IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.09.2018

CORAM:

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

C.M.A. No.2635 of 2016
and
C.M.P.No.18804 of 2016

Royal Sundaram Alliance Insurance Company Limited,
Sundaram Towers,
No.45 and 46, Whites Road,
Royapettah, Chennai - 600 014.
... Appellant

-vs-

1.Nita M.Mehta
2.Arjun Mehta
3.G.Palaniammal
... Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree in MCOP.No.1626 of 2013 dated 23.06.2016 on the file of the Motor Accidents Claims Tribunal, Special Subordinate Court No.II, Chennai.

For Appellant : Mr.M.B.Raghavan

For Respondents: Mr.N.Veerasamy for R1 and R2
R3 - No appearance

J U D G M E N T
[Judgment of the Court was delivered by R.SUBRAMANIAN,J.]

The Insurance Company is the appellant. The claimants sought for a compensation of Rs.28,00,000/- for the death of one Mukesh B Metha aged about 54 years in a road accident that occurred on 21.07.2012.

2. The factum of the accident and the negligence aspects are not in dispute. Mr.M.B.Raghavan, learned counsel appearing for the Insurance Company would restrict his challenge only to the quantum of compensation. Mr.M.B.Raghavan, would contend that the

claimants had in the claim petition stated that the monthly income of the deceased was Rs.12,500/-, however during the course of the proceedings, the claimants had produced a salary certificate as Ex.P14 disclosing that he has been paid a salary of Rs.25,000/- per month. PW2 was examined to prove the said salary certificate. In the proof affidavit, PW2 had claimed that he is the Proprietor of a Firm called Jyoti Communication, which is engaged in servicing mobile handsets. It is his further evidence that the Firm has been paying the deceased a salary of Rs.25,000/- per month. However, he had said that the Firm is not an Income tax assessee. Pointing out these discrepancies in the evidence, Mr.M.B.Raghavan, would submit that the Tribunal ought not to have accepted the salary certificate.

3. Per contra Mr.N.Veerasamy, learned counsel appearing for the respondents/ claimants would contend that whatever was stated in the claim petition was only a basic salary and the salary certificate produced as Ex.P14 reflects the salary with other emoluments.

4. We have considered the rival submissions. We are unable to agree with the learned counsel for the respondents/ claimants. It is clear from the evidence of PW2, that the salary certificate marked as Ex.P14 has been produced only for the purpose of claiming compensation. We therefore reject the said salary certificate.

5. The claimants have claimed income of the deceased at Rs.12,500/- per month at the time of the accident. The deceased was a Commerce graduate and aged about 54 years working as an Accountant-cum-Manager. We are therefore of the considered opinion that the income could be taken safely at Rs.15,000/- per month, adding 10% towards future prospects, the monthly income for the purpose of calculation of pecuniary loss would be Rs.16,500/-. We have to deduct 1/3rd towards personal expenses of the deceased. Thus calculated, the annual loss of dependency would be 16,500/- x 12 x 2/3 = Rs.1,32,000/-. The deceased being aged about 54 years at the time of the accident, the multiplier is '11'. Thus calculated the compensation for loss of dependency works out to Rs.14,52,000/-. The Tribunal has awarded Rs.1,20,176/- towards medical expenses based on the medical bills and the same is confirmed. The Tribunal has awarded a sum of Rs.5,000/- towards transportation charges, Rs.25,000/- towards funeral expenses. The awards on the said heads are also confirmed.

6. The Tribunal has awarded a sum of Rs.1,00,000/- towards loss of love and affection to the 2nd claimant, Rs.1,00,000/- towards loss of estate, Rs.1,00,000/- towards loss of consortium. These awards are contrary to the decision of the larger Bench of the Hon'ble Supreme Court in National Insurance

Co. Ltd Vs. Pranay Sethi and others reported in 2018 (1) LW 331, hence they are reduced as follows:-

Rs.40,000/- towards loss of consortium, Rs.40,000/- towards loss of love and affection, Rs.15,000/- towards loss of estate. Thus the total award works out to Rs.16,97,176/- and the same is rounded of to Rs.17,00,000/- with 7.5% interest.

7. It is stated that the Insurance Company had deposited 50% of the compensation and the claimants have also withdrawn the said amount. The claimants will share the compensation equally. The Insurance Company will deposit the balance amount within a period of four (4) weeks from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petition is also closed.

-s/d-
Assistant Registrar(CS-II)

True Copy

Sub-Assistant Registrar

dsa

To
1. The Motor Accidents Claims Tribunal,
Special Subordinate Court No.II, Chennai.

2. The Section officer
VR Section, High court, Madras 104.

+1 cc to Mr.M.B. Gopalan Associate sr 62765.
+1 cc to Mr.N. Veerasamy, Advocate sr 61618.

C.M.A. No.2635 of 2016

RGN(CO)
SP(16/10/2018)