IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 20.09.2018
CORAM:
THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
CMA.No.2834 of 2015
and
Cross.Obj.No.54 of 2018

CMA.No.2834 of 2015

The Manager,
M/s. SBI General Insurance Company Ltd.,
No.64, Ground Floor, Greams Dugar,
Greams Road, Chennai - 600 006.
... Appellant/2nd Respondent

-vs-

1. M.Mariyammal
2. M.Anand
3. M.Thangasamy
4. M.Selvakumar
5.M.Papathiyammal ...1to5 Respondents/Petitioner

6. K.Jayanthi ...6th Respondent/1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree in MCOP No.217 of 2013, dated 30.04.2015, on the file of the Motor Accidents Claims Tribunal, Subordinate Judge's Court, Tiruttani.

For Appellant : Mr.Mohan Babu
for Mr.N.Vijayarahavan
For Respondents: Mr.K.R.Ponnusamy for
M/s. Anand & Suryas for R1 to R5
No appearance for R6

Cross.Obj.No.54 of 2018
1. M.Mariyammal
2. M.Anand
3. M.Thangasamy
4. M.Selvakumar
5. M.Papathiyammal
...Appellants/Petitioner

-vs-

1.K.Jayanthi

2.The Manager,
M/s. SBI General Insurance Company Ltd.,
No.64, Ground Floor, Greams Dugar,
Greams Road, Chennai - 600 006.
...Respondents/Respondents

Cross Objections filed under Rule 22 of Order 41 of the Code of Civil Procedure 1908, against the judgment and decree in MCOP No.217 of 2013, dated 30.04.2015, on the file of the Motor Accidents Claims Tribunal, Subordinate Judge's Court, Tiruttani.

For Appellant : Mr.Mohan Babu for M/s.N.Vijayraghavan

For Respondets/
Cross Objectors : Mr.K.R.Ponnusamy for
M/s. Anand & Suryas

J U D G M E N T

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

While, the Insurance company challenges the award of the Tribunal dated 30.04.2015 made in M.C.O.P.No. 217 of 2013, contending that the quantum of compensation awarded for the death of one Madasamy in a road accident that occurred on 01.12.2012 as excessive. The claimants in M.C.O.P.No.217 of 2013 have filed cross objections enhancement of the compensation terming it to be lesser than the just and reasonable compensation.

2. According to the claimants, the deceased Madasamy was travelling in a Auto-rickshaw. On 01.12.2012 at about 11:30 p.m. when the Auto-rickshaw was proceeding on the extreme left side of the Chivada - Pannur Substation road, the Tractor bearing registration No.AP-03-AF-7975 with the Trailer bearing registration No.AP-03-AF-7976 collided against the Auto-rickshaw. Contending that the Tractor was driven in a rash and negligent manner, endangering public safety resulting in the death of the said Madasamy, the claimants sought for a compensation of Rs.25,00,000/-. According to the claimants, the deceased was working as a Car Cleaner in Dubai and was earning about Rs.16,000/- per month.

3. The claim petition was resisted by the Insurance company, contending that the accident did not occur in the manner set out in the claim petition. It was claimed that the

accident occurred only due to the reckless driving of the Auto-rickshaw in which the deceased was a passenger. The Insurance company, further contended that the owner and the insurer of the Auto-rickshaw are the necessary parties to the claim petition, as the driver of the Auto-rickshaw had also contributed to the accident. The particulars regarding income and employment of the deceased were also denied by the Insurance company. It was claimed that the compensation sought for is excessive.

4. The Tribunal which heard the original petition concluded that the accident occurred due to the rash and negligent driving of the Tractor. In coming to the conclusion, the Tribunal relied upon the evidence of PW2, eye-witness, First Information Report marked as Ex.P1 and the Charge Sheet marked as Ex.P3. The Tribunal also took note of the fact that the Insurance company did not examine either the driver or the owner of the Tractor to prove the absence of negligence on the part of the Tractor driver or negligence on the part of the driver of the Auto-rickhaw.

5. On the quantum, the Tribunal fixed the income of the deceased at Rs.16,000/- per month based on the salary certificate Ex.P8, which was issued by the employer at Dubai. The Tribunal adopted a multiplier of 15 after deducting 1/5th towards personal expenses, since, the deceased had left behind five dependents and applying a multiplier of 15, the Tribunal arrived at the total loss of dependency at Rs.23,04,000/-. The Tribunal also awarded a sum of Rs.1,00,000/- towards loss of love and affection to the children and Rs.50,000/- towards loss of consortium to the wife, Rs.10,000/- towards funeral expenses. Thus, the Tribunal arrived at the total compensation of Rs.24,64,000/-.

6. Aggrieved, the Insurance company has filed an appeal and the claimants have sought for enhancement by way of Cross objections. Since, the claimants had sought for only a sum of Rs.25,00,000/- in the original claim petition, claimants had filed CMP No.18023 of 2016 seeking enhancement of the claim amount to Rs.35,00,000/-. The said petition has been ordered directing the claimants to pay court fees for the enhanced amount claimed by them.

7. We have heard Mr.Mohan Babu learned counsel for the appellant Insurance company and Mr.K.R.Ponnusamy for Anand & Surya for respondents 1 to 5/claimants. Though the 6th respondent, the owner of the Tractor, has been served he does not appear either in person or through counsel.

