IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.166 of 2018
and CMP.No.2037 of 201
***and**
CMA SR.1105/18 in CMA No.606/18

M/s.Reliance General Insurance Co.Ltd.,
Legal department, Reliance House
6th Floor, No.6, Haddows Road
Nungambakkam, Chennai-6 ...Appellant
/2nd respondent.

Vs

1.S.Kachapalayam
2.Abirami
3.Azhagambigai
4.Amudha
5.K.Jambulingam ..Respondents 1 to 5
.. /Petitioners 1 to 5

6.K.Kothandaraman ..6th Respondent
/1st respondent.

***CMP 1105/18 in CMA Sr.No.606/18**

1.S.Kachapalayam
2.Abirami
3.Azhagambigai
4.Amudha
5.K.Jambulingam ...Petitioners/Appellants

VS

1.K.Kothandaraman

2.M/s.Reliance General Insurance Co.Ltd.,
Legal department, Reliance House
6th Floor, No.6, Haddows Road
Nungambakkam, Chennai-6 ... Respondents/Respondents

CMP No.1105/18 pleased to order of exemption of court fee for a sum of Rs.4000/- in the above CMA Sr.No.606/18 against the Judgment and decree dated 21.09.2017 and made in MACTOP No.7569/15 on the file of the Motor Accident Claims Tribunal Chief Judge, Small Causes Court, Chennai.

Civil Miscellaneous Appeal filed against the judgment and decree dated 21.09.2017 passed in M.C.O.P.No.7569 of 2015 on the file of Motor Accidents Claims Tribunal, Chief Court of Small Causes, Chennai.

For appellant : : Mr.S.Arun Kumar
for Respondents : : M/s.M.Malar
M/s.P.Terry Chella Raja
for R1 to R4.

J U D G M E N T

This Civil Miscellaneous Appeal is filed by the appellant/Insurance Company, challenging the judgment and decree dated 21.09.2017 passed in M.C.O.P.No.7569 of 2015 on the file of Motor Accidents Claims Tribunal, Chief Court of Small Causes, Chennai.

2. For the sake of convenience, the parties are referred to as per their litigative status before the Tribunal. The case of the petitioners is that on 12.08.2015, at about 10.00 a.m., while the deceased viz., Karpagam was crossing Kelambakkam-Vandalur Main road, near P.S.Apparels Company Pedestrian crossing, a two wheeler bearing Reg.No.TN-21-X-6946 came at high speed, dashed against the deceased Karpagam causing her fatal injury and she subsequently died on 24.08.2015 in G.H., Chennai. The accident occurred due to negligence of the said two wheeler rider only. The deceased was aged 44 years and by working as Helper in Private concern, was earning Rs.9000/- per month. The Petitioners, who are the husband and children of the deceased were depending on her income. Thus, the petitioners sought for a sum of Rs.20,00,000/- as compensation from the respondents, who are owner and insurer of the said two wheeler.

3. On the other hand, opposing the claim of the Petitioners, by filing counter, the 2nd respondent-Insurance company contends that the accident did not occur in the manner alleged by the Petitioners. The age, avocation and income of the deceased as claimed by the Petitioners is not true. The vehicle bearing Reg.No.TN-21-X-6946 was driven by a person without valid driving licence, as such, the 2nd respondent is not liable to pay compensation. The amount claimed by the Petitioners is exorbitant. Thus, the 2nd respondent sought for dismissal of the Petition.

4. Before the Tribunal, the Petitioners examined P.W.1 and P.W.2 and produced documents Ex.P.1 to Ex.P.17 to prove their claim. On the side of the respondents, R.W.1 was examined and documents Ex.R.1 and Ex.R.2 was produced.

5. On careful analysis of evidence available on record, the Tribunal found negligence on the part of the 1st respondent vehicle driver alone caused the accident and passed award of Rs.10,92,600/- payable by the 2nd respondent.

6. Aggrieved over the said finding of the Tribunal, the 2nd respondent/Insurance company has come forward with the present appeal.

7. The learned counsel for the appellant/2nd respondent-Insurance company contends that the tribunal failed to consider the fact that the 1st respondent/owner cum driver of the vehicle committed violation of Policy condition. The amount awarded by the Tribunal is highly excessive. The age of the deceased was above 50, but the Tribunal wrongly fixed her age at 45. The amount awarded by the Tribunal under other heads is also excessive. Thus, the 2nd respondent counsel sought to set aside the award passed by the Tribunal by entertaining the appeal.

