IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 15.02.2018

Coram

The Honourable Mr. Justice S.BASKARAN

Civil Miscellaneous Appeal Nos.1980 and 1981 of 2017

Reliance General Insurance Company Ltd.,
Sri Lakshmi Complex, First Floor,
Bharathi Vidhi, Omalur Main Road,
Swarnapuri, Salem - 636 004.

... Appellant/3rd Respondent (in both appeals)

..vs..

1.Velu
2.Gurunathan
3.Ranjithkumar
4.Boopathy
5.Kaliyammal
6.Deivanai
7.Valli
8.K.Balamurugan

9.P.Thangammal ... Respondents 1 to 9 in cma.1980/17 & 1981/17/ Petitioners

PRAYER IN CMA.NO.1980 OF 2017 This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the Fair and Decreetal order dated 03.03.2016 made in MCOP.No.375 of 2013 on the file of the Motor Accident Claims Tribunal/Sub Judge, Bhavani.

PRAYER IN CMA.NO.1981 OF 2017 This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the Fair and Decreetal order dated 03.03.2016 made in MCOP.No.377 of 2013 on the file of the Motor Accident Claims Tribunal/Sub Judge, Bhavani.

For Appellant : Mr.S.Arunkumar

For Respondents : Mr.MA.P.Thangavel for R1 to R7

COMMON JUDGMENT

Aggrieved over the finding of the Tribunal dated 03.03.2016 made in M.C.O.P.Nos.375 and 377 of 2017, the present appeals have been filed by the respondent-Insurance Company to set aside the award passed by the Tribunal.

2. For sake of convenience, the parties will be hereinafter referred to in this judgment as arrayed before the Tribunal.

3. The case of the petitioners is that on 29.03.2013 at about 3.00 pm., while the deceased Gurusamy was proceeding in his two wheeler bearing Registration No.TN-22-Z-8588, along with his wife, the deceased Chidhayee as pillion rider, in Anthiyur - Ammapettai Road, near Maruthi Nagar Sector, the first respondent lorry bearing Registration No.KA-01-C-3175, came at high speed from east to west on the wrong side of the road and dashed against the vehicle in which the deceased were travelling resulting in the death of both the persons. According to the petitioners, the negligent of the first respondent lorry driver alone caused the accident. The petitioners who are sons and daughters of the deceased persons, in MCOP.No.377 of 2013 contended that the deceased was their father and he was aged about 60 years and earning a sum of Rs.10,000/- per month by working as agriculture cooli. Due to the sudden death of their father, his contribution to the family has suffered. Hence, they seek compensation of Rs.10,00,000/- from the respondents, who are the owner and insurer of the offending vehicle. Similarly, as petitioners in MCOP.No.375 of 2013 contended that the deceased was their mother, she was aged about 55 years at the time of accident and she was earning a sum of Rs.10,000/- per month by working as cooli. Due to the sudden death of their mother, the petitioners have lost their carry mother and also her contribution to the family. Hence, the petitioners seek compensation of Rs.10,00,000/- for their deceased mother.

4. On the other hand, opposing the claim petition, the third respondent-Insurance company filed a counter stating that the manner of the accident has to be established by the petitioners. Further, the driver of the first respondent lorry was not having valid licence. The vehicle have no papers to operate on the road. In such circumstances, the third respondent-Insurance Company is not responsible to pay any compensation. Hence, they seek dismissal of both petitions.

5. In M.C.O.P.No.377 of 2013, before the Tribunal, the petitioners examined P.W.1 and P.W.2 and produced documents Ex.P1 to Ex.P7 to substantiate their claim. On the side of the respondents, neither oral evidence nor documentary evidence was produced. The Tribunal, on the basis of available materials on

record, fixed the negligence of the first respondent lorry driver as the sole reason for the accident and awarded a sum of Rs.5,28,200/- as compensation. Aggrieved over the said findings of the Tribunal, the third respondent -Insurance Company has come forward with this appeal in CMA.No.1981 of 2017 seeking to set aside the award passed by the Tribunal.

