IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.09.2017

CORAM

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

C.M.A.NO.1502 OF 2013

ICICI Lombard Motor Insurance Company
Having their office
Keshavarao Khade Marg
Mumbai 34. ..Appellant/2nd Respondent

..vs..

1.Vimala
2.Minor Dharmesh Krishnan
3.Minor Rubesh Srinivas
(Minors are represented by their mother and guardian 1st respondent)

4.R.Govindarajan
(R4 set exparte in Lower Court)
..Respondents/Petitioners 1 to 3/1st Respondent

Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988 against the order and decree dated 04.10.2012 made in M.C.O.P. No 93 of 2009 passed by the Motor Accidents Claims Tribunal (Principal Subordinate Judge) Chengalpattu.

For Appellant : Mrs.R.Sree Vidhya
For R1 to R3 : Mr.V.Manisekaran
R4 Exparte before Tribunal

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

This appeal has been filed by the appellant insurance company against the order and decree dated 04.10.2012 passed by the Motor Accidents Claims Tribunal (Principal Subordinate Judge) Chengalpattu, awarding a sum of Rs.20,68,000/- as compensation to the claimants for the death of one Srikanth in an accident that had occurred on 08.12.2008.

2.The abridged version of facts necessary to be noticed for the disposal of this appeal are that on 08.12.2008 at about 10.00am, while the deceased Srikanth was standing near the compound wall of a house bearing Door No.34, Thiruvalluvar Street, Gowrivakkam, Chennai-73, a lorry bearing Regn.No.TN21 AX 7004 insured with the appellant insurance company, which was loaded with sand and was engaged for laying cement road, came in the same street. When its driver tried to reverse it in a rash and negligent manner without giving any horn, it went to ditch. Due to the sand load, the lorry slanted on its right, thereby the said Srikanth was caught hold between the lorry and compound wall of the house and sustained grievous injuries and died. The legal representatives of the deceased viz., wife and minor sons, filed a claim petition before the Tribunal seeking a compensation of Rs.25,00,000/-. According to them, the deceased was aged about 38 years and he was earning a sum of Rs.20,000/- per month by doing contract work.

3.The appellant insurance company filed a counter denying the averments made in the claim petition.

4.Before the Tribunal, on the side of the claimants, six witnesses were examined as P.W.1 to P.W.6 and ten documents were marked as Exs.P1 to P10. On the side of the appellant insurance company, no witness was examined and no document was marked. On evaluation of the same, the Tribunal came to the conclusion that the accident was caused due to the rash and negligent driving of the driver of the lorry insured with the appellant insurance company and awarded a sum of Rs.20,68,000/- as compensation to the claimants. Hence, this appeal by the insurance company.

5.At the outset, the learned counsel for the appellant insurance company fairly contended that the appellant is questioning only the quantum of compensation awarded by the Tribunal. In view of the same, we are not inclined to traverse into the other aspects of the order passed by the Tribunal.

6.The learned counsel for the appellant insurance company made the following submissions:

(i)The respondents/claimants have not produced any tangible evidence to show that the deceased was earning a sum of Rs.20,000/- per month by doing contract work.

(ii)The Tribunal erred in applying the multiplier '16' while calculating the compensation under the head "loss of dependency", whereas, the proper multiplier to be applied is '15'. By stating so, the learned counsel prayed that the compensation awarded by the Tribunal under the head "loss of dependency" has to be recalculated by reducing the monthly income of the deceased and applying the correct multiplier and consequently, the total compensation has to be reduced.

7.Per contra, the learned counsel for the respondents/claimants submitted that the Tribunal has considered all the evidence adduced by the parties and awarded the compensation, which is just, fair and reasonable and the same warrants no interference by this Court.

8.Keeping the submissions made by the learned counsel on either side, we have carefully perused the records placed before us.

