IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.03.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
AND
THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.NO.980 OF 2016
AND CMP NO.7458 OF 2016

The Divisional Manager
Shriram General Insurance Co. Ltd.,
Divisional Office
No.E8, RIICO Industrial Area,
Sita Pura, Jaipur,
Rajasthan State.
Pincode - 302 022. ... Appellant

Versus

1.C.Thimmaraj
2.T.Jayachandhiran
3.Minor T.Jaikumar
(Minor represented by his next friend
father Thimmaraj)
4.K.Manjunath ... Respondents

PRAYER: Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 30.03.2015 passed in M.C.O.P.No.118 of 2014 by the Motor Accident Claims Tribunal (Special District Court) Krishnagiri.

For Appellant : Mr.S.Dhakshnamoorthy
For Respondents 1 and 2 : Mr.V.Vijayakumar

J U D G M E N T
(JUDGMENT OF THE COURT WAS MADE BY M.GOVINDARAJ, J.)

Challenging the award dated 30.03.2015 passed in M.C.O.P.No.118 of 2014, by the Motor Accident Claims Tribunal (Special District Court) Krishnagiri, the appellant - insurance company has filed the instant appeal on the grounds of quantum and liability.

2. The contention of the appellant - insurance company is that the deceased was aged about 31 years at the time of accident, whereas, his son / the second respondent herein, was aged about 19 years. So it goes to show that the deceased got married in the age of 12 and given birth to his son. However, as per the documents, the age of the deceased was 38 years. Further, the victims were transported in a Tempo Travellor, bearing Registration No.KA01-C-6443, which has a seating capacity of 13+1. But the vehicle carried 20 persons at the time of accident, which is in violation of policy condition. Considering the violation of policy condition, the Tribunal has awarded the compensation and directed the appellant to deposit the amount and recover it from the owner of the vehicle.

3. This Court has ordered notice to the respondents. The fourth respondent has not been served so far. Therefore, at this stage, without hearing the owner of the vehicle / fourth respondent herein, it is not correct to take up the matter for final disposal. However, since it is seen that the Tempo Traveller is licensed to carry about 13 + 1 passengers and in the present appeal, only one claimant, has been awarded compensation by the Tribunal below, we are not inclined to accept the contention of the appellant Insurance Company for exoneration.

4. In so far as the quantum of compensation is concerned, monthly income of the deceased was calculated at Rs.9,000/- on the ground that the deceased was employed as a worker in Arvind Garment Factory and was earning Rs.300/- per day. The worker's identity card was marked as Ex.P9 to prove that the deceased was employed in Arvind Garment Factory. The income was calculated at the rate of Rs.300/- per day and the monthly income was fixed at Rs.9,000/-. The deceased was married and there were three dependents. Therefore, 1/3rd of the income was deducted towards personal and living expenses of the deceased. Thus, Rs.6,000/- was taken as monthly contribution to the family. As per the entry in the post mortem certificate, which is marked as Ex.P2, the age of the deceased was 38 years, at the time of accident. As per the identity card, she was 31 years. Therefore, the Tribunal has fixed the age of the deceased as 31 years and adopted multiplier 16. Thus, a sum of Rs.14,32,000/- was awarded by the Tribunal as total compensation.

5. The quantum of compensation awarded by the Tribunal under different heads are as follows:

Future loss of income (6000 X 12 X 16)	-	Rs.11,52,000 /-
Loss of consortium for the first respondent who lost his wife	-	Rs. 50,000 /-
Loss of love and affection to the 2nd and 3rd respondents (1,00,000 X 2)		Rs. 2,00,000/-
Transport to Hospital	-	Rs. 10,000/-
Funeral expenses	-	Rs. 20,000/-
Total	-	Rs.14,32,000/-

6. The contention of the learned counsel appearing for the appellant is that the age and multiplier fixed by the Tribunal is not correct. On a perusal of the claim petition, it is seen that the second respondent, son of the deceased was aged about 19 years as on 2014. If the age is taken as correct, then the deceased who was stated to be 31 years at the time of death should have begotten the son at the age of 12, which is not probable. In that event, we have to rely on Ex.P2, which is the post mortem certificate, showing the age of the deceased as 38 years. Therefore, the age of the deceased shall be fixed as 38 years. The application of multiplier 16 relevant to the age group between 31 and 35 cannot be applied and the deceased shall be put in the age bracket of 35-40. The loss of income shall be calculated applying multiplier 15 as the age of the deceased is fixed at 38 years. For all other aspects, this Court accepts the monthly income of the deceased at Rs.9000/- and personal contribution at the rate of Rs.3000/- by deducing 1/3rd towards personal expenses and contribution and arriving at a sum of Rs.6000/- as monthly income. Multiplier for the age group between 35 and 40 is 15. Loss of income is arrived at Rs.10,80,000/-. The Tribunal below has not awarded compensation under the heads of loss of estate and conventional damages. The deceased was aged about 38 years and the first respondent husband was aged about 43 years. Therefore, we modify the award amount under the head loss of consortium as Rs.1,00,000/- instead of Rs.50,000/-.

7. As per the judgment of the Hon'ble Supreme Court in SARLA VERMA (SMT) AND OTHERS VS. DELHI TRANSPORT CORPORATION AND ANOTHER [2009 (6) SCC 121] multiplier is fixed at 15 for the age group between 36 and 40. Applying the same, the award of compensation is modified as below:

Loss of income (Rs.6000 X 12 X 15)	-	Rs.10,80,000/-
Loss of consortium to the first respondent / husband of the deceased	-	Rs. 1,00,000/-
Loss of love and affection	-	Rs. 2,00,000/-
Transportation to hospital	-	Rs. 20,000/-
Funeral expenses	-	Rs. 25,000/-
Loss of estate	-	Rs. 5,000/-
Conventional damages	-	Rs. 2,000/-
Total	-	Rs.14,32,000/-

8. In view of the above discussion, we are of the view that there is no need to interfere with the quantum of compensation. Accordingly, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected civil miscellaneous petition is closed.

9. Consequent to the dismissal of the appeal, appellant - insurance company is directed to deposit the entire award amount, with interest at the rate of 7.5% per annum, from the date of claim and costs, of this appeal, less the statutory deposit, to the credit of MCOP No.118 of 2014, on the file of Motor Accident 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 claimants are permitted to seek for withdrawal of the same, by making necessary applications before the Tribunal. The share of the minor claimant, as apportioned by the Tribunal, shall be kept in a fixed deposit in any one of the Nationalised Banks, proximate to the residence of the respondents / claimants, initially for a period of three years and the same shall be renewed periodically, till the minor attains majority.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

TK

To

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

Copy to

The Section Officer
VR Section, High Court, Madras

+1 CC to Mr.S.Dhakshnamoorthy , Advocate sr 15629
+1 CC to Mr.V. Vijayakumar, Advocate sr 15446

C.M.A.NO.980 OF 2016

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