6. In M.C.O.P.No.375 of 2016, before the Tribunal, the petitioners examined P.W.1 and P.W.2 and produced documents Ex.P1 to Ex.P7 to substantiate their claim. On the side of the respondents, neither oral evidence nor documentary evidence was produced. The Tribunal, on the basis of available materials on record, fixed the negligence of the first respondent lorry driver as the sole reason for the accident and awarded a sum of Rs.7,61,600/- as compensation. Aggrieved over the said findings of the Tribunal, the third respondent -Insurance Company has come forward with this appeal in CMA.No.1988 of 2017 seeking to set aside the award passed by the Tribunal.

7. I have heard the learned counsel appearing for the appellant and the learned counsel appearing for the second respondent and perused the materials available on record.

8. The learned counsel appearing for the third respondent-Insurance Company contends that the Tribunal has not considered the materials available on record properly and the multiplier applied by the Tribunal is not correct. The Tribunal also failed to consider the fact that the deceased only was dependent on the petitioners herein and as such there is no question of loss of income suffered by the petitioners. The reasons stated by the Tribunal for awarding compensation is not proper and the award itself is on the higher side. As such the same is unsustainable. Thus, the third respondent Insurance Company seeks to entertain both the appeals and set aside the award passed by the Tribunal.

9. On the other hand, the learned counsel appearing for the petitioners/claimants contends that the Tribunal without appreciating the evidence on record properly, awarded a lesser sum as compensation and as such the award amount is to be enhanced to meet the ends of justice. Thus, the petitioners seek dismissal of both appeals.



10. According to the petitioners/claimants, the deceased are their parents. On the date of occurrence, while the deceased were going in a two wheeler, the first respondent lorry came at high speed and dashed against them resulting in death of both. The eye witness to the occurrence P.W.2 Muniya Gounder has clearly stated about the manner in which the accident took place. He clearly stated that the offending vehicle came at

high speed and dashed against the vehicle in which the deceased were travelling. Nothing is extracted during the cross examination of P.W.2 to discredit his evidence. Further, the police after registering the case against the first respondent lorry diver under Ex.P1 first information report investigated and laid charge sheet Ex.P6 accusing the said lorry driver of negligence in causing the accident. The respondent has not chosen to let in any contra evidence to discredit the version of the petitioners about the nature of accident. In such circumstances, on the basis of P.W.2 oral evidence and Ex.P1, Ex.P2, Ex.P3 and Ex.P6, it is clear that the negligence of the first respondent lorry driver alone resulted in the accident as claimed by the petitioners. Hence, the finding of the Tribunal in that regard is just and proper.

11. MCOP.NO.377 of 2013 in CMA.No.1981 of 2017:-

The petitioners contended that the deceased Gurusamy was their father and he was aged about 60 years at the time of the accident. The petitioners has not produced any documentary proof to prove the age of the deceased Gurusamy. As per Ex.P5 Postmortem Report, the age of the deceased is stated to be 65 years. Thus, the age of the deceased is fixed at 65.

11.1. Following the Apex Court Ruling reported in 2009(2) TN MAC 1 (SC) in Smt.SARLA VERMA AND OTHERS Vs. DELHI TRANSPORT CORPORATION AND ANOTHER, the multiplier to be applied for a person aged 65 is 7 years. In the said ruling, it has held as follows:-

> 21. We therefore hold that the multiplier to be used should be as mentioned in column (4) of the Table above (prepared by applying Susamma Thomas, Trilok Chandra and Charlie), which starts with an operative multiplier of 18 (for the age groups of 15 to 20 and 21 to 25 years), reduced by one unit for every five years, that is M-17 for 26 to 30 years, M-16 for 31 to 35 years, M-15 for 36 to 40 years, M-14 for 41 to 45 years, and M-13 for 46 to 50 years, then reduced by two units for every five years, that is, M-11 for 51 to 55 years, M-9 for 56 to 60 years, M-7 for 61 to 65 years and M-5 for 66 to 70 years.



