IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.08.2017

CORAM

THE HON'BLE MR. JUSTICE R.SUBBIAH
and
THE HON'BLE MR. JUSTICE P.VELMURUGAN

C.M.A.No.1165 of 2015
and
MP.No.1 of 2015 and CMP.No.11572 of 2017

The Royal Sundaram Alliance Insurance Co Ltd
Chennai-600 006.
..Appellant/2nd Respondent

..vs..

1. Selvi
2. Minor Shivalini
3. Minor Swathi
(Minors are represented by
their mother Selvi/1st respondent)
... Respondents 1 to 3/Petitioners 1 to 3

4. M/s.Janatha Roadways Private Limited
No.16, Pillaiyar Koil Street,
Kamaraj Nagar, Chennai - 600 016.

5. Saroja
6.Sundaramoorthy ..Respondents 4 TO 6/ Respondents 1,3 & 4

Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 23.12.2014 passed by the Motor Accidents Claims Tribunal, Special District Court, Krishnagiri in MCOP.No.430 of 2013.

For Appellant : Mr.M.B.Raghavan

For R1 to 3, 5 & 6 : Mr.Mukund R.Pandiyan

JUDGMENT
(Judgment of the Court was delivered by R. SUBBIAH, J.)

This appeal has been preferred by M/s.Royal Sundaram Alliance Insurance Co. Ltd, Chennai ('the insurance company' for short) against the order and decreetal order dated 23.12.2014 passed in MCOP.No.430 of 2013, whereby, the Motor Accidents Claims Tribunal, Special District Court, Krishnagiri ('the Tribunal' for brevity) awarded a sum of Rs.41,20,000/- as compensation for the death of one Mohan Kumar, in a road accident that had occurred on 16.01.2012.

2.The respondents 1, 2 & 3 and 5 & 6 herein are the wife, minor children and parents of the deceased Mohan Kumar. They filed a petition in MCOP.No.430 of 2013 claiming compensation of Rs.30,00,000/-, stating that on 16.01.2012, at about 17.30 hours, while the deceased Mohan Kumar was driving a lorry bearing Registration No.TN70 A 5869 belonging to one M/s.Arunachala Logistics Private Limited, Hosur, on the Dharmapuri to Salem N.H. Main Road, he stopped the vehicle near the Thoppur Kanavai Big Bridge and was standing nearby the lorry, to load cement from another lorry bearing Registration No.TN24 W 7095. At that time, a container lorry bearing Regn.No.TN10 K 0853 belonging to the fourth respondent herein and insured with the appellant insurance company, came in a rash and negligent manner and without blowing the horn, knocked on the right side of the lorry bearing Regn.No.TN70 A 5869 and ran over the deceased and ultimately stopped after hitting the bridge. As a result of the same, the deceased sustained fatal injuries and succumbed to death on the spot.

3.Denying the averments made in the claim petition, the appellant insurance company filed its counter statement before the Tribunal.

4.On the side of the respondents/claimants, the first respondent herein/wife of the deceased was examined as P.W.1, besides examining two witnesses as P.W.2 and P.W.3 and Exs.P1 to P6 documents were marked, whereas, the appellant insurance company neither examined any witness nor marked any document.

5.The Tribunal, on evaluation of those oral and documentary evidence, arrived at the conclusion that the accident had occurred due to the rash and negligent act on the part of the driver of the container lorry bearing Regn.No.TN10 K 0853 insured with the appellant insurance company and consequently, awarded a sum of Rs.41,20,000/- as compensation. Aggrieved over the same, the insurance company has filed the present appeal before this Court.

6.When the appeal was taken up for consideration, learned counsel for the appellant fairly contended that the present appeal has been filed only questioning the quantum of compensation awarded by the Tribunal. In view of the same, it is unnecessary for this Court to traverse into the other aspects of the award.

7.With regard to quantum of compensation, the learned counsel for the appellant insurance company submitted that the Tribunal erred in awarding a higher compensation of Rs.41,20,000/-, when the claim made by the respondents/claimants itself was only at Rs.30,00,000/-. The learned counsel further submitted that in the absence of any concrete evidence to prove the income earned by the deceased, the Tribunal erred in fixing a sum of Rs.25,000/- as the monthly income of the deceased. Thus, the learned counsel prayed that the compensation awarded by the Tribunal has to be reduced by way of recalculation of the same.

8.Per contra, the learned counsel for the respondents/claimants submitted that the Tribunal, considering the facts and circumstances of the case and taking note of the evidence adduced by the parties, awarded the compensation of Rs.41,20,000/-, which is fair, just and reasonable and which warrants no interference by this Court.

9.We have considered the submissions of the learned counsel appearing for the parties and perused the materials.

