the claimants.

7. As already stated, the family consists of the deceased, his wife and two minor children, viz., the claimants. The minor children have lost the love and affection of their father and the widow is also of very young age. Therefore, while holding that the loss of income awarded to the deceased family in a sum of Rs.12,80,064/- is on the higher side, since no separate amount has been awarded by the Tribunal towards future prospects, considering the age of the deceased, we are of the view, that to meet the ends of justice, it will be appropriate to fix the total compensation payable at Rs.13,00,000/- [Rupees thirteen lakhs only] to the claimants instead of Rs.13,65,064/- as awarded by the Tribunal, which shall carry interest at 7.5% p.a. from the date of the claim petition till the date of deposit.

8. It is seen that the Tribunal has apportioned the compensation amount of Rs.13,65,064/- as follows:

(i) Wife/Widow - Rs.5,65,064/-
(ii) Minor Children - Rs.4,00,000/- each

Since the compensation awarded has been reduced by us to a sum of Rs.13,00,000/- [Rupees thirteen lakhs only], the share of the claimants are apportioned as follows:

(i) Wife/Widow - Rs.5,00,000/-
(ii) Minor children - Rs.4,00,000/- each
[as ordered by the Tribunal]

9. It is submitted that as per the interim order passed by this Court in M.P.No.1 of 2013 dated 07.06.2013, the appellant-Insurance company has deposited the entire award amount together with accrued interest. It is further stated that as per the order dated 20.12.2013 passed by this Court in M.P.No.2 of 2013, the widow/first claimant was permitted to withdraw 50% of her share along with accrued interest.

10. In such circumstances, the appellant-Insurance Company in C.M.A.No.1149 of 2013 is entitled to withdraw the excess amount deposited, if any, along with the accrued interest. The widow/first claimant is also entitled to withdraw her balance portion of the share along with accrued interest on making out appropriate application before the Tribunal. Insofar as the compensation apportioned to the share of the minor claimants is concerned, the same shall be deposited in a Nationalised Bank under re-investment scheme, till they attain majority. The interest accrued on the said amount shall be withdrawn by the mother of the minor children/first claimant once in three months.

11. In the result,

(i) C.M.A.No.1149 of 2013 filed by the appellant-Insurance Company is allowed in part.

(ii) C.M.A.No.1978 of 2013 filed by the claimants is dismissed.

No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS III )

/true copy/
Sub Asst. Registrar

vj2

To
The III Judge
Court of Small Causes
Motor Accidents Claims Tribunal
Chennai.

1 cc to Mr.K. Varadhakamaraj, Advocate, Sr. 23343
1 cc to Mr.M. Vijayaraghavan, Advocate, Sr. 23744

C.M.A.Nos.1149 and 1978 of 2013

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