IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.09.2018

CORAM:

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

C.M.A. No.2098 of 2017

United India Insurance Company Ltd.,
No.1119/B, M.C.Road,
Mandya - 571 401, Mandya. ... Appellant/2nd Respondent

-vs-

1.Santha
2.Minor S.V.Kabil Karthikeya
[Minor represented by his mother and guardian Santha]
3.Ramanamma
4.Venkatayaiah ..Respondents 1 to 4/Petitioners
5.Pathima Tabassum
... Respondents/Respondent 1

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the award and decree dated 08.12.2016 made in MCOP.No.1038 of 2013 on the file of the Motor Accident Claims Tribunal (III Additional District Judge), Tiruvallur at Poonamallee.

For Appellant : Mr.D.Bhaskaran

For Respondents: Ms.N.R.Jasmine Padma
for M/s.L.Chandrakumar for R1 to R4
R5 - exparte

J U D G M E N T

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

1. The Insurance Company which suffered an award for payment of a sum of Rs.76,36,136/- is the appellant.

2. Mr.D.Bhaskaran, learned counsel appearing for the appellant Insurance Company would submit that he is not challenging the finding of the Tribunal on the ground of negligence and liability and he would restrict his submissions to the quantum of compensation awarded by the Tribunal.

3. The claimants who are the parents of the deceased sough for a compensation of Rs.90,00,000/- for the death of one

Venkataramaniah in a motor accident that occurred on 30.09.2012 at about 7.30 pm. The claim was made on the premise that the claimant is a Post Graduate in Geography along with B.Ed., working as a Senior Academic Delivery Manager with TATA Interactive Systems, drawing a monthly salary of Rs.67,000/-. The claimants assessed the loss at Rs.1,87,00,000/-, but restricted their claim to Rs.90,00,000/-.

4. The claim was resisted by the Insurance Company contending that the deceased was negligent and the accident occurred due to the mistake of the deceased. On the quantum, the Insurance Company contended that the compensation sought for by the claimants is exaggerated.

5. The Tribunal concluded that the accident occurred due to the rash and negligent driving of the lorry by its driver. In coming to the said conclusion, the Tribunal relied upon the FIR and the evidence of PW2 who was an eye witness. The Tribunal also faulted the Insurance Company for not examining the driver of the lorry. Rightly, the counsel for the Insurance Company does not challenge the said finding of the Tribunal. There is no dispute about the existence of the insurance cover on the date of the accident.

6. On the quantum, the salary certificate of the deceased was produced as Ex.P16 and Form 16 and Income Tax returns were produced as Ex.P18. An employee of the employer viz., TATA Interactive Systems was also examined to prove the salary certificate. From Ex.P16, it could be gathered that the deceased was drawing a monthly salary of Rs.67,433/- after deduction of income tax, profession tax and provident fund contribution, the Tribunal taking note of the fact that the authenticity of the Ex.P16 has not, in any manner, been denied by the Insurance Company, accepted the said document. However, taking note of the fact that the deceased had worked only for 1 ½ months, took the income of the deceased at Rs.53,000/- per month. The Tribunal deducted 1/3rd towards his personal expenses and arrived at a monthly loss of dependency at Rs.35,334/-. Applying the multiplier of '17', the Tribunal had arrived at the total loss of dependency at Rs.72,08,136/-. The Tribunal had granted a sum of Rs.1,00,000/- towards loss of consortium and Rs.1,00,000/- towards loss of love and affection adding Rs.25,000/- towards funeral expenses, the Tribunal awarded a total compensation of Rs.76,33,136/-. Aggrieved by the said award, the Insurance Company is on appeal.

7. Mr.D.Bhaskaran, learned counsel appearing for the Insurance Company would contend that Ex.P16 discloses the salary for entire period of 40 days, hence, according to him, the Tribunal was not right in taking a sum of Rs.67,433/- as monthly income. He would also draw our attention to the contents of the

salary like special allowance and travelling allowance, which according to him, should have been excluded by the Tribunal.

8. We are unable to accept the said submission of the learned counsel, inasmuch as the special allowance and travelling allowance are essential part of the income and it is seen from Ex.P16 that the salary reflected in the said document is the salary for 30 days and not for 40 days as claimed by the counsel. An attempt in a claim petition filed under Section 166 of the Motor Vehicles Act should be to award just and reasonable compensation. If Ex.P16 is examined with the above object in mind, we find that the Tribunal was not wrong in accepting Ex.P16. Even while accepting Ex.P16, the Tribunal has taken only Rs.53,000/- as monthly income and has also not added any amount towards future prospects. The contention of the Insurance Company that the basic salary should be taken to calculate the loss of dependency has been rightly rejected by the Tribunal.

9. Even though Mr.D.Bhaskaran would contend that the compensation granted towards loss of love and affection and loss of consortium are on the higher side, relying upon the judgment of the Hon'ble Supreme Court in National Insurance Co. Ltd Vs. Pranay Sethi and others reported in 2018 (1) LW 331, we do not think the award requires interference at our hands, because the Tribunal has not added any amount towards future prospects. The deceased was aged about 34 years at the time of the accident, therefore, in view of the judgment of the Hon'ble Supreme Court in National Insurance Co. Ltd Vs. Pranay Sethi and others referred to supra, atleast 40% should have been added towards future prospects. We do not propose to interfere with the award inasmuch as the claimants are not on appeal.

10. In fine, the appeal fails and it is dismissed. The Insurance Company is granted six (6) weeks time to deposit the balance amount of the compensation awarded less the amount if any already deposited. The award will carry interest at 7.5% per annum. The apportionment made by the Tribunal is sustained. However, there will be no order as to costs.

s/d-
Assistant Registrar(CS VII)

True Copy

Sub-Assistant Registrar

dsa

To

1.The Motor Accident Claims Tribunal,
III Additional District Judge,
Tiruvallur, Poonamallee.

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

+1 CC to Mr.D. Bhaskaran, Advocate sr 62441.
+1 CC to Mr.L. Chandrakumar, Advocate sr 62573.

C.M.A. No.2098 of 2017

BS(CO)
SP(15/10/2018)