IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.09.2018

CORAM:

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

CMA Nos.2221 of 2016 and 15 of 2017
and C.M.P.No.76 of 2017

CMA No.2221 of 2016

1.Anandeeshwari
2.Minor Lakshna
3.Shenbakavalli
4.Dharmalingam
5.Devishri ....Appellants/
Petitioners in CMA 2221/16
Respondent/Claimant
in CMA.15/17

(2nd minor petitioner is represented by her mother Anandeeshwari as natural guardian and next friend)

-vs-

1.S.Subha .. 1st Respondent in CMA 2221/16
6th Respondent in CMA 15/17

2.Royal Sundaram Alliance Insurance Co. Ltd.,
TP Department, Subramanian Building,
II Floor, Club House Road,
LM Opposite Sinthur Hotel,
Chennai 600 002. 2nd Respondent in CMA 2221/16
Appellant in CMA 15/17

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 17.03.2016 made in M.A.C.T.O.P.No.1371 of 2014 on the file of the II Court of Small Causes, Chennai.

For Appellants :Ms.Subathra
for Mr.V.Velu

For Respondents:Exparte (For R1)

Mr.M.Krishnamoorthy (For R2)

C.M.A.No.15 of 2017

Royal Sundaram Alliance Insurance Co. Ltd.,
No.1, II Floor, Subramaniyam Buildings, Club House Road,
Anna Salai, Chennai 600 002. ... Appellant

Vs.

1.Anandeeshwari
2.Minor Lakshna
3.Shenbakavalli
4.Dharmalingam
5.Devishri
6.S.Subha ... Respondents

(2nd respondent minor is represented by her mother Anandeeshwari as natural guardian and next friend)

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 17.03.2016 made in M.A.C.T.O.P.No.1371 of 2014 on the file of the II Court of Small Causes, Chennai.

For Appellant :Mr.M.Krishnamoorthy

For Respondents :Ms.Subathra
for Mr.V.Velu (For R1 to R5)
Exparte (For R6)

C O M M O N J U D G M E N T

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

Challenge in these appeals is to the award of Motor Accidents Claims Tribunal, granting a sum of Rs.25,06,000/- for the death of one D.Murugan, who died in a road accident that occurred on 24.11.2013. The claimants are the wife, daughter, mother, father and sister of the deceased.

2.According to the claimants, the accident occurred due to the rash and negligent driving of the TATA Safari Car bearing Registration No.TN-42-Y- 8888 which was insured with the Insurance Company, the appellant in C.M.A.No.15 of 2017. The claimants sought for a compensation of Rs.50,00,000/-. The Tribunal on consideration of the evidence on record, concluded that the driver of the TATA Safari vehicle was negligent and the same was the cause for the accident. In coming to the said conclusion, the Tribunal relied upon the evidence of P.W.2 and Ex.P1, the First Information Report. Mr.M.Krishnamoorthy, learned counsel appearing for the Insurance Company does not challenge the finding of the Tribunal on negligence.

3.On quantum, the Tribunal took the monthly notional income of the deceased at Rs.8,000/-. Though there was evidence to show that he was drawing a monthly salary of Rs.12,176/-, in the form of bank statement, the Tribunal added 50% towards future prospects and deducted 1/4th towards personal expenses and arrived at the monthly loss of dependency at Rs.9,000/-. Applying the multiplier '16', the Tribunal arrived at the total pecuniary loss of Rs.17,28,000/-. The Tribunal also awarded a sum of Rs.4,00,000/- towards loss of love and affection, Rs.1,00,000/- towards loss of consortium, Rs.50,000/- towards loss of estate, Rs.25,000/- towards funeral expenses and Rs.2,03,000/- towards medical expenses. Thus, the total award was worked out to Rs.25,06,000/-.

4.The main contentions of Mr.M.Krishnamoorthy, the learned counsel for the appellant Insurance Company in C.M.A.No.15 of 2017 are:

(i).The Tribunal should have added only 40% towards future prospects.

(ii).The Tribunal erred in deducting 1/4th towards personal expenses, since, the sister and father of the deceased cannot be treated as dependents.

(iii).The award of the Tribunal under the conventional heads is beyond amounts suggested by the Hon'ble Supreme Court in National Insurance Co. Ltd Vs. Pranay Sethi and others reported in 2018 (1) LW 331.

5.The claimants have also challenged the award in C.M.A.No.2221 of 2016. Ms.Subathra, the learned counsel for the appellants in C.M.A.No.2221 of 2016 would contend that the Tribunal should not have taken notional income when evidence showing the income of the deceased is available on record. Faulting the Tribunal for adopting a sum of Rs.8,000/- towards income for a B.Sc., B.Ed. graduate, she would contend that the award needs to be enhanced.

6.We have considered the rival submissions. Ex.P15, bank statement shows that the sum of Rs.12,176/- had been credited month on month to the account of the deceased. Therefore, we do not think that the Tribunal was right in fixing the notional salary at Rs.8,000/-. We therefore take the salary of the deceased at Rs.12,000/- per month. Adding 40% towards future prospects, the income for the purpose of fixation of the loss of dependency would be Rs.16,000/-. There are only three dependents on the deceased, viz., his wife, mother and daughter. Therefore, deduction of ¼ leaves a balance of Rs.11,200/- as the loss of dependency. Applying the multiplier of '16', the total loss of dependency worked out to Rs.21,50,400/- The award of the Tribunal under the conventional heads is definitely on the higher side. Therefore, the same is modified as follows:

Award towards		Amount
Loss of Love and Affection	-	Rs. 50,000/-
Loss of Consortium	-	Rs. 40,000/-
Loss of Estate	-	Rs. 15,000/-
Funeral Expenses	-	Rs. 25,000/-
Medical Expenses	-	Rs. 2,03,000/-
Transportation Charges	-	Rs. 5,000/-
Damages to clothing and other articles	-	Rs. 5,000/-

The deceased was in hospital for six days. Therefore, we think it will be reasonable to award a sum of Rs.7,000/- towards pain and suffering. The total compensation works out to Rs.25,00,400/- and the same is rounded off to Rs.25,00,000/-

7.For the foregoing reasons, both the appeals are partly allowed. The compensation is fixed at Rs.25,00,000/- with 7.5% interest from the date of petition till the date of payment. The compensation is apportioned as follows: The 1st claimant, wife will take Rs.10,00,000/- with proportionate interest and entire costs, 2nd claimant, daughter of the deceased will take Rs.11,00,000/- with proportionate interest, father and mother will take the remaining amount of Rs.4,00,000/- with proportionate interest equally. The 5th claimant, sister is not entitled to any compensation as she is not the dependent. Pursuant to the interim order of this Court, the Insurance Company has already deposited a sum of Rs.20,00,000/-. Hence, the Insurance Company is directed to deposit the balance amount within a period of six (6) weeks from the date of receipt of a copy of this order. On such deposit, the Tribunal is directed to invest the share of the minor in an interest earning Fixed Deposit in any one of the nationalised bank till she attains majority. The major claimants would be entitled to withdraw their share of the compensation. The 1st claimant, wife is directed to withdraw quaterly interest from the Fixed Deposit for the maintenance of the minor. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/--

Assistant Registrar(CS iv)

//True Copy//

Sub Assistant Registrar

gsa

To
The Motor Accidents Claims Tribunal,
II Court of Small Causes, Chennai.

+2cc to Mr.M.Krishnamoorthy , Advocate SR.No. 63553,63554
+1cc to Mr. V.velu, Advocate SR.No. 63633

CMA Nos.2221 of 2016 and 15 of 2017
and C.M.P.No.76 of 2017

A.SK(31/01/2019)