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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.09.2018

CORAM:

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

CMA No.2049 of 2018 and
C.M.P.No.15970 of 2018

M/s.IFFCO - TOKIO General Insurance Co., Ltd.,
Thulasi Chambers, 3rd Floor,
No.195, T.V.Samy Road,
South R.S.Puram, Coimbatore - 641 002.

... Appellant/3rd
Respondent

-vs-

1.Abirami	..1 st Respondent/Petitioner
2.Karunakaran	..2 nd Respondent/Petitioner
3.C.Dineshkumar	..3 rd Respondent/1 st Respondent
4.S.Nirmala Samuvel	...4 th Respondent/2 nd Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 24.08.2017 made in M.C.O.P.No.326 of 2016 on the file of the Motor Accidents Claims Tribunal, II Additional District and Sessions Court, Tiruppur.

For Appellant : Mr.S.Arun Kumar
For Respondents: Mr.K.Myilsamy

J U D G M E N T

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

With the consent of both sides, the Civil Miscellaneous Appeal is taken up for disposal at the admission stage itself.

2. Mr.K.Myilsamy, learned counsel takes notice on behalf of respondents 1 and 2/claimants. The respondents 3 and 4, who are the Driver and the owner of the vehicle involved in the accident remained ex parte before the Tribunal. Hence, notice to them is dispensed with.

3. Heard Mr.S.Arun Kumar, learned counsel for the appellant Insurance Company.



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4. The challenge in this appeal is only to the quantum of compensation awarded by the Tribunal. The deceased was aged about 18 years. She was doing final year Diploma in Electronics and Communication Engineering. The Tribunal had fixed the notional monthly income at Rs.10,000/- adding 50% towards future prospects after deducting 50% towards personal expenses, fixed the Loss of dependency at Rs.16,20,000/-. The Tribunal has awarded Rs.2,00,000/- (Rs.1 lakh to each claimants) towards loss of Love and Affection, Rs.50,000/- towards Pain and Suffering and Rs.50,000/- towards attender charges.

5. Mr.Arunkumar, learned counsel for the appellant does not dispute the compensation awarded under the heads viz., Rs.31,000/- towards Medical Expenses, Rs.25,000/- towards Funeral Expenses and Rs.25,000/- towards Transportation Charges. He would however contend that the addition of 50% towards future prospects is against the 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]. He would also point out that the amounts awarded at Rs.2,00,000/- towards loss of Love and Affection; Rs.50,000/- towards Pain and Suffering and Rs.50,000/- towards Attender Charges are also on the higher side.

6. The learned counsel for the respondents 1 and 2 / claimants would contend that the Award on the whole is reasonable.

7. We have considered the rival submissions.

8. The award of 50% towards future prospects by the Tribunal cannot be sustained in view of the larger Bench judgment of the Hon'ble Supreme Court in Pranay Sethi (cited supra). Therefore, future prospects awarded by the Tribunal at 50% is reduced to 40%. We sustain the monthly notional income fixed by the Tribunal at Rs.10,000/-.

9. Thus, the Loss of dependency would be Rs.15,12,000/- (Rs.7,000 x 12 x 18). The amount awarded towards loss of Love and Affection at Rs.2,00,000/- is reduced to Rs.50,000/- (Rs.25,000/- to each claimants). The amounts awarded towards Funeral Expenses and Medical Expenses are confirmed. The amounts awarded by the Tribunal towards Pain and Suffering and Attender Charges are reduced to Rs.35,000/- and Rs.7,000/- respectively, considering the fact that the deceased was in the hospital only for two days. The Tribunal has not awarded any amount towards Loss of Estate. Hence, we award a sum of Rs.15,000/- towards Loss of Estate.



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10. Thus, the total compensation is as follows:-
Loss of Dependency : Rs.15,12,000/-
Loss of Love and Affection : Rs. 50,000/-
(Rs.25,000/- each)

Pain and Suffering	: Rs.	35,000/-
Medical Expenses	: Rs.	31,000/-
Funeral Expenses	: Rs.	25,000/-
Transportation	: Rs.	25,000/-
Attender Charges	: Rs.	7,000/-
Loss of Estate	: Rs.	15,000/-
Total		Rs. 17,00,000/-

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

(i) The award of the Tribunal is modified and reduced from Rs.20,00,000/- to Rs.17,00,000/-

(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) The first respondent - mother of the deceased will be entitled to Rs.10,00,000/- with proportionate interest and entire costs.

b) The second respondent - father of the deceased will be entitled to Rs.7,00,000/- with proportionate interest.

iv) The appellant - Insurance Company is directed to deposit the modified award amount, less the amount, if any, already deposited, along with accrued interest and costs within a period of six weeks from the date of receipt of a copy of this judgment. The claimants are permitted to withdraw the modified amount as awarded by this Court.

No costs. Consequently, connected miscellaneous petition is closed.

-s/d-

Assistant Registrar(CS-IX)

True Copy

Sub-Assistant Registrar

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To

1. The Motor Accidents Claims Tribunal,
- II Additional District and Sessions Court, Tiruppur.

2. The Section officer
VR Section, High Court, Madras 104. (2 copies)

- +1 CC to Mr.K.Myilsamy, Advocate sr 64442.
- +1 CC to Mr.S.Arunkumar, Advocate sr 65182.

CMA No.2049 of 2018

SP(12/12/2018)