IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.09.2017

CORAM

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

C.M.A.No.2891 of 2017
and
CMP.No.16941 of 2017

M/s.Reliance General Insurance Company Limited
No.2054, Roy Towers,
2nd Floor, 2nd Avenue,
Anna Nagar, Chennai - 600 040. ..Appellant/2nd Respondent

..vs..

1. T.Syed Ali Fathima
2. T.Mohammed Rafic (Minor)
3. T.Mohammed Razack (Minor)
4. Siraj Begum
5. Sindha Kani ..Respondents 1 to 5/Petitioner 1 to 5
(minors are represented
by mother and natural guardian 1st respondent)
6. M/s.SRM Transport India Pvt. Ltd
No.12 Cross Cubbonpet,
Bangalore - 560 002. ..6th Respondents/1st Respondent

PRAYER: Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 19.04.2017 in M.C.O.P. No 344/2013 passed by the Motor Accidents Claims Tribunal, II Small Causes Court, Chennai.

For Appellant : Mr.N.Vijayaraghavan
For R1 to R5 : Mr.C.D.Kamaraj

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

This appeal has been preferred by the appellant M/s.Reliance General Insurance Company Limited (hereinafter referred to as 'the insurance company') against the order and decreetal order dated 19.04.2017 passed by the Motor Accidents Claims Tribunal, II Court of Small Causes, Chennai (hereinafter mentioned as 'the Tribunal').

2.By the impugned order, the Tribunal awarded a sum of Rs.19,67,000/- with interest at 7.5%p.a. to the respondents 1 to 5 (hereinafter stated as the claimants) for the death of one Thamim Ansari in a road accident, which took place on 12.11.2012.

3.The brief conspectus of facts is as under:

On 12.11.2012 at about 23.15 hours, while the deceased Thamim Ansari was riding a motor cycle bearing Regn.No.TN22 AA 6035 on the Poonamallee High Road, near Alapakkam, Madura Marbles, a private bus bearing Registration No.KA-1-AA-868 came in a rash and negligent manner and hit the motor cycle from behind and caused the accident. As a result of the same, the deceased sustained grievous injuries and died in the hospital on 19.11.2012. Hence, the wife, minor children and parents, who are the legal heirs of the deceased, filed a claim petition seeking compensation of Rs.20,00,000/- as against the owner as well as the insurer of the offending vehicle.

4.Denying the averments made in the claim petition, the insurance company filed its counter statement.

5.Before the Tribunal, on the side of the claimants, in order to prove their claim, the wife of the deceased/first claimant was examined as P.W.1, besides two witnesses were examined as P.W.2 and P.W.3 and seven documents were marked as Exs.P1 to P7. The insurance company neither examined any witness nor marked any document.

6.The Tribunal, appreciating the evidence both oral and documentary, fixed the negligence for the accident on the part of the driver of the bus, resulting in fatal injuries to the deceased. Consequently, the Tribunal awarded a total compensation of Rs.19,67,000/- with interest at 7.5%p.a. under the following heads:

Loss of pecuniary benefits	- Rs.14,91,750/-
Loss of love and affection	- Rs. 3,00,000/-
Loss of estate	- Rs. 50,000/-
Consortium	- Rs. 1,00,000/-
Funeral Expenses	- Rs. 25,000/-
Total	-Rs.19,66,750/-

Rounded off at Rs.19,67,000/-

Questioning the quantum of compensation awarded by the Tribunal, the insurance company is before this Court with the present appeal.

7.The learned counsel for the appellant insurance company contended that the total compensation of Rs.19,67,000/- awarded by the Tribunal is unfair, unjust and arbitrary and is extremely on the higher side. According to the learned counsel, in the absence of any evidence to show that the deceased was working as driver and was earning a sum of Rs.10,000/- per month + Rs.100 per day towards batta, the Tribunal erred in fixing the notional income of Rs.6,500/- per month, which resulted in awarding an exorbitant sum of Rs.14,91,750/- towards pecuniary loss. The learned counsel further contended that the award of Rs.3,00,000/- under the head "loss of love and affection" and Rs.50,000/- under the head "loss of estate" are also on the higher side. Therefore, the learned counsel prayed that the compensation awarded by the Tribunal has to be reduced by way of recalculation.

8.Per contra, the learned counsel for the respondents/claimants contended that the Tribunal has considered all the oral and documentary evidence led by the parties and awarded the compensation, which is just, fair and reasonable and hence, no interference is warranted in the same.

9.We have carefully considered the respective contentions made by the learned counsel and also perused the materials on record.

