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.2052 of 2016
and C.M.P.No.15017 of 2016

The Branch Manager,
Cholamandalam MS General Insurance Company Limited,
Chennai .... Appellant/2nd Respondent

-vs-

1.Lakshmi
2.Saravanan
3.Venkatesan
4.Kavitha
5.Sudha
6.Geetha ...1 to 6 Respondents/1 to 6 Petitioners

7.Anbarasu .... 7th Respondent/1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicle Act, 1988 against the judgment and decree dated 23.12.2014 passed in M.C.O.P.No.605 of 2011 on the file of the Motor Accidents Claims Tribunal, Principal District Court, Perambalur.

For Appellant : Mr.N.Vijayaraghavan

For Respondents: Mr.K.Murugesan (For R1 to R6)
Mr.S.Jayakumar (For R7)

J U D G M E N T

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

The Insurance Company is on an appeal challenging the award of a sum of Rs.14,21,000/- for the death of one Panneerselvam, aged 60 years in a motor accident that occurred on 13.01.2010.

2.His widow and five major children are the claimants. According to the claimants, the deceased was travelling in an auto rickshaw bearing Reg.No.TN 31 AV 1292. The driver of the auto drove the vehicle in a rash and negligent manner and dashed against the lorry which was proceeding ahead of the auto rickshaw. As a result of the accident, the said Panneerselvam suffered grievous injuries and died on 13.01.2010. Claiming that the deceased was earning about Rs.15,000/- per month, the claimants sought for compensation of Rs.15,00,000/-.

3.The Insurance Company resisted the claim contending that the driver of the auto was not negligent. It is also claiming that the compensation sought for is excessive, considering the age of the deceased. The Tribunal upon consideration of the evidence on record, particularly Ex.P1, First Information Report, concluded that the accident occurred due to rash and negligent driving of the auto by its driver and held that the appellant Insurance Company being the insurer of the auto, is liable to pay the compensation. On quantum, the Tribunal took the monthly income of the deceased at Rs.18,396/-, which is the pension drawn by him and calculated the loss of dependency at Rs.14,90,076/-. The Tribunal also awarded a sum of Rs.20,000/- towards loss of consortium, Rs.38,924/- towards loss of love and affection, Rs.10,000/- each towards funeral expenses, transport charges and loss of estate and after deducting 10% towards Income Tax, the Tribunal awarded total compensation of Rs.14,21,000/-. Aggrieved, the Insurance Company has come forward with this appeal.

4.Mr.N.Vijayaraghavan, learned counsel for Insurance Company is not canvassing the finding of the Tribunal on the question of negligence and the liability of the Insurance Company. On quantum, Mr.N.Vijayaraghavan would contend that on the death of the pensioner, the pension is paid to his wife at 50% of the pension drawn to him which in this case would be about Rs.9,500/-. Therefore, according to the learned counsel for the Insurance Company, the actual pecuniary loss is only Rs.9,500/- and the Tribunal was not right in taking Rs.18,396/- as the pecuniary loss. He would also suggest deduction of ¼ towards personal expenses.

5.We do not think that the same can be done in this case in as much as we are taking the loss of income alone as the basis for calculation of the loss of dependency. Therefore, the loss of dependency would be Rs.9,500/- x 12 x 9 = Rs.10,26,000/-. The amount awarded towards loss of consortium and loss of love and affection are on the lower side. The award for loss of consortium is increased to Rs.50,000/- and loss of love and affection is fixed at Rs.50,000/- considering the fact that the children are all major children. The sum of Rs.25,000/- is awarded towards funeral expenses, Rs.10,000/- towards transportation and Rs.25,000/- towards loss of estate. Thus, the total compensation would be Rs.11,86,000/- and the same is rounded of to Rs.12,00,000/-. The compensation is apportioned as follows: 1st respondent, the wife of the deceased will take Rs.4,50,000/- with proportionate interest and entire costs. The children five in number will take a sum of Rs.1,50,000/- each with proportionate interest. It is stated that the Insurance Company has deposited the entire compensation. The claimants would be entitled to withdraw their share of the compensation fixed as above and the balance amount will be paid over to the Insurance Company by the Tribunal.

6.In fine, this appeal is allowed in part. However, there is no order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

gsa
To

The Motor Accidents Claims Tribunal,
Principal District Judge,
Perambalur.

+1cc to Mr.N.Vijayaraghavan, Advocate Sr.61458

CMA No.2052 of 2016
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srg 22/10/2018