IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.09.2018

CORAM:

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

CMA No.2715 of 2014 and
M.P.No.1 of 2014

The Divisional Manager,
United India Insurance Co., Ltd.,
Cudddalore. ... Appellant/2nd Respondent

-vs-

1.Rajesh
2.Vivek
3.Vinoth ... Respondents 1 to 3/Petitioners
4.T.Chandrika

5.M/s.Roadlines Corporation (P) Ltd.,
B.F.119, Sector -1, Saltlakecity,
Nagaland.

6.M/s.Reliance General Insurance Co., Ltd.,
Chennai. ... Respondents 4 to 6/R1,3 & 4

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 29.08.2013 made in M.C.O.P.No.1008 of 2009 on the file of the Motor Accidents Claims Tribunal, Special Subordinate Judge, Cuddalore.

For Appellant :Mr.S.Arunkumar

For Respondents:Mr.R.Sreedhar for R1 to R3
No appearance for R5
Not ready in notice Regarding R4 & 6

J U D G M E N T

[Judgment of the Court was delivered by

R.SUBRAMANIAN,J.]

The Insurance Company is on appeal. The only challenge in this appeal is to the quantum of compensation.

2. We have heard Mr.S.Arunkumar, learned counsel for the appellant and Mr.R.Sreedhar, learned counsel appearing for the respondents 1 to 3/ Claimants.

3. The deceased was an employee of the Insurance company. He was drawing monthly salary of Rs.33,434/- as per Ex.P10 Salary Certificate. The Tribunal has taken monthