BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.12.2017
CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A.(MD)No.14 of 2016
and
C.M.P.(MD) No.164 of 2016

The Divisional Manager,
National Insurance Company Limited,
Bharathidasan Salai,
Contonment, Trichirapalli - 1. ... Appellant / 2nd Respondent

Vs.

1.Radha Kanaga Durga
2.Minor Priya
3.Minor Vishnu
(Minor RR2 and 3 are represented by their mother and natural guardian,the first respondent/Radha Kanaga Durga)
... Respondents 1 to 3 / Petitioners

4.Jeyakumar ... Respondent No.4 / Respondent No.1
5.Subbulakshmi ... Respondent No.5 / Respondent No.3
6.Anthonisamy ... Respondent No.6 / Respondent No.4

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the judgment and decree order dated 10.03.2015 made in M.C.O.P.No.1784 of 2013 on the file of Motor Accident Claims Tribunal, Special District Court, Trichirapalli.

For Appellant : Mr.J.S.Murali
For Respondents : Mr.Sudhakar Nagaraj
for RR1 to 3
RR4 and 6 - exparte vide EB

JUDGMENT

The insurer has filed this appeal questioning the impugned award on the ground of quantum.

2.One Rajendran was employed in the State Government. He was travelling as a passenger in a Tata Sumo car insured with the appellant. It was driven in a rash and negligent manner and it capsized. The accident took place on 27.03.2012 at about 11.00 a.m. The claimants filed M.C.O.P.No.1784 of 2013. The Tribunal passed an award for a sum of Rs.39,56,938/- with interest. Contending that the same is excessive, this appeal has been filed.

3.The learned counsel appearing for the appellant raised four grounds viz., (i) the claimants received certain amount as a lumpsum towards death benefit. Therefore, the same ought to have been deducted from the compensation ultimately paid; (ii)Wife of the deceased was given appointment on compassionate grounds. Therefore, there was no substantial loss of income to the family; (iii) the deceased was aged 51 years at the time of accident and he would have retired by the age of 58 years. Therefore, split multiplier method should have been adopted; and (iv) Income Tax deduction was not properly made.

4.I am of the view that the first and second grounds raised by the appellant deserved to be rejected in view of decision of the Hon'ble Supreme Court reported in 2016(2) TNMAC 721 - Reliance General Insurance Co. Ltd., Vs. Shashi Sharma and others. In the present case, the ex-gratia amount of Rs.12,00,000/- as well as compassionate appointment would have been given to the claimant even if the death had taken place otherwise than by an accident. As held by the Hon'ble Supreme Court, if the amount would be due to the dependants of the deceased, even otherwise the same shall not be deducted from the compensation amount payable under the Motor Vehicles Act, 1988.

5.But, there is considerable force in the submission of the learned counsel for the appellant that split multiplier method must have been adopted in this case. The appellant was aged 51years at the time of accident. Therefore, 11 would be the proper multiplier. Since he would have reached the age of superannuation at the age of 58, salary last drawn by him would have been available for the family only for 7 years from the date of accident. Therefore, applying the split multiplier method, loss of income and the compensation payable to the family has to be reworked as under:

Loss of income	Rs.33,84,000
Loss of consortium to the wife and loss of love and affection to the others	Rs. 1,20,000
Loss of Estate and funeral expenses	Rs. 30,000
Total	Rs.35,34,000/-

6.As regards the contention that income tax deduction must have been made, it is seen that the Tribunal did not add any future prospects to the last drawn pay of the deceased. Therefore, I am of the view that both can be set off against one another. Accordingly, the award dated 10.03.2015 made in M.C.O.P.No.1784 of 2013 on the file of Motor Accident Claims Tribunal, Special District Court, Judge, Trichirapalli is modified.

7.The appellant insurance company is directed to deposit the entire compensation of Rs.35,34,000/- with interest at the rate of 7.5% per annum, from the date of petition till the date of realization and costs, within a period of eight weeks from the date of receipt of a copy of this order, less the amount already deposited if any. On such deposit, the claimants and the 5th respondent herein are permitted to withdraw the same as apportioned by the Tribunal by filing proper application before the Tribunal, less the amount already withdrawn by them, if any. The shares of the minor claimants shall be deposited in any one of the nationalised bank and the natural guardian is permitted to withdraw the interest accrued thereon once in three months directly from the bank.

8.This civil miscellaneous appeal is partly allowed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-
Assistant Registrar(CS-III)

/TRUE COPY/

Sub Assistant Registrar

To

1. The Special District Judge,
   Motor Accident Claims Tribunal,
   (Special District Court),
   Trichirapalli.

2. The Record Keeper, Vernacular Section, (2 Copies)
   Madurai Bench of Madras High Court, Madurai.

+1. C.C. to Mr.N.SUDHAGAR NAGARAJ, Advocate SR.No.93557.
+1. C.C. to Mr.J.S.MURALI, Advocate SR.No.93476.

C.M.A.(MD)No.14 of 2016
and
C.M.P.(MD) No.164 of 2016
13.12.2017

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SDS/CSL/SAR-4/06.06.2018/3P/6C