IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 19.09.2017

CORAM

The Honourable Mr.Justice R.SUBBIAH
AND
The Honourable Mr.Justice P.VELMURUGAN

C.M.A.No.2813 of 2017
and
C.M.P.No.16102 of 2017

M/s.Reliance General
Insurance Company Ltd.,
Balmer Lawrie House,
No.628, Anna Salai, Teynampet,
Chennai-600 018. ..Appellant/2nd Respondent

..vs..

1.T.Parthiban ..1st Respondent/Petitioner
2.P.Padma Priya ..2nd Respondent

3.B.Elumalai ..3rd Respondent/1st respondent

Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree, dated 31.01.2017, made in M.C.O.P.No.2239 of 2012 on the file of the Motor Accidents Claims Tribunal (II Court of Small Causes), Chennai.

For Appellant : Mr.S.Arun Kumar
For Respondents : Mr.Varadha Kamaraj (For R1 & R2)

JUDGMENT

R. SUBBIAH, J.,

This appeal has been filed by the Insurance Company challenging the quantum of compensation awarded by the Motor Accidents Claims Tribunal (II Court of Small Causes), Chennai, in and by award dated 31.01.2017 in M.C.O.P.No.2239 of 2012.

2.The respondents 1 & 2 herein are the claimants before the Tribunal and they are the parents of the deceased Arjun, who died in a motor accident which had occurred on 29.10.2011. It is the case of the claimants before the Tribunal that on 29.10.2011 while their son Arjun was riding the motor cycle bearing Reg.No.TN-22-BQ-7284 from Nellikuppam to Goduvancherry, near Kize Kalvai Bus Stand, on the left hand side of the road, the Maxi Cab TATA Motors Ltd (City Ride) bearing Reg.No.TN-19-C-3915 owned by the 3rd respondent herein and insured with the appellant Insurance Company, came in a rash and negligent manner from the opposite direction at hectic speed and dashed against the said two-wheeler and thus, caused the accident. In the said accident, the son of the claimants viz., the said Arjun died on the spot. Hence, the claimants made a claim for a sum of Rs.15 lakhs as compensation.

3.Before the Tribunal, the case of the claimants was resisted by the Insurance Company by filing a counter contending that the accident is the result of the rash and negligent act of the deceased; therefore, the Insurance Company is not liable to pay the compensation.

4.In order to the prove their claim before the Tribunal, on the side of the claimants, the 1st claimant examined himself as P.W.1 besides examining two other witnesses as P.W.2 & P.W.3 and marked sixteen documents as Ex.P.1 to Ex.P.16. On the side of the Insurance Company, one Thangaraj was examined as R.W.1 and through him, two documents were marked as Ex.R.1 & Ex.R.2.

5.The Tribunal, after analysing the entire evidence adduced on both sides, has come to the conclusion that the accident is the result of the rash and negligent act of the driver of the Maxi Cab TATA Motors bearing Reg.No.TN-19-C-3915. By coming to such a conclusion, the Tribunal has calculated the compensation under different heads and passed an award for a total sum of Rs.15,71,000/-. The breakup details of the compensation amount awarded by the Tribunal are as follows_

1)Loss of Pecuniary Benefits	=	Rs.12,96,000/-
2)Loss of Love and Affection	=	Rs. 2,00,000/-
3)Loss of Estate	=	Rs. 50,000/-
4)Funeral Expenses	=	Rs. 25,000/-
Total	=	Rs.15,71,000/-

Aggrieved over the compensation amount awarded by the Tribunal, the present appeal has been filed by the Insurance Company.

6.Now, it is the submission of the learned counsel for the appellant/Insurance Company that the sum of Rs.2 lakhs awarded by the Tribunal under the Head of Loss of Love and Affection appears to be on the higher side and the same needs proper modification. That apart, the claimants are only the parents of the deceased; hence, the question of awarding the compensation under the head of loss of estate does not arise in this case. Further, the sum of Rs.12,96,000/- awarded by the Tribunal under the head of Loss of Pecuniary Benefits is also on the higher side. Thus, the learned counsel for the appellant/Insurance Company sought for proper modification in the compensation amount awarded by the Tribunal.

