IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 15.11.2016

Pronounced on : 15.12.2016

CORAM

THE HON'BLE MR. JUSTICE G. CHOCKALINGAM

C.M.A. No.2685 of 2013
and Cross Objection No.118 of 2013
and M.P. No.1 of 2013

C.M.A. No.2685 of 2013 and Cross Objection No.118 of 2013

M/s.United India Insurance Co. Ltd.,
Silingi Building,
No.134, Greams Road,
Chennai - 600 006. .. Appellant/2nd Respondent in CMA 2685/13 & 1st Respondent in Cross Objection 118/13

Versus

1. S.K. Devi
2. S. Pandian
3.S.Baskar ..Respondents/Petitioners/ 1st Respondent in CMA 2685/13 & Cross Objection & 2nd Respondent in Cross Objection 118/13

(3rd respondent ex-parte in Lower Court)

Prayer in C.M.A. No.2685 of 2013 : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and decree in M.C.O.P. No.1583 of 2009, dated 13.09.2012 on the file of the Motor Accidents Claims Tribunal, III Court of Small Causes, Chennai.

Prayer in Cross Objection No.118 of 2013 in C.M.A. No.2685 of 2013 : Cross Objection filed under Order XLI Rule 22 of Civil Procedure Code against the decree and judgment dated 13.09.2012 made in M.C.O.P. No.1583 of 2009 on the file of Motor Accidents Claims Tribunal (III Small Causes Court), Chennai.

In C.M.A.No.2685 of 2013

| | |
|---|---|
| Appellant | :Mr.N.Vijayaraghavan |
| Respondents | :Mr.K.Suryanaraynan for RR1 and 2<br>R3 - Ex-parte |

In Cross Objection No.118 of 2013

Appellant/Cross objector: Mr. K.Suryanarayanan
Respondents : Mr.N.Vijayaraghavan for R1
R2 - Ex-parte

COMMON JUDGMENT

The insurance company has come forward with this appeal questioning the quantum of compensation awarded by the Tribunal in favour of the claimants, who are respondents 1 and 2 in the appeal. The claimants have also filed Cross Objection No.118 of 2013 in C.M.A. No.2685 of 2013. As both the appeal and the Cross Objection arise out of one and the same award passed by the Tribunal, they are taken up together and disposed of by this Common judgment.

2. M.C.O.P.No.1583 of 2009 has been filed by the parents of the deceased P.Rathinavel Pandian who died in a motor accident that took place on 07.05.2009. According to the claimants, on 07.05.2009 at about 22.20 hours, when the deceased in O.P. No.1583 of 2009 was riding the motorcycle bearing Registration No.TN22 BD 2209 along with pillion rider in O.P.No.1584 of 2009 at E.H. Road near Dr.Ambedkar College Signal, Chennai were proceeding from east to west, a mini lorry bearing Registration No.TN 25 V 7525 driven by its driver in a rash and negligent manner and hit the vehicle driven by the deceased from behind. In the impact, the deceased sustained multiple injuries and died on the spot. In connection with the accident a case in Crime No.243 of 2009 of came to be registered on the file of Inspector, G3 Traffic Investigation Police Station, Kilpauk, Chennai. The first respondent in the claim petition is the owner of the vehicle and the second respondent is the insurance company. According to the claimants, at the time of accident, the deceased was earning a sum of Rs.21,000/- p.m. by his employment as Clinical Research Associate in Klintra Reserarch and Technology Services Ltd., Kandanchavady, Chennai - 96. At the time of death of the deceased was 32 years of age. The deceased was the sole bread winner of the family. The deceased died as a Bachelor. On his death, the claimants, who are parents has lost their dependency and compassion at their old age. In such circumstances, the claimants have filed the claim petition claiming the compensation of Rs.20,00,000/-.

3. The insurance company resisted the cliam petition by denying the age and monthly income of the deceased. The insurance company also disputed that the lorry, which was insured with them, was not driven by the driver in a rash and negligent manner and it is the deceased, who has contributed to the accident.