11.2. The deceased is stated to be employed as agricultural cooli and earned a sum of Rs.10,000/- per month. However, there is no documentary proof or independent evidence to support the same. Considering the age of the deceased and other factors, it will be appropriate to fix the monthly income of the deceased at Rs.7,000/-. Admittedly, the petitioners are major sons and daughters of the deceased and the petitioners 5, 6 and 7 are married persons and living with their husbands. As such, the petitioners 1 to 4 alone can be considered to have lived with the deceased. In such circumstances, it will be appropriate to deduct 1/4th amount towards the personal expenses of the deceased. Thus, the monthly income will be Rs.7,000/- - 1/4th amount of Rs.1,750/- = Rs.5,250/-. Hence, a sum of Rs.5,250/- is taken as monthly income of the deceased and the loss of dependency is calculated as follows:-

Rs.5,250/- x 12 = Rs.63,000/- x 7 = Rs.4,41,000/-.

11.3. Following the Apex Court decision reported in 2017 (2) TN MAG 609 (SC) NATIONAL INSURANCE CO. LTD., Vs. PRANAY SETHI AND OTHERS, towards loss of estate, loss of consortium and funeral expenses, this Court is inclined to modify the compensation as under:-

| | | |
|---|---|---|
| Loss of Estate | = | Rs. 15,000.00 |
| Funeral Expenses | = | Rs. 15,000.00 |

11.4. The Tribunal has awarded a sum of Rs.1,05,000/- as compensation for loss of love and affection. The learned counsel appearing for the third respondent contended that following the Apex Court decision reported in 2017 (2) TN MAG 609 (SC) NATIONAL INSURANCE CO. LTD., Vs. PRANAY SETHI AND OTHERS, no amount can be awarded under the head of loss of love affection.

11.5. On the other hand, the learned counsel appearing for the petitioners/claimants contended that there is no bar or impediment in the Apex Court Ruling, to award compensation under the head of loss of love and affection. In support of the same, he relied upon the Judgment of the Division Bench of this Court rendered in CMA.No.1351 of 2017 dated 06.11.2017 and contended that the amount awarded by the Tribunal under the head of loss of love and affection need not be disturbed.

11.6. However, considering the Apex Court ruling relied upon by the learned counsel appearing for the third respondent-Insurance Company, wherein no amount was provided under the head of loss of love and affection, this Court is of the view that the petitioners are not entitled for the amount under the said head. Hence, the finding of the Tribunal granting Rs.1,05,000/- under the head of loss of love and affection is set aside.

12. Accordingly, the compensation warded by the Tribunal is modified as follows:-

| Sl No | Heads | Amount awarded by the Tribunal | Awarded by this Court |
|---|---|---|---|
| 1. | Loss of income | 4,03,200.00 | 4,41,000.00 |
| 2. | Loss of love and affection | 1,05,000.00 | - |
| 3. | Loss of Estate | | 15,000.00 |
| 4. | Funeral Expenses | 20,000.00 | 15,000.00 |
| | Total | 5,28,200.00 | 4,71,000.00 |

13. MCOP.NO.375 of 2013 in CMA.No.1980 of 2017:-

The petitioners contended that the deceased Chidhayee was their mother and she was aged about 55 years at the time of the accident. The petitioners has not produced any documentary proof to prove the age of the deceased Chidhayee. As per Ex.P5 Postmortem Report, the age of the deceased stated to be 55 years. Thus, the age of the deceased has been fixed at 55.

13.1. Following the Apex Court Ruling reported in 2009(2) TN MAC 1 (SC) in Smt.SARLA VERMA AND OTHERS Vs. DELHI TRANSPORT CORPORATION AND ANOTHER, the multiplier to be applied for a person aged 55 years is 11.

13.2. The deceased was stated to be employed as agricultural cooli and earned a sum of Rs.10,000/- per month. However, there is no documentary proof or independent evidence to support the same. Considering the age of the deceased and other factors, it will appropriate to fix the monthly income of the deceased at Rs.7,000/-. Admittedly, the petitioners are major sons and daughters of the deceased and the petitioners 5, 6 and 7 are married persons and living with their husbands. As such the petitioners 1 to 4 alone can be considered to have lived with the deceased. In such circumstances, it will appropriate to deduct 1/4th amount towards the personal income of the deceased. Thus, the monthly income will be Rs.7,000/- - 1/4th amount of Rs.1,750/- = Rs.5,250/-. Hence, a sum of Rs.5,250/- is taken as monthly income of the deceased and the loss of dependency is calculated as follows:-

Rs.5,250/- x 12 = Rs.63,000/- x 11 = Rs.6,93,000/-.