8. Per contra, the learned counsel for the Petitioners/claimants contend that the deceased was aged 44 years and by working as Helper in P.S.Apparels India Limited was earning Rs.9000/- per month. However, the Tribunal wrongly fixed her monthly income at Rs.6000/- without any basis. The Tribunal wrongly deducted 1/4th of the income towards personal expenses. The future prospects was not properly considered. The amount awarded under other heads by the Tribunal is very meagre. As such, the petitioners/claimants sought for dismissal of the appeal. The learned counsel for the Petitioners/claimants also contended that the award amount being very meagre, this court in the interest of justice should enhance the same, even if no appeal or cross objection is filed by the claimants.

9. The appeal is filed mainly on the issue of quantum. Both sides counsel have not seriously disputed the liability aspect.

10. Before the Tribunal, the 1st petitioner/husband of the deceased Karpagam deposed as P.W.1 and stated about the accident which took place on 12.08.2015 causing the death of his wife Karpagam. However, P.W.1 is not an eyewitness to the accident. The Petitioner examined the person who witnessed the accident as P.W.2 and he clearly stated that on 12.08.2015 at 10 a.m., while he was waiting for bus in the bus-stop near P.S.Apparel company in Kelambakkam-Vandalur Road, he saw the two wheeler bearing

Reg.No.TN-21-X-6946 going towards Vandalur at high speed and the said two wheeler dashed against the lady crossing the road in Pedestrian crossing, resulting in the accident. The Police also registered the case against the rider of the two wheeler as evidenced by Ex.P.1 FIR. It is thus clear from P.W.2 oral evidence and Ex.P.1-FIR that the accident occurred due to negligence of the 1st respondent rider. Further, the 2nd respondent has not examined either the rider of the two wheeler or any eyewitness to the accident to contradict the version given by P.W.2 about the manner in which the accident occurred. As such, the conclusion of the Tribunal on the basis of P.W.2 evidence and contents of Ex.P.1-FIR that negligence of the 1st respondent vehicle rider alone caused the accident is just and proper. Further, the same is not seriously disputed or challenged by the 2nd respondent-Insurance company.

11. The 2nd respondent-Insurance company has come forward with the present appeal mainly against the quantum of award only. Therefore, the conclusion of the Tribunal arrived at by the Tribunal with regard to negligence aspect that 1st respondent rider of the two wheeler bearing Reg.No.RN-21-X-6946 above caused the accident is confirmed.

12.(i) Age:- The 1st petitioner, who deposed as P.W.1 stated that the deceased is his wife and was aged 50 years at the time of the accident. There is no proof or any other evidence available on record in respect of proof of age. In Ex.P.2-Post Mortem certificate, the age of the deceased is recorded as 40 years. While so, in the petition averments, it is stated that the petitioners 2 to 5 are the children of the deceased and are aged 27, 25, 23 and 22 respectively. Considering the fact that the 2nd petitioner/daughter of the deceased was aged 27 years at the time of the accident and the admission of P.W.1/husband of the deceased himself that his wife was aged 50 years, the claim of the learned counsel for the petitioner that the deceased was aged only 40 years as stated in Ex.P.3 Post Mortem Certificate cannot be accepted. In the light of admission of P.W.1 himself, the age of the deceased is fixed as 50 years. As such, the correct multiplier to be applied for such age group is '13'. The Tribunal has correctly fixed the age and multiplier in that regard and accordingly, the same is confirmed.

(ii) Income:- The Petitioners contend that the deceased by working as Helper in M/s.P.S.Apparels was earning Rs.9000/- per month. However, neither salary certificate nor any other document regarding the employment and monthly income of the deceased was produced before the Tribunal by the Petitioner. They also failed to examine any member of the said P.S.Apparel company, to prove the avocation and income of the deceased. In such circumstances, the Tribunal fixed the monthly income of the deceased at Rs.6000/-. The said conclusion is disputed by the Petitioners/claimants on the ground that the accident having occurred in 2015, the notional income is to be fixed atleast at Rs.8000/- per month. Considering the circumstances stated above, it will be appropriate to fix the notional income of the deceased at Rs.7000/- per month.

(iii) Future Prospects:- The learned counsel for the 2nd respondent/Insurance company contends that the Tribunal ought to have given only 10% of the income towards Future Prospects, but wrongly given as 30% and the same is not sustainable.

On the other hand, the learned counsel for the Petitioners/claimants contends that following the Apex Court Ruling reported in 2017(2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and Others], for a person in the age group of 40 to 50, 25% of the income has to be added as future prospects. Even though, the 2nd respondent/Insurance company contended that for the age group of 50 to 60 years, 10% of the income alone has to be added, considering the above said judgment, it will be appropriate to add 25% of the income as future prospects.