4. The tribunal upon considering the oral and documentary evidence awarded the following :-

| | | |
|---|---|---|
| Pecuniary Loss (13,911 x 12 x 5) | : | Rs.8,34,660/- |
| Loss of Love and Affection | : | Rs.2,00,000/- |
| Transport Expenses | : | Rs. 39,000/- |
| Damages to clothes | : | Rs. 1,340/- |
| Funeral expenses | : | Rs. 25,000/- |
| Total compensation | : | Rs.11,00,000/- |

5. The learned counsel appearing fo the insurance company vehemently contended that the Tribunal erred in granting compensation in favour of the claimant under the head of pecuniary loss for a period of three months without giving any statutory deduction in as much as the deceased died as a Bachelor. As regards, the income, on behalf of the claimants, Ex.P.9, identity card issued by the employer of the deceased and Ex.P.10, pay slip issued by the employer were produced, which shows that the deceased was drawing Rs.20,886/- per month as salary. Therefore, the Tribunal while arriving at compensation ought to have given statutory deduction towards his personal expenses at 50% instead of fixing 2/3 of income. Resultantly, the Tribunal erred in arriving at a compensation of Rs.8,34,660/- towards pecuniary loss. The Tribunal has also awarded a sum of Rs.2,00,000/- as compensation to the claimants, which is on the higher side.

6. Per contra, the learned counsel appearing for the claimants / respondents would contend that the deceased died at the age of 33 years, he was the sole bread winner of the family. On the death of the deceased, the claimants, who are the parents lost their only dependency and compassion. Taking into consideration, the above factors, the Tribunal has granted a meagre amount as compensation and it does not call for any interference. Further, the learned counsel for the claimants submitted that the Tribunal ought to have granted more amount towards Love and Affection and it could have awarded amount separately under the head loss of dependency. Therefore, the learned counsel for the respondents / claimants prayed for enhancement of the compensation.

7. I heard the arguments advanced by the learned counsel on both sides and pursued the records. The insurance company is not disputing the date, time and manner in which the accident has occured. In other words, the insurance company is not questioning the liability to pay the compensation to the claimants. The insurance company is only questioning the

quantum of compensation in favour of the claimants. Admittedly, the deceased was employed and his earning was around Rs.20,000/-p.m. In order to prove the same, the identity card, pay slip and other documents issued by the employer of the deceased have been produced to show the earning capacity. At the time of accident, the deceased was 33 years and he died as a Bachelor. The Tribunal while arriving at a compensation towards loss of earning capacity as given 1/3 deduction without taking into account the fact that the deceased died as a Bachelor. As per the decision of the Hon'ble the Supreme Court in the off-quoted Judgment in Sarla Verma & Ors. Vs. Delhi Transport Corporation & Anr., it was held that "where the deceased was a Bachelor and the claimants are the parents deduction follows a different principle. In regard to bachelors, normally, 50% is deducted as Personal and Living Expenses, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parent/s and siblings is likely to be cut drastically".

8. Therefore, applying the principle enunciated by the Hon'ble Supreme Court in Sarala Verma & Ors. Vs. Delhi Transport Corporation & Anr. case, the Tribunal ought to have given 50% deduction instead of giving 1/3rd deduction. If 50% deduction is given then the amount payable to the claimants under the head of pecuniary loss shall be Rs.10,433/-p.m. (Rs.20,866/2) Resultantly, the pecuniary loss payable to the claimants shall be Rs.10,433 x 12 x 5 = Rs.6,25,980/- as against Rs.8,34,660/- awarded by the Tribunal.

9. As regard Love and Affection, the Tribunal awarded Rs.1,00,000/- each to the claimants, who are the parents of the deceased for having lost their young bread winner at his tender age, even before his marriage. This in my considered view, does not call for any interference. Similary for transportation expenses, damages to clothes and funeral expenses, the Tribunal has awarded a very reasonable amount, which I am not inclined to interfere with.

10. In the result, the cliamants are entitled for compensation as follows :-

| | | |
|---|---|---|
| Pecuniary Loss | : | Rs.6,25,980/- |
| Love and Affection | : | Rs.2,00,000/- |
| Transportation | : | Rs. 39,000/- |
| Damages to clothes | : | Rs. 1,300/- |
| Funeral expenses | : | Rs. 25,000/- |
| Total compensation | : | Rs.8,91,280/- |

11. Accordingly, the award passed by the Tribunal is modified as Rs.8,91,280/- and the appeal filed by the insurance company is partly allowed and the Cross Objection filed by the claimants is dismissed. No costs. The insurance company is directed to deposit the compensation amount as determined in this appeal before the Tribunal with interest as directed by the Tribunal within a period of twelve weeks from the date of receipt of the copy of the Judgment.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

III Court of Small Causes, Chennai

+1cc to Mr.M.B. Gopalan, Advocate Sr. 73970
+1cc to Mr. K. Suryanarayanan, Advocate Sr. 73960

Common Judgment
C.M.A.No.2685 of 2013
and
Cross Objection No.118 of 2013

RJ(CO)
VR(28/03/2017)