10.Since the finding recorded by the Tribunal with regard to negligence is not assailed in this appeal, there is no need for us to review that part of the finding recorded by the Tribunal. What was assailed herein is with regard to the quantum of compensation awarded by the Tribunal.

11.On a perusal of the records, it is manifest that the claimants numbering five are the legal heirs of the deceased. They stated that the deceased was working as a driver under one M.Anandan and was earning a sum of Rs.10,000/- per month and Rs.100/- per day towards batta. However, no document was produced to substantiate the same. At the same time, no contra evidence was adduced on the side of the appellant insurance company to dislodge or disprove the aforesaid statement of the claimants. In such circumstances, the Tribunal has fixed the notional sum of Rs.6,500/- as the monthly income of the deceased, which, in our opinion, is just and proper and the same is hereby confirmed.

12.The Tribunal, considering the age of the deceased, who was 29 years at the time of accident, has taken 50% of the monthly income of the deceased towards future prospects and calculated the monthly income of the deceased at Rs.9,750/- [Rs.6,500/- + Rs.3,250/- (50% of Rs.6,500/-)], from which, 1/4th amount was deducted towards personal expenses i.e., Rs.9,750/- (-) Rs.2,437.50 = Rs.7312.50. Thereafter, the Tribunal has adopted the multiplier '17' and determined the compensation under the head "loss of pecuniary benefits" at Rs.14,91,750/- (Rs.7,312.50 x 12 x 17), which, in our view, is fair, just and reasonable and the same is hereby confirmed.

13.However, a sum of Rs.3,00,000/- awarded by the Tribunal towards loss of love and affection appears to be on the higher side and the same is hereby reduced to Rs.2,50,000/-. Similarly, a sum of Rs.50,000/- awarded by the Tribunal towards loss of estate is reduced to Rs.25,000/-.

14.Further, the Tribunal awarded a sum of Rs.1,00,000/- under the head "loss of consortium" to the wife of the deceased. In the light of the observation of the Hon'ble Supreme Court in the decision reported in (2013) 9 SCC 54 (Rajesh v. Rajbir Singh and others) that the loss of consortium is usually for loss of spouse's affection, comfort, solace, companionship, society, assistance, protection and care, the award of Rs.1,00,000/- awarded by the Tribunal under this count is hereby confirmed.

15.That apart, the compensation of Rs.25,000/- awarded under the head "funeral expenses" and the interest awarded at 7.5%p.a. by the Tribunal are very reasonable. Hence, the same need no modification.

16.In view of the above discussions, the compensation of Rs.19,67,000/- awarded by the Tribunal is hereby reduced to Rs.18,92,000/-, the details of which are as follows:

Loss of pecuniary benefits	- Rs.14,91,750/-
Loss of love and affection	- Rs. 2,50,000/-
Loss of estate	- Rs. 25,000/-
Consortium	- Rs. 1,00,000/-
Funeral Expenses	- Rs. 25,000/-
	….....................
Total	- Rs.18,91,750/-
	….....................

Rounded off at Rs.18,92,000/-

Consequently, the respondents 1, 2 and 3, 4 and 5/wife, minor children and parents of the deceased, are entitled to get Rs.10,42,000/-, Rs.3,00,000/- and Rs.3,00,000/-, Rs.1,75,000/- and Rs.75,000/- respectively, from and out of the modified compensation amount.

17.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.344/2013 on the file of the Motor Accidents Claims Tribunal, II Small Causes Court, Chennai within a period of four weeks from the date of receipt of a copy of this order. On such deposit, the respondents/claimants 1, 4 and 5 are permitted to withdraw their respective shares as apportioned by this Court. Insofar as the minors' shares are concerned, the Tribunal is directed to deposit the same in any one of the Nationalised banks in a fixed deposit till they attain majority. On such deposit being made, the first respondent/claimant is permitted to withdraw the interest accrued on the minors' deposit once in three months directly from the bank concerned.

18.In the result, the Civil Miscellaneous Appeal is allowed in part. No costs. Consequently, connected Miscellaneous Petition is closed.

s/d-
Assistant Registrar(CS VII)

True Copy

Sub-Assistant Registrar

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To
1. The II Judge, Small Causes Court
   Motor Accidents Claims Tribunal,
   Chennai.

2. The Section officer
   ER Section, High Court, Madras.(2 copies)

+1 CC to Mr.C.D. Kamaraj, Advocate sr 69752.
+1 CC to Mr.C.B. Gopalan, Associates sr 70558.

C.M.A.No.2891 of 2017

RR(CO)
SP(28/02/2018)