(v) Deductions:- Even though the petitioners are 5 in numbers, admittedly, the 2nd, 3rd and 4th petitioners/daughter of the deceased are already married and living in their matrimonial home. As such, they cannot be stated to be dependants of the deceased. Therefore, only the 1st and 5th petitioners can be treated as dependant family members. In such circumstances 1/3rd of the income has to be deducted towards personal expenses of the deceased. Thus, the loss of dependency to the family of the deceased Karpagam is computed as under:-

Monthly salary = Rs.7000/-
Add: 25% towards future prospects = 1750
7000 + 1750 = 8750
1/3rd deduction towards personal expenses of the deceased(2916)
8750 - 2916 = Rs.5834/-
5834 x 12 x 13 = Rs.9,10,104/-

It is pointed out by the Petitioners/claimants that the deceased after suffering injuries in the accident which took place on 12.08.2015 was under continuous treatment in the Hospital and died on 24.08.2015. As such, it is appropriate to award a sum of Rs.5,000/- under the head "Attender charges".

13. The learned counsel for the Petitioners/claimants contends that due to sudden demise of the deceased Karpagam, the petitioners 2 to 5 lost love and affection of their mother. He relied upon the Ruling of the Kerala High Court reported in 2017 SCC Ker 23174 [1.Valsamma and others Vs. V.A.Baiju, 2.Rev.FR.Joseph Vattakalam, and 3. The National Insurance Co.Ltd., - MACA.Nos.711 and 921 of 2010] and contended that the sum of Rs.1,00,000/- awarded by the Tribunal towards Loss of Love and affection to petitioners 2 to 5 at Rs.25,000/- each may be confirmed.

14. Considering the fact that the petitioners 2 to 4 are already married daughters of the deceased and taking note of other attendant circumstances, the amount provided by the Tribunal under the head "Loss of love and affection" is reduced to Rs.10,000/- each to Petitioners 2 to 5 (in total Rs.40,000/-). Further, by following the Apex Court Ruling reported in 2017(2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and Others], under conventional heads "Loss of consortium" Rs.40,000/-; Rs.15,000/- under the head "Funeral expenses" and Rs.15,000/- under the head "loss of estate", is awarded by this court.

15. In view of the foregoing discussion, the modified award amount is as follows:-

Sl.No.	Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this court (Rs.)
1.	Loss of dependency	9,12,600/-	9,10,104/-
2.	Loss of consortium	50,000/-	40,000/-
3.	Loss of love and affection to petitioners 2 to 5	1,00,000/-	40,000/-
4.	Transport charges	5,000/-	5,000/-
5.	Attender charges	---	5,000/-
6.	Funeral expenses	25,000/-	15,000/-
7.	Loss of estate	---	15,000/-
	Total	10,92,600/-	10,30,104/-

11. In the result,

(i) This Civil Miscellaneous Appeal is Partly Allowed;
(ii) The award amount is reduced from 10,92,600/- to Rs.10,30,104/-.
(iii) The award amount will carry interest at the rate of 7.5% from the date of petition till the date of realisation;
(iv) This Court, by order dated 07.02.2018 directed the Appellant/Insurance company to deposit the entire award amount along with proportionate interest and cost. Therefore, the Insurance company is entitled to withdraw the excess sum, if any, in deposit, after satisfying the order of this court.
(v) The Petitioners/Respondents 1 to 5 are entitled to withdraw the award amount along with accrued interest in the following apportionment:-
1st Petitioner - 40%
Petitioners 2 to 4 - 10% each
5th petitioner - 30%

The Tribunal shall pass necessary orders following the appropriate procedure for disbursal of the award amount.

***CMP No.1105/18 in CMA SR.No.606/18 is dismissed as withdrawn consequently CMA Sr.No.606/2018 is rejected.**

(vi) No costs. Consequently connected CMP is closed.

Sd/-
Assistant Registrar(CO)
Dated:21/06/2018

*corrected order as per the
order of this Court dated
06/07/2018 made in
CMP No.1105/2018 in
CMA SR.No.606/18 & CMA 166/2018

Sd/-
Assistant Registrar(CO)
Dated:02/08/2018

//True Copy//

Sub Assistant Registrar

To 1.The Motor Accident Claims Tribunal, Chief Court of Small Causes, Chennai.	To be substituted as per the order of this Court Dated 06.07.2018 made in CMP No.1105/18 in CMA Sr.606/18 & CMA 166/18

2.The Section Officer,
V.R.Section, High Court, Madras.[2 copies]

+1cc to Ms.M.Malar, Advocate Sr.32484
+1cc to Mr.S.Arunkumar, Advocate Sr.32385

C.M.A.No.166 of 2018

ca[co]
srg 25/06/2018
srg 3/8/2018