In the High Court of Judicature at Madras

Dated 21.09.2017

Coram

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

C.M.A.No.2859 of 2013
and
M.P.No.1 of 2013

M/s.ICICI Lambard Motor
Insurance Company Ltd.,
Mumbai. ..Appellant

..vs..

1.Kayalvizhi
2.Santhoshkumar
3.Minor - Harikumar
4.P.Devaraju
5.P.Mohankumar ..Respondents

Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree, dated 30.06.2011, made in M.C.O.P.No.17 of 2009 on the file of the Motor Accidents Claims Tribunal (Principal District Judge) at Perambalur.

For Appellant : Mr.R.Sree Vidhya
For Respondents : Mr.S.,Rajendrakumar (For R1 to R3)

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

Questioning the quantum of compensation awarded by the Motor Accidents Claims Tribunal (Principal District Judge), Perambalur, in and by award dated 30.06.2011 in M.C.O.P.No.17 of 2009, the present appeal has been filed by the Insurance Company.

2.Since the present appeal has been filed questioning the quantum of compensation alone, it is not necessary for this Court to deal with the other aspects of the award passed by the Tribunal.

3.The respondents 1 to 3 herein are the claimants before the Tribunal. They are the wife and sons of the deceased

Senniayappan, who died in the accident that had occurred on 31.08.2008 involving the Lorry bearing Reg.No.KA-01-C-3075 owned by the 4th respondent herein and insured with the appellant herein/Insurance Company.

4.So far as the quantum of compensation, it is the case of the claimants before the Tribunal that the deceased Senniayappan was aged 51 years at the time of accident and he was running two textile businesses, one under the name and style of 'Santhosh Tex' and another in his wife's name under the name and style of 'Santhosh Impex', at Karur. He was also having local textile business and doing his export business. Both the said textile businesses were assessed to income-tax. Though the 1st respondent herein/wife was shown as Proprietrix for the business of 'Santhosh Impex', the fact is that the deceased Senniayappan was doing the business personally. He was earning more than a sum of Rs.50,000/- per month. On the above pleadings, the claimants made a claim for Rs.75,10,000/- as compensation.

5.The claim made by the claimants was resisted by the Insurance Company by filing a counter stating that they are not liable to pay the compensation.

6.Before the Tribunal, in order to prove their claim, on the side of the claimants, the 1st claimant/wife examined herself as P.W1, besides examining one Ravichanran, the Superintendent of the Income Tax Office, Karur as P.W.2 and one Ramasamy, Village Administrative Office, as P.W.3 and marked 21 documents as Ex.P.1 to Ex.P.21. On the side of the Insurance Company, the Legal Manager of the Insurance company was examined as R.W.1 and two documents were marked as Ex.R.1 & Ex.R.2.

7.The Tribunal, after analysing the entire evidence, has come to the conclusion that the accident is the result of the rash and negligent act of the driver of the lorry bearing Reg.No.KA-01-C-3075 owned by the 4th respondent herein and insured with the appellant herein/Insurance Company. By coming to such a conclusion, the Tribunal has calculated the compensation amount under different heads and passed an award for a total compensation amount of Rs.17,78,628/-. The breakup details of the same are as follows_

1)Loss of Income	=	Rs.17,61,628/-
2)Funeral Expenses	=	Rs. 2,000/-
3)Loss of consortium	=	Rs. 5,000/-
4)Loss of love & affection	=	Rs. 10,000/-
Total		Rs.17,78,628/-

Aggrieved over the same, the present appeal has been filed by the Insurance Company.

7.Now, it is the submission of the learned counsel for the appellant/Insurance Company that the Tribunal has fixed the annual income of the deceased at Rs.2,40,222/- based on the Income Tax Returns for the assessment years 2007-2008 under Ex.P.18. But, the fact remains that the business, which the deceased Senniayappan was carrying on viz., Santhosh Impex' was standing in the name of his wife/1st claimant and that even after his demise, the claimants are carrying on the said business. While so, the Tribunal ought not to have taken the sum of Rs.2,40,222/- as annual income of the deceased. Therefore, according to the learned counsel for the Insurance Company, the compensation amount of Rs.17,61,628/- awarded by the Tribunal under the head of Loss of Income needs proper modification.

