IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.02.2018

CORAM

THE HONOURABLE MR. JUSTICE R. SUBBIAH

AND

THE HONOURABLE MR. JUSTICE P.D. AUDIKESAVALU

C.M.A. No. 2562 of 2014

&

M.P. No. 1 of 2014

M/s. Reliance General Insurance Company Ltd.,
No. 570, Naigaum Cross Road,
Next to Royal Industrial Estate,
Wadaia (W), Mumbai - 400 031. ..Appellant/3rd Respondent

Vs.

1. D. Jothi
2. D. Balasukumar
3. D. Sumathi
4. D. Sundari
5. P. Muniyammal
6. V. Perumal .. Respondents 1 to 6/ claimants 1 to 6
7. R. Selvaraj
8. R. Thangavel ..Respondents 7 and 8/ Respndents 1 & 2

Prayer: Civil Miscellaneous Appeal filed under section 173 of MV Act, 1988 as against the award and decree dated 19.12.2013 made in M.C.O.P. No. 58 of 2011 by the Motor Accidents Claims Tribunal (Sub Judge), Hosur.

For Appellant :: Mr.S. Arunkumar

For Respondents :: Mr.S. Lakshmanasamy for R1 to R6

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J U D G M E N T

(Judgment of the Court was delivered by R. SUBBIAH,J.)

Questioning the quantum of compensation awarded by the Motor Accidents Claims Tribunal (Sub Judge), Hosur, in and by award dated 19.12.2013 in M.C.O.P. No. 58 of 2011, the present appeal has been filed by the Insurance Company.

2. Respondents 1 to 6, who are wife, son, two daughters and parents of the deceased, are the claimants before the Tribunal.

3. The deceased, in this case, is one P. Danaseelan, who met with an accident, on 09.12.2010, while riding his two-wheeler bearing Registration No. TN-29-L-609, when a lorry bearing Registration No. KA-07-4696, belonging to the 8th respondent and insured with the appellant, hit the backside of the two-wheeler, due to which, the said P. Danaseelan sustained grievous injuries, resulting in his death subsequently. Stating that the accident had occurred only due to the rash and negligent driving by the driver of the lorry, the claim petition was filed seeking compensation to the tune of Rs.50 lakhs. The Tribunal, on an overall appraisal of the materials on record, held that the accident had occurred only due to the rash and negligent driving by the driver of the lorry and awarded Rs. 33,76,440/- as compensation to the claimants. As against the same, the Insurance Company has preferred the present appeal.

4. Since the present appeal has been filed questioning only the quantum of compensation awarded by the Tribunal, we are not inclined to traverse into other aspects of the award.

5. As far as the quantum of compensation awarded by the Tribunal is concerned, the case of the claimants before the Tribunal was that at the time of accident, the deceased was working as an Operator in TTK Prestige Company Limited in SIPCOT, Hosur, earning a sum of Rs. 23,006/- per month and was aged about 46 years. However, the Tribunal, based on Ex-R1, which is Form-16 relating to deceased Danaseelan, according to which, his gross salary for the year 01.04.2009 to 31.03.2010 was Rs.2,22,018/- and taking note of the fact that the accident had occurred about 9 months after the period covered under Ex-R1 and in the absence of salary certificate produced for the month of December, 2010, took Rs.2,22,000/- as the gross annual income of the deceased. Considering the number of dependants, deducted one-fifth towards "Personal Expenses" of the deceased and arrived at Rs.1,77,600/- as "Gross Loss of Dependency" i.e,

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Gross Annual Income :: Rs.2,22,000/-
Less: One-fifth towards
"Personal Expenses" :: Rs.2,22,000/- (-) 1/5 (Rs.2,22,000/-)

:: Rs.2,22,000 (-) Rs.44,400/-

Annual Contribution of
the deceased to his
family :: Rs.1,77,600/-

Since the deceased was aged about 46 years, the Tribunal adopted multiplier 13 and and arrived at "Loss of Dependency" as follows:

Annual Contribution :: Rs.1,77,600/-
:: Rs.1,77,600 x 13
Loss of Dependency:: Rs.23,08,800/-

The Tribunal also allowed 30% addition towards "Future Prospects", being Rs.6,92,640/-. Besides, Rs.2,50,000/- was awarded to respondents 2 to 6 towards "Loss of Love and Affection", Rs.1,00,000/- towards "Loss of Consortium" to the 1st respondent/wife of the deceased, Rs.25,000/- towards "Funeral Expenses" and further Rs.10,000/- and Rs.5,000/- towards "Transport Expenses" and "Attender Charges" respectively. Totally, a sum of Rs. 33,76,440/- was awarded as compensation to the claimants.

6. Now, the main grievance of the learned counsel for the Insurance Company is that the Tribunal has awarded huge amounts under the conventional heads, while it has been recently held by the Constitution Bench of the Honourable Apex Court in National Insurance Company Limited V. Pranay Sethi and others, reported in 2017 (2) TN MAC 609 (SC), that the compensation amount that can be granted under the conventional heads is Rs. 70,000/-.

7. Heard the learned counsel for the respondents on the above contention.

8. We find some force in the submission made by the learned counsel for the appellant. Consequently, the sum of Rs.2,50,000/- awarded towards “Loss of Love and Affection” is set aside and the sum of Rs.1 lakh awarded towards “Loss of Consortium” is reduced to Rs.40,000/-. The sum of Rs.25,000/- awarded towards “Funeral Expenses” is reduced to Rs.15,000/- and and Rs.5000/- awarded towards Transportation Expenses and Rs. 10,000/- awarded towards “Attender Charges” are set aisde and instead, a sum of Rs. 15,000/- is awarded towards “Loss of Estate”.

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9. Hence, the total compensation payable to the claimants under the various heads are:

Loss of Dependency	::	Rs. 23,08,800/-
Loss of Future Prospects	::	Rs. 6,92,640/-
Loss of Consortium	::	Rs. 40,000/-
Funeral Expenses	::	Rs. 15,000/-
Loss of Estate	::	Rs. 15,000/-
Total	::	Rs. 30,71,440/-

The rate of interest awarded by the Tribunal @ 7.5% per annum remains unaltered.

10. Resultantly, the Civil Miscellaneous Appeal is partly allowed and the award of the Tribunal to the tune of Rs. 33,76,440/- is reduced to Rs.30,71,440/-. No costs. Connected M.P. is closed.

11. It is submitted that the entire award amount has been already deposited by the appellant Insurance Company before the Tribunal. In view of the modified award passed by this Court, the claimants are permitted to withdraw their respective shares from and out of the total sum of Rs.30,71,440/- as per the apportionment of the Tribunal and the excess amount lying in deposit, shall be refunded to the appellant Insurance Company, by the Tribunal.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

nv
To
The MACT (Subordinate judge), Hosur.

Copy to
The Section Officer,
V.R. Section, High Court, Madras.

+1cc to Mr.S.ARUNKUMAR, Advocate, S.R.No. 10357

C.M.A. No. 2562 of 2014

VP(CO)
TR(19/03/2018)

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