8. Mr.Mohan Babu learned counsel for the Insurance company would restrict objections only to the quantum of compensation arrived at by the Tribunal. He would submit that as per the salary certificate Ex.P8 produced before the Tribunal, the deceased was employed only till March 2012 and the

accident had occurred in December 2012. Therefore, according to him, it should be presumed that the deceased was jobless between April 2012 and November 2012. He would, further submit that the Tribunal was not justified in taking the salary as Rs.16,000/- per month. He would also fault the Tribunal for awarding a sum of Rs.1,00,000/- towards loss of love and affection and Rs.50,000/- towards loss of consortium on the ground that they are over and above the amounts suggested by the Larger Bench of the Hon'ble Supreme Court in National Insurance company Vs. Pranay Sethi reported in 2018 1 LW 331.

9. Per contra, Mr.K.R.Ponnusamy learned counsel for the respondents 1 to 5/cross objectors would contend that there is no material to disbelieve Ex.P8, salary certificate. The passport of deceased was also marked as Ex.P10. He would contend that the Tribunal was justified in fixing Rs.16,000/- as monthly income based on Ex.P8 the salary certificate. He would, however, contend that the Tribunal should have added 40% towards future prospects relying on the Judgment of Larger Bench of the High Court in National Insurance Company Vs. Pranay Sethi cited supra.

10. We have heard the rival contentions. We do not find any merit in the contention of the learned counsel for the appellant Insurance company that the Tribunal should have rejected Ex.P8 as it has not been called question. Ex.P8 reveals that the deceased was getting a salary of Rs.16,000/- up to March 2012. The fact that he came back to India did not go back to Dubai till December in our considered opinion cannot have the effect of nullifying Ex.P8. We, therefore, affirm the conclusion of the Tribunal in fixing the monthly income at Rs.16,000/-. As rightly pointed out by the learned counsel for claimants/cross objectors, the Tribunal ought to have added a certain percentage of income towards future prospects. Though, the Larger Bench of the Hon'ble Supreme Court had suggested an addition of 40% of the income towards future prospects in case of the deceased being in the age group of 30 to 40 years, we find that the said addition was proposed, taking into the economic considerations prevailing in India. The same cannot be applied for a person who is employed abroad and drawing salary in foreign currency. We are, therefore, of the considered opinion that addition of 30% towards future prospects would be just and reasonable.

11. In the light of the above, the award of the Tribunal on the ground of loss of dependency will have to be reworked and the same reworked as follows:

The monthly income is taken at Rs.16,000/-, adding 30% towards future prospects, the monthly income for the purposes of fixing the loss of dependency would be Rs.20,800, deducting 1/5th towards personal expenses and adopting a multiplier of 16, the total loss of dependency would work out to Rs.31,94,880/- (20,800 x 1/5 x 12 x 16). The Tribunal has awarded Rs.1,00,000/- towards loss of love and affection for the three sons namely claimants 2,3 and 4. All of them are majors aged about 23, 21 and 19 years at the time of the accident, therefore the amount awarded towards loss of love and affection is reduced to Rs.60,000/-, at Rs.20,000/- each. The amount awarded towards loss of consortium to the wife is reduced to Rs.40,000/-. The Tribunal has not awarded any amount towards loss of love and affection to the mother of the deceased, a sum of Rs.10,000/- is awarded towards loss of love and affection to the mother of the deceased. The amount awarded towards funeral expenses is enhanced to Rs.25,000/- from Rs.10,000/-. The Tribunal has not awarded any amount towards loss of estate, transportation charges and damage to clothing. We, therefore, award a sum of Rs.15,000/- towards loss of estate, Rs.5,000/- towards transportation and Rs.5,000/- towards damage to clothing. Thus, the total award works out to Rs.33,54,880/-, and the same is rounded off to Rs.33,55,000/-. The award will carry interest at 7.5% per annum. The claimants shall pay the court fee for the enhancement amount. In fine the appeal is dismissed without costs and the Cross Objection is allowed with proportionate costs.

12. The Insurance Company is directed to deposit the enhanced award amount less the amount, if any, already deposited, within a period of 6 weeks from the date of receipt of the copy of the judgment. The award is apportioned as follows:

The 1st respondent, wife of the deceased will take Rs.13,55,000/- with proportionate interest and the entire costs awarded by the Tribunal and in the Cross objection. The 3 sons namely, respondents 2,3 and 4 will each take Rs.6,00,000/- with proportionate interest. The 5th respondent, mother of the deceased will take Rs.2,00,000/- with proportionate interest. Since all the claimants are majors, they are permitted to withdraw the award amount on such deposit. There shall be no order has to cost in this appeal.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

kkn
To
1. The Motor Accidents Claims Tribunal,
Subordinate Judge's Court,
Tiruttani.

Copy to
The Section Officer,
VR Section, High Court,
Madras.

+1cc to Mr.M.B.Gopalan, Advocate, S.R.No.65612

+1cc to Mr.*Anand and Suryas, Advocate, S.R.No.65635

CMA.No.2834 of 2015
and
Cross.Obj.No.54 of 2018

RGN(CO)
GSP(08/02/2019)