9.According to the respondents/claimants, the deceased was aged about 38 years and was a Civil Engineer. He was earning a sum of Rs.20,000/- per month by doing contract works. In order to prove the income earned by the deceased, they have examined the wife of the deceased as P.W.1, besides examining one Jayaraman, Manickavelu and Gunasekaran as P.W.3 to P.W.5, who were the officers of the three different Town Panchayats namely, Chitlapakkam, Madambakkam and Sembakkam Town Panchayats respectively. The estimates for the contract works done by the deceased with respect to Chitlapakkam, Madambakkam and Sembakkam Town Panchayats were marked as Ex.P5, P6 and P7 respectively. Further, the Income Tax returns in Form No.2d, Income Tax work bill deduction from 2000 to 2007 (9 series) and the Statement of Income for the Assessment years from 1998-99 to 2007-09 (14 series) were marked as Exs.P8 to P10 respectively. A reading of the aforesaid oral and documentary evidence would undoubtedly go to show that the deceased was a Civil Engineer and was doing contract works. He was an Income Tax Assessee. Further, the income earned by the deceased through the works done with respect to Chitlapakkam, Madambakkam and Sembakkam Town panchayats was also duly noted in the Income Tax returns filed before the competent authority. In that event, the contention of the learned counsel for the appellant insurance company that no tangible evidence was produced to prove the actual income earned by the deceased at the time of accident, cannot be accepted by this Court. Based on the aforesaid oral and documentary evidence, a sum of Rs.15,000/- fixed by the Tribunal as the monthly income of the deceased at the time of accident, is very much reasonable and the same is hereby confirmed.

10.Yet another submission made by the learned counsel for the appellant is that considering the fact that the deceased was aged about 38 years at the time of accident, the Tribunal ought to have adopted the multiplier '15', instead of '16'. We are of the considered opinion that even though the multiplier adopted by the Tribunal is not correct, the Tribunal has failed to add 50% of the salary of the deceased towards future prospects, while calculating the compensation under the head “loss of dependency”. If 50% of the income of the deceased towards future prospects is to be added, the respondents/claimants would have got more compensation. In such view of the matter, we are not inclined to interfere with the award of the Tribunal, with regard to adoption of the multiplier '16'.

11.The Tribunal, after deducting 1/3rd of the salary of the deceased from Rs.15,000/- towards his personal expenses and applying the multiplier '16', arrived at Rs.19,20,000/- and awarded the said sum as compensation under the head "loss of dependency", which, in our view, cannot be said to be excessive, exorbitant or arbitrary by any stretch of imagination.

12.As regards the compensation awarded by the Tribunal under the other conventional heads, viz., Rs.3,000/- towards transport to hospital, Rs.25,000/- towards damages to cloth and articles, Rs.20,000/- towards funeral expenses, Rs.50,000/- towards loss of consortium to the first respondent/wife and Rs.25,000/- each towards loss of love and affection to the minor respondents/claimants, appears to be fair, just and reasonable and the same are hereby confirmed. That apart, the interest at 7.5% p.a. awarded by the Tribunal is also hereby confirmed.

13.For the discussions held above, we are of the considered opinion that based on the evidence led by the parties, the Tribunal has awarded a sum of Rs.20,68,000/- as total compensation to the claimants, which cannot be said to be excessive or a bonanza or for the matter that it is an unjust enrichment to the claimants for the death of the deceased. Hence, there is no scope for interference with the award so passed by the Tribunal, which is hereby confirmed.

14.It is now represented by the learned counsel for the appellant insurance company that as per the order of this Court dated 23.04.2013, the appellant has deposited the entire compensation amount before the Tribunal. In view of the same, the first respondent/wife is permitted to withdraw her share as apportioned by the Tribunal. In respect of the minors' shares, the Tribunal is directed to deposit the same in a nationalized bank in a fixed deposit, if not already deposited, till they attain majority. On such deposit, the first respondent/mother of the minor respondents 2 and 3 herein, is permitted to withdraw the interest accrued on the deposit of the minors' shares once in three months directly from the bank concerned.

15.In fine, this Civil Miscellaneous Appeal is dismissed. No costs.

-s/d-
Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

To

The Principal Sub Judge
Motor Accidents Claims Tribunal
Chengalpattu.

+1 CC to Ms.V. Mani Sekaran, Advocate sr 67086.
+1 Cc to Ms.R. Sreevidhya, Advocate sr 67971.

C.M.A.No.1502 of 2013

RR(CO)
SP(11/12/2017)