IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.09.2018

CORAM:

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

CMA No.1080 of 2015 and
M.P.No.1 of 2015

The Divisional Engineer,
Oriental Insurance Company Limited,
Arunagiri Complex, Ground Floor,
No.23, Bye-Pass Road, Hosur 635 109.

... Appellant/2nd Repondnet

-vs-

1.K.Mahalingam
2.Radha
3.Matcha Gandhi
4.V.Munivenkatappa ... Respondents/Petitioners & 1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 23.12.2014 made in M.C.O.P.No.482 of 2013 on the file of the Motor Accidents Claims Tribunal, Special District Court for Motor Accident Claims Cases, Krishnagiri.

For Appellant : Mr.S.Manohar
For Respondents: Mr.Mukund R. Pandian for R1 to R3

J U D G M E N T

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

The Insurance Company challenges the Award granting a sum of Rs.24,73,080/- for the death of one Raman in a motor accident that occurred on 27.02.2012.

2. According to the claimants, the deceased was travelling in a two wheeler bearing Registration No.TN-24-H-4840 as a pillion rider. While so, the lorry belonging to the first respondent insured with the second respondent driven by its driver in a rash and negligent manner came from the side road

and hit against the two wheeler. As as result of the accident, both the driver and the pillion rider suffered injuries. The pillion rider succumbed to injuries at LIVE 100 Hospital at Bangalore on 01.03.2012. The claimants sought for a compensation of Rs.30 lakhs claiming that the deceased was doing Post Graduation in Micro Biology and working as part-time employee in a private company.

3. The Insurance Company resisted the claim by contending that the driver of the two wheeler was negligent and the accident did not happen in the manner set out in the claim petition. According to the Insurance Company, it is the driver of the two wheeler who drove the vehicle in a rash and negligent manner and dashed against the lorry which came from the side road. The quantum of compensation claimed was also termed as "excessive". The occupation and monthly income of the deceased was also disputed by the Insurance Company.

4. The Tribunal found that the accident occurred due to the rash and negligent driving of the driver of the lorry based on Ex.P1 FIR and the evidence of P.W.2 Thiru.Mithuvachan, the driver of the two wheeler at the time of the accident. The Insurance Company did not choose to examine the driver of the lorry, but examined the Police Officer, who marked the Sketch. Faulting the Insurance Company for not examining the Driver of the lorry, the Tribunal concluded that the negligence is on the part of the lorry driver.

5. Though Mr.S.Manohar, learned counsel for the Insurance Company would attempt to question the said finding on the ground of negligence recorded by the Tribunal, we find that in the absence of the examination of the driver of the lorry, the Insurance Company cannot challenge the finding on negligence. On the quantum, the Tribunal took the monthly income of the deceased at Rs.20,000/- and after deducting Rs.10,000/- towards his personal expenses, the deceased being a bachelor, the total pecuniary loss was arrived as Rs.21,60,000/- adopting multiplier of "18". The Tribunal awarded Rs.1,00,000/- each to the parents and Rs.25,000/- to the sister of the deceased towards Loss of love and affection. A sum of Rs.43,080/- was awarded towards medical expenses based on the bills. The Tribunal also awarded Rs.20,000/- towards Funeral Expenses and Rs.25,000/- towards transportation.

6. Mr.S.Manohar, learned counsel for the Insurance Company would contend that the fixation of monthly income at Rs.20,000/- is on the higher side. He would also contend that the compensation awarded for loss of Love and Affection at Rs.1,00,000/- each to the parents and Rs.25,000/- to the sister of the deceased is excessive.

7. Per contra, Mr.Mukund R.Pandian, learned counsel for the claimants would contend that the Tribunal has not added any amount towards future prospects. Therefore, according to him, the Award, as a whole is just and reasonable.

8. We have considered the rival submissions.

9. There is no direct evidence to show the income of the deceased. It is claimed that he was studying first year M.Sc Microbiology. It is claimed that he was working as a part-time employee in a medical concern. In the absence of any evidence to show such employment, we are of the considered opinion that his monthly income could be safely taken as Rs.12,000/- by adding 40% towards future prospects, as per the larger bench judgment of the Hon'ble Supreme Court in National Insurance Co. Ltd., v. Pranay Sethi and others [2018 (1) L.W. 331], the monthly income of the deceased is taken as Rs.16,800/- for the purpose of calculating the loss of dependency and deducting 50% towards his personal expenses, the loss of dependency per month works out to Rs.8,400/-. Thus, the total loss of dependency is Rs,18,14,400/- (Rs.8400 x 12 x 18).

10. As regards the compensation towards Loss of Love and Affection, we are of the view that the same is not in consonance with the larger Bench Judgment of the Hon'ble Supreme Court in Pranay Sethi (cited supra). Thus, the loss of Love and Affection awarded to the parents and sister of the deceased is reduced to Rs.80,000/- and Rs.20,000/- respectively. The compensation awarded under the following heads viz., Medical Expenses, Funeral Expenses and Transport Expenses are sustained. The Tribunal has not awarded any amount towards Loss of Estate, hence, we award a sum of of Rs.15,000/- towards Loss of Estate.

11. Thus, the total compensation is as follows:-

Loss of Dependency	:	Rs.18,14,400/-
Loss of Love and Affection to parents	:	Rs. 80,000/-
Loss of Love and Affection to sister	:	Rs. 20,000/-
Medical Expenses	:	Rs. 43,080/-
Funeral Expenses	:	Rs. 20,000/-
Transportation	:	Rs. 25,000/-
Loss of Estate	:	Rs. 15,000/-
Total		Rs.20,17,480/-
Rounded off to		Rs.20,18,000/-

12. In the result, the Civil Miscellaneous Appeal is Partly Allowed as follows:-

(i) The award of the Tribunal is modified and reduced from Rs.24,73,080/- to Rs.20,18,000/-.

(ii) The award amount will carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit with proportionate costs.

iii) The compensation is apportioned as follows:-

a) 2nd respondent mother will be entitled to Rs.10,00,000/-.

b) 1st respondent father will be entitled to Rs.8,00,000/-

c) 3rd respondent sister will be entitled to Rs.2,18,000/- with proportionate interest and costs.

iv) It is stated that the Insurance Company has deposited the entire amount and the claimants had withdrawn 50% of the same. The claimants are permitted to withdraw the balance amount as awarded by this Court.

v) The remaining amount is to be paid over to the appellant Insurance Company.

No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

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To

1.Special District Judge,
for Motor Accident Claims Cases,
The Motor Accidents Claims Tribunal,
Krishnagiri.

2. The Section Officer,
V.R. Section, High Court,
Madras.(2 copies)

+1cc to Mr.Mukund R.Pandian, Advocate, S.R.No. 61459
+1cc to Mr.S.Maohar, Advocate, S.R.No. 61466

CMA No.1080 of 2015

KK(CO)
GN(22/10/2018)