8.Per contra, the learned counsel for the respondents 1 to 3 herein/claimants made his submissions supporting the award passed by the Tribunal.

9.Keeping the submissions made on either side, We have carefully gone through the entire materials available on record.

10.It is the case of the claimants that the deceased Senniayappan was earning income by running two textile businesses viz., "Santhosh Tex" & 'Santhosh Impex". In order to prove the income earned by the deceased Senniayappan, the claimants have also produced the Profit and Loss Accounts and Income Tax Returns pertaining to the years 2007-2008 & 2008-2009, under Ex.P.10 to Ex.P.21. The Tribunal by considering the said documents has fixed a sum of Rs.2,40,222/- as annual income of the deceased. But, We find that as contended by the learned counsel for the appellant/Insurance Company, when the business viz., Santhosh Impex is standing in the name of the 1st claimant/wife and the said business is continuing till date, the amount of Rs.2,40,222/- fixed by the Tribunal appears to be on the higher side. Hence, the same needs property modification.

11.Considering the present cost of living, We are of the opinion that by fixing a sum of Rs.15,000/ as monthly income of the deceased, the calculation has to be made. Accordingly, if a sum of Rs.15,000/- is taken as monthly income, 1/3rd amount has to be deducted towards personal expenses; then the amount comes to Rs.10,000/-, which is the monthly loss of income. By applying the multiplier 11, based on the age of the deceased, who was aged 51 years at the time of accident, the total loss of income would come to Rs.13,20,000/- (10,000 x 12 x 11 = 13,20,000). Accordingly, the compensation amount of Rs.17,61,628/- awarded by the Tribunal under the head of loss of income is hereby modified and reduced to Rs.13,20,000/-.

12.However, We find that the Tribunal has awarded only a sum of Rs.2,000/- for funeral expenses, which appears to be on the lower side considering the present cost of living. Hence, the same is hereby enhanced to Rs.30,000/-. Similarly, the Tribunal has awarded a meager sum of Rs.5,000/- for the loss of consortium to the wife. Hence, the same is hereby enhanced to Rs.1,00,000/-. Considering the fact that the claimants 2 & 3/sons have lost their father in the accident, the sum of Rs.5,000/- each awarded by the Tribunal for loss of love and affection is hereby enhanced to Rs.1,00,000/- each. Thus, the total compensation amount of Rs.17,78,628/- awarded by the Tribunal is hereby modified and reduced to Rs.16,50,000/-. The breakup details of the modified/reduced compensation amount are as follows_

1.Loss of Income	=	Rs.13,20,000/-
2)Funeral Expenses	=	Rs. 30,000/-
3)Loss of consortium	=	Rs. 1,00,000/-
4)Loss of love & affection	=	Rs. 2,00,000/-
Total		Rs.16,50,000/-

13.In fine, the appeal is allowed in part and the total compensation amount of Rs.17,78,628/- (Rupees seventeen lakhs seventy eight thousand six hundred and twenty eight only) awarded by the Tribunal is hereby modified and reduced to Rs.16,50,000/- (Rupees sixteen lakhs and fifty thousand only). The appellant/Insurance Company is directed to deposit the entire modified amount, after deducting the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the 1st claimant/wife is entitled to Rs.6,50,000/- and the claimants 2 & 3/sons are entitled to Rs.5,00,000/- each, together with proportionate interest as ordered by the Tribunal. The claimants 1 & 2 are entitled to withdraw their share amounts by making necessary application. The share of the minor claimant/3rd claimant shall be deposited in any one of the nationalised bank till he attains majority and his mother/1st claimant is entitled to withdraw the interest once in every three months.

Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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Copy to

1. The Motor Accidents Claims Tribunal,
(Principal District Judge),
Perambalur.

2. The Section Officer, Vr Section,
High Court, Madras.

+ 1 cc to M/s. J. Ram, Advocate SR.69263
+ 1 cc to M/s. R. Sree Vidhya, Advocate Sr.70405

GMI(CO)
EU(16/12/2017)