7.Per contra, the learned counsel appearing for the respondents 1 & 2/claimants made his submissions supporting the award passed by the Tribunal.

8.Keeping the submissions made on either side, We have carefully gone through the materials available on record. It is the case of the claimants that the deceased Arjun was aged about only 21 years at the time of accident and he was a part-time worker of KRK Rice Mill, as incharge of Purchase of Paddy and collection of cash and he was drawing a fixed remuneration of Rs.8,000/- per month. Further, he was also working as Helper in Woory Automotive Indian Pvt Ltd., under the Contract named JKM Hospitality and Facility Management Services Pvt ltd. and he was drawing a salary of Rs.7,150/- per month; thus, the said Arjun (deceased) was drawing a total sum of Rs.15,000/- per month. Since no documentary evidence was produced on the side of the claimants to prove the income earned by the deceased, the Tribunal has taken only a sum of Rs.8,000/- as notional income of the deceased. Thereafter, by adding 50% of the amount as future prospects, the Tribunal has arrived at a sum of Rs.12,000/-. Then, the Tribunal deducted 50% of the amount for personal expenses and arrived at a sum of Rs.6,000/- as loss of income per month. Thereafter, the Tribunal by applying the multiplier of 18 based on the age of the deceased, who was 21 years at the time of death, has awarded a sum of Rs.12,96,000/- (6000 X 12 X 18 = 12,96,000) towards Pecuniary loss. The calculation made by the Tribunal to award pecuniary loss is well within the principles laid down by the Hon'ble Supreme Court in various decisions and We do not find any infirmity in the same.

9.However, We find that as contended by the learned counsel for the appellant/Insurance Company, the sum of Rs.2 lakhs awarded by the Tribunal under the head of loss of love and affection appears to be on the higher side. Hence, the same is hereby reduced to Rs.1,50,000/- at the rate of Rs.75,000/- each to the claimants. Further, since the claim is made by the parents of the victim, they are not entitled to compensation under the head of loss of estate. Hence, the sum of Rs.50,000/- awarded by the Tribunal towards loss of estate is hereby set aside. The sum of Rs.25,000/- awarded by the Tribunal for the funeral expenses appears to be just and fair; hence, the same is hereby confirmed. Consequently, the total compensation amount of Rs.15,71,000/- awarded by the Tribunal is hereby modified and reduced to Rs.14,71,000/-. The breakup details of the modified/reduced compensation amount are as follows_

1)Loss of Pecuniary Benefits	=	Rs.12,96,000/-
2)Loss of Love and Affection	=	Rs. 1,50,000/-
3)Funeral Expenses	=	Rs. 25,000/-
Total		Rs.14,71,000/-

10.In fine, the appeal is partly allowed and the compensation amount of Rs.15,71,000/- (Rupees fifteen Lakhs and Seventy One Thousand Only) awarded by the Tribunal is hereby modified and reduced to Rs.14,71,000/- (Rupees fourteen lakhs and seventy one thousand only). The appellant/Insurance Company is directed to deposit the entire modified compensation amount, after deducting the amount if any already deposited, with proportion interest as awarded by the Tribunal, within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the claimants are is entitled to withdraw the same on equal share by making necessary application before the Tribunal.

Consequently, connected Miscellaneous Petition is closed.

No costs.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

ssv
Copy to

The Motor Accidents Claims Tribunal,
(II Judge, Court of Small Causes), Chennai.
Copy to: The Section Officer,
VR Section, High Court, Madras.
+ 1 cc to Mr. K. Varadha Kamaraj, Advocate SR.68213
+ 1 cc to Mr. S. Arunkumar, Advocate Sr.68302

C.M.A.No.2813 of 2017
and C.M.P.No.16102 of 2017

SSI(CO)
EU(27/11/2017)