

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CMA.No.155 of 2018
& CMP No.1988 of 2018

M/s. Reliance General Insurance Co. Ltd.,
Plot No.2054, 2nd Avenue,
2nd Floor, Next to Senthil Nursing Home,
Anna Nagar, Chennai 40.

... Appellant/2nd Respondent

-vs-

1. K. Kalliammal
2. K. Kanniampan
3. K.Dilliamma
4. K.Kanniammal
5. Baba D Yadav

... Respondents/1 to 4 Claimants & 1st respondent

Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and decree dated 23.08.2017 made in MCOP.No.613 of 2014 on the file of the Motor Accidents Claims Tribunal, III Additional District Judge, Thiruvallur, Poonamallee.

For Appellant : Mr.S.Arun Kumar

For Respondents: Mr. K.Vardhakamaraj for RR 1 to 4
Not ready for R5

J U D G M E N T

[Judgment of the Court delivered by R.SUBRAMANIAN,J.]

The Insurance Company which suffered an award for payment of a sum of Rs.12,28,000/- as compensation for the death of one Krishnamoorthi, husband of the 1st respondent and the father of

the respondents 2 to 4, in the motor accident that occurred on 25.06.2014 is on appeal, challenging the quantum of compensation.

2. According to the claimants, at about 6.45 p.m. on 25.06.2014, when the deceased E.Krishnamoorthi, was collecting the plastic waste in Thiruverkadu Road, Arunachalam Nagar, the lorry bearing Registration No.MH-04-GF-5384, driven by its driver, in a rash and negligent manner, hit the deceased and ran over him killing him on the spot. Contending that the accident occurred due to the rash and negligent driving of the lorry and that the lorry was insured with the appellant Insurance Company, the claimant sought for a compensation for Rs.15,00,000/-.

3. The claim was resisted by the Insurance Company denying the manner in which the accident occurred. It also denied the age and income of the deceased as claimed in the Claim Petition. It is also claimed that the driver of the lorry did not possess a driving license to drive heavy goods vehicle at the time of the accident. On the above contentions, the Insurance Company sought for dismissal of the Original Petition.

4. The Tribunal which heard the Original Petition relied upon Ex.P1 the First Information Report and the evidence of P.W.1 eyewitness concluded that it was the negligent driving of the lorry driver that caused the accident resulting in death of Krishnamoorthi. The Tribunal based on the Postmortem Certificate and the Death Certificate determined the age of the deceased at 48.

5. While deciding the quantum, the Tribunal took the monthly income of the deceased Rs.9,000/- per month (Rs.300/- per day) and after deducting $\frac{1}{4}$ th of the same i.e. Rs.2,250/- for his personal expenses arrived at the monthly loss of dependency at Rs.6,750/-. Thus, the Tribunal arrived at the compensation for loss of dependency at Rs.10,53,000/- [Rs.6,750/- x 12 x 13]. The Tribunal also granted a sum of Rs.25,000/- towards funeral expenses, Rs.25,000/- each to the claimants 2 to 4 and Elumalai, the father of the deceased towards loss of love and affection, a sum of Rs.30,000/- was awarded towards loss of consortium to the 1st claimant and Rs.10,000/- was awarded towards transport charges, apart from Rs.10,000/- awarded towards loss of estate. In all the Tribunal awarded a sum of Rs.12,28,000/- as compensation.

6. Aggrieved by the award, the Insurance Company has come up on appeal claiming the award as excessive.

7. We have heard Mr.S.Arunkumar, learned counsel appearing for the appellant and Mr.K.Vardhakamaraj, learned counsel appearing for the claimants respondents 1 to 4. The 5th respondent owner of the lorry, though served he does not appear either in person or through counsel duly instructed.

8. Mr.S.Arunkumar, would submit that considering the fact that the accident occurred in the year 2014, coupled with the fact that the deceased was only a ragpicker, the Tribunal was in error in fixing the monthly income at Rs.9,000/-. He would also contend that the awards under the conventional heads, like loss of love and affection, loss of consortium and loss of estate are on the higher side.

9. Per contra, Mr. K.Vardhakamaraj, learned counsel appearing for the respondents 1 to 4/claimants would submit that even though the Tribunal has adopted Rs.9,000/- as monthly income, it has not added any amount towards future prospects. According to him, in view of the judgment of the Larger Bench of the Hon'ble Supreme Court in National Insurance Company Limited v. Pranay Sethi and other, reported in 2018 (1) LW 331, considering the age of the deceased 25% should have been added towards future prospects. Even, if the income is taken as Rs.7,500/- per month, which is the bare minimum, adding 25% towards future prospects, the income for the purposes of arriving at the compensation would be Rs.9,375/-. Considering the age of the deceased applying a multiplier of 13 and deducting 1/4th towards his personal expenses, the compensation on the ground of the loss of dependency alone would work out to Rs.10,96,875/-. Therefore, according to him, the overall compensation is just reasonable.

10. We find some force in the submissions of the learned counsel for the respondents 1 to 4. Though the Tribunal has taken the income at Rs.9,000/- per month, it has not added any amount towards future prospects. We find that the Tribunal has awarded a sum of Rs.1,00,000/- towards loss of love and affection. The deceased had left behind three sons and his father Elumalai. Considering the same, we find that award of Rs.1,00,000/- towards loss of love and affection is just and reasonable. The Tribunal has awarded a sum of Rs.30,000/- towards loss of consortium, Rs.10,000/- towards loss of estate, Rs.10,000/- towards transport charges and Rs.25,000/- towards

funeral expenses. We find that these awards are also just and reasonable.

11. In the light of the above, we see no ground to interfere with the award of the Tribunal and the appeal is dismissed confirming the award. However, there shall be no order as to costs in this appeal. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

The Motor Accidents Claims Tribunal,
III Additional District Judge,
Thiruvallur, Poonamallee.

Copy to:

The Section Officer,
VR Section,
High Court, Madras.

+1cc to Mr.K.Varadhakamaraj, Advocate sr.no.62081
+1cc to Mr.S.Arunkumar, Advocate sr.no.62714

CMA.No.155 of 2018
& CMP No.1988 of 2018

ssi(co)
nr 30/10/2018

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