13.3. Following the Apex Court decision reported in 2017 (2) TN MAG 609 (SC) NATIONAL INSURANCE CO. LTD., Vs. PRANAY SETHI AND OTHERS, towards loss of estate, loss of consortium and funeral expenses, this Court is inclined to modify the compensation as under:-

| | | |
|---|---|---|
| Loss of Estate | = | Rs. 15,000.00 |
| Funeral Expenses | = | Rs. 15,000.00 |

13.4. The Tribunal has awarded a sum of Rs.1,05,000/- as compensation for loss of love and affection. The learned counsel appearing for the third respondent contended that following the Apex Court decision reported in 2017 (2) TN MAG 609 (SC) NATIONAL INSURANCE CO. LTD., Vs. PRANAY SETHI AND OTHERS, no amount can be awarded under the head of loss of love affection.

13.5. On the other hand, the learned counsel appearing for the petitioners/claimants contended that there is no bar or impediment in the Apex Court Ruling to award compensation under the head of loss of love and affection. In support of the same, he relied upon the Judgment of the Division Bench of this Court rendered in CMA.No.1351 of 2017 dated 06.11.2017, contended that the amount awarded by the Tribunal under the head of loss of love and affection need not be disturbed.

13.6. However, considering the the Apex Court ruling relied upon by the learned counsel appearing for the third respondent-Insurance Company and the fact that no amount was provided under the head of loss of love and affection, this Court is of the view that the petitioners are not entitled for the amount under the said head. Hence, the finding of the Tribunal granting Rs.1,05,000/- under the head of loss of love and affection is set aside.

14. Accordingly, the compensation warded by the Tribunal is modified as follows:-

| Sl No | Heads | Amount awarded by the Tribunal | Awarded by this Court |
|---|---|---|---|
| 1. | Loss of income | 6,36,600.00 | 6,93,000.00 |
| 2. | Loss of love and affection | 1,05,000.00 | - |
| 3. | Loss of Estate | | 15,000.00 |
| 4. | Funeral Expenses | 20,000.00 | 15,000.00 |
| | Total | 7,61,600.00 | 7,23,000.00 |

15. C.M.A.No.1981 of 2017:

In the result, the Civil Miscellaneous Appeal is partly allowed with costs. The total compensation of Rs.5,28,200/- awarded by the Tribunal is reduced to Rs.4,71,000/-. The appellant-Insurance Company is directed to deposit the entire award amount as modified by this Court with interest at the rate of 7.5% p.a., after deducting the amount that has already been deposited by them within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the petitioners/claimants are entitled to equal share in the award amount. The petitioners/claimants are permitted to withdraw their respective share with accrued interest by filing necessary application before the Tribunal.

16. C.M.A.No.1980 of 2017:

In the result, the Civil Miscellaneous Appeal is partly allowed with costs. The total compensation of Rs.7,61,600/- awarded by the Tribunal is reduced to Rs.7,23,000/-. The appellant-Insurance Company is directed to deposit the entire award amount as modified by this Court with interest at the rate of 7.5% p.a., after deducting the amount that has already been deposited by them within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the petitioners/claimants are entitled to equal share in the award amount. The petitioners/claimants are permitted to withdraw their respective share with accrued interest by filing necessary application before the Tribunal.

Sd/-
Assistant Registrar(CS-)

//True Copy//

Sub Assistant Registrar

rrg
To

The Sub Judge,
The Motor Accident Claims Tribunal
Bhavani.

+2cc to Mr.S.ARUNKUMAR, Advocate, S.R.No. 12212 & 12213
+2cc to Mr.MA.P.THANGAVEL Advocate, S.R.No. 11824 & 11821

C.M.A.Nos.1980 and 1981 of 2017

SSI(CO)
TR(02/04/2018)