10.According to the respondents/claimants, the deceased Mohan Kumar was aged about 33 years and was working as a driver under one M/s.Arunachala Logistics Private Limited, Hosur on contract basis and was earning not less than Rs.25,000/- per month. To substantiate the same, one Lakshmanasamy, Assistant Manager of the said Company was examined as P.W.3. As per his evidence, the deceased was working from 06.12.2011 to January 2012; he died due to the accident on 16.01.2012; for the period from 08.12.2011 to 26.12.2011 i.e., 19 days, he was getting a salary of Rs.20,894/-; during the period from 27.12.2011 to 12.01.2012, he attended the duty and received a salary of Rs.18,200/-; and from 13.01.2012 to 16.01.2012, he was paid Rs.1152/-. However, during the course of cross examination, P.W.3 admitted that the deceased had worked only for 29 days. The driving licence of the deceased was marked as Ex.P5. The salary certificate was marked as Ex.P6, which would disclose the salary of the deceased for 19 days, 16 days and 4 days only. Having regard to all those evidence, the Tribunal has taken a sum of Rs.1,000/- per day as the income earned by the deceased and accordingly, fixed a sum of Rs.25,000/- as the monthly income of the deceased for the sake of convenient calculation. Since the dependents were five in numbers, the Tribunal deducted 1/5th towards personal expenses and adopted the multiplier '16' based on the age of the deceased, who was 35 years at the time of accident and determined the compensation under the head "loss of income" at Rs.38,40,000/-.

11.It is urged by the learned counsel for the appellant that in the absence of any tangible evidence to show the actual income earned by the deceased, a sum of Rs.25,000/- fixed by the Tribunal is on the higher side. We are of the view that since the deceased was working as a driver on contract basis in M/s.Arunachala Logistics Private Limited at Hosur, which is evident from the evidence of P.W.3, who was the Assistant Manager of the said Company and Ex.P6-salary certificate, it would be fair and reasonable to fix a sum of Rs.15,000/- as the monthly income of the deceased, from which, 50% of the salary is to be added towards future prospects. Considering the facts and circumstances of the case, 1/5th amount deducted by the Tribunal towards personal expenses is hereby reduced to 1/4th amount. Accordingly, the compensation under the head "loss of income to the family" is recalculated as follows:

Monthly salary of the deceased	Rs.15,000/-
Add: 50% of Rs.15,000/- towards future prospects	Rs. 7,500/-
	....
	Rs.22,500/-
Less:1/4th amount towards personal expenses	5,625/-
	....
loss of monthly income	Rs.16,875/-
	....

If multiplier "16" is applied, then the loss of income to the family of the deceased works out to Rs.32,40,000/- (Rs.16,875/- x 12 x 16). Thus, the sum of Rs.38,40,000/- awarded by the Tribunal is hereby reduced to Rs.32,40,000/- under the head of "loss of income".

12.As regards the compensation awarded under the other conventional heads, the Tribunal awarded a sum of Rs.1,00,000/- towards loss of consortium to the wife, which, in our view, is fair, just and reasonable and the same is hereby confirmed.

13.However, the Tribunal awarded only a sum of Rs.50,000/- each to the children of the deceased under the head "loss of love and affection", which, in our opinion, appears to be on the lower side. Considering the fact that the children, who were aged about 6 years and 4 years respectively at the time of the accident, lost their father at their tender age, the award of Rs.50,000/- each is hereby enhanced to Rs.1,00,000/- each under this count. Similarly, the award of Rs.25,000/- each to the parents of the deceased is hereby enhanced to Rs.50,000/- each under the head "loss of love and affection".

14.That apart, the compensation of Rs.10,000/- awarded by the Tribunal towards transport to hospital is very much reasonable and the same is hereby confirmed. However, the compensation of Rs.20,000/- awarded by the Tribunal under the head "funeral expenses" appears to be low and the same is hereby enhanced to Rs.25,000/-.

15.In view of the above discussion, the compensation of Rs.41,20,000/- awarded by the Tribunal is hereby reduced to Rs.36,75,000/-, the details of which, read as under:

Loss of income	-	Rs.32,40,000/-
Loss of consortium to wife	-	Rs. 1,00,000/-
Loss of love and affection (children)	-	Rs. 2,00,000/-
Loss of love and affection (parents)	-	Rs. 1,00,000/-
Transport to hospital	-	Rs. 10,000/-
Funeral expenses	-	Rs. 25,000/-
Total	-	Rs.36,75,000/-

The first respondent/wife is entitled to Rs.10,00,000/-, the respondents 2 and 3/children are entitled to Rs.10,00,000/- each and the respondents 5 and 6/parents are entitled to Rs.3,37,500/- each, from and out of the aforesaid compensation amount.

16.The appellant insurance company is directed to deposit the aforesaid modified compensation amount, after deducting the amount already deposited, if any, along with proportionate interest at 7.5%p.a, and costs, to the credit of MCOP.No.430/2013 on the file of the Motor Accidents Claims Tribunal, Special District Court, Krishnagiri within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the respondents 1, 5 and 6 are permitted to withdraw their respective compensation amount as apportioned by this Court. In respect of the share of the minor respondents 2 and 3, the Tribunal is directed to deposit the minor shares in any of the nationalised banks in a fixed deposit, till they attain majority. On such deposit, the first respondent being the mother of the minor children, is permitted to withdraw the interest accrued on the same once in three months directly from the bank concerned.

17.In fine, the Civil Miscellaneous Appeal is allowed in part. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

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To

The Motor Accidents Claims Tribunal,
Special District Court, Krishnagiri.

Copy To

The Record Keeper,
VR Section, High court, Madras.

+1cc to Mr.Mukund R.Pandiyan, Advocate SR.No.62952
+1cc to Mr.M.B.Gopalan, Advocate SR.No.1751

C.M.A.No.1165 of 2015

VGII(CO)
GN(02/01/2018)