IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.09.2017

CORAM

THE HONOURABLE Dr.JUSTICE S.VIMALA

C.M.A.No.2603 of 2015
in
C.M.P.No.10401 of 2017 and M.P.No.1 of 2015

Shriram General Insurance Co.Ltd.,
E-8, RLLCO Industrial Area,
Sirapura, Jaipur,
Rajasthan - 302 022. .... Appellant/2nd Respondent

Vs.

1. Jayalakshmi
2. Senthilnathan
3. Prasath ...Respondents 1 to 3/Petitioners
4. Narayanan ...4th Respondent/1st Respondent
5. Kannaiyan ...5th Respondent/3rd Respondent

Prayer: Civil Miscellaneous Appeal filed under section 173 of Motor Vehicles Act, 1988 to set aside the decree and judgment passed in M.C.O.P.No.188 of 2010, dated 07.10.2014, on the file of Motor Accident Claims Tribunal (Sub Court), Chidambaram.

For Appellants : Mr.S.Dhakshnamoorthy

For Respondents : Mr.T.Saravanan for R-1 to R-3

J U D G M E N T

This appeal has been filed by the appellant/Insurance Company, challenging the quantum of compensation.

2. The first claimant as wife, second and third claimants as sons, as legal representatives of the deceased have filed the claim petition for compensation claiming a sum of Rs.15,00,000/-.

3. The deceased Selvaraj, aged about 55 years, a building contractor, earning a sum of about Rs.12,000/- to 15,000/- per month, died in an accident on 06.09.2009.

4. The claims Tribunal, after consideration of materials, awarded a sum of Rs.9,07,500/- with the following break-up details:-

Transportation	-	Rs. 5,000/-
Funeral Expenses	-	Rs. 10,000/-
Loss of consortium	-	Rs.1,00,000/-
Pecuniary loss of income	-	Rs.7,42,500/-
Loss of love and affection to P-2 and P-3 (Rs.25,000x2)	-	Rs. 50,000/-
		Rs.9,07,500/-

5. The learned counsel for the appellant submits that the age of the deceased had been wrongly fixed as 55 and it should be 58, based on the available documentary evidence and the proper multiplier to be adopted is 9 and not 11, as has been adopted by the Tribunal. It is also submitted that the income ought to have been taken at Rs.6,500/- based upon Syed Sadiq, etc., Vs. Divisional Manager, United India Insurance Co., Ltd., reported in 2014 (1) TNMAC 459 (SC), and not Rs.7,500/- as fixed by the claims Tribunal.

6. The learned counsel for the second respondent submits that even at the age of 58, the deceased was hale and healthy and he was in a position to take care of his family and earn more, therefore, the monthly income fixed at Rs.7,500/- is proper. Learned counsel for the claimants submit that future prospective increase in income has not been considered and, therefore, this Court has to enhance the compensation.

7. On a perusal of the order it is clear that the Tribunal, based on the documentary evidence, has fixed the age of the deceased at 58. However, curiously, the Tribunal has fixed the income at Rs.7,500/=. It is to be pointed out that the deceased is aged 58 years, which is normally the retirement age of persons. In such circumstances, it would be safe to fix the income of the deceased at Rs.6,500/-. Further, an addition of 15% needs to be made towards the future prospective increase in income of the deceased and after deducting 1/3rd towards the personal expenses of the deceased and adopting multiplier of 9 (in respect of age group 55 to 60) the loss of dependency is quantified at Rs.5,38,164/= (Rs.4983 x 12 x 9) which is rounded off to Rs.5,40,000/-.

8. The compensation awarded under the heads funeral expenses and transportation is on the lower side. This Court, on a consideration of the entire matter, is of the considered view that a sum of Rs.25,000/- towards funeral expenses and Rs.10,000/- towards transport expenses would be just and reasonable compensation.

9. Insofar as the compensation awarded at Rs.25,000/- each to claimants 2 and 3, this Court is of the considered opinion that the same needs to be enhanced and, accordingly, a sum of Rs.50,000/- each to claimants 2 and 3 under the said head would

be reasonable compensation.

10. Accordingly, the award passed by the Tribunal is restructured under the following heads :-

Transportation	-	Rs. 10,000/-
Funeral Expenses	-	Rs. 25,000/-
Loss of consortium	-	Rs.1,00,000/-
Pecuniary loss of income	-	Rs.5,40,000/-
Loss of love and affection to P-2 and P-3 (Rs.25,000x2)	-	Rs.1,00,000/-
		Rs.7,75,000/-

11. In the result, the Civil Miscellaneous appeal is allowed in part and the compensation awarded by the Tribunal is reduced from 9,07,500/- to Rs.7,75,000/-, which is payable with interest at 7.5% p.a from the date of petition till the date of deposit. Consequently, connected Civil Miscellaneous petitions are closed. No costs.

12. It is represented that the entire compensation amount, as determined by the claims tribunal has already been deposited. In such circumstances, the Tribunal is directed to transfer the amount as per the ratio of apportionment ordered by the Tribunal directly to the bank account of the respective claimants through RTGS within a period of two weeks from the date of receipt of a copy of this order. The balance amount, lying in deposit, shall be refunded to the insurance company under proper acknowledgement.

kv/GLN

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To
1.The Motor Accident Claims Tribunal (Sub Court), Chidambaram.
2. The Section Officer, V.R. Section,
High Court, Madras.(2 copies)

+1cc to M/s.S.Dhakshnamoorthy, Advocate SR.No.63696
+1cc to M/s.T.Saravanan, Advocate Sr.No.63739

CNR(CO)
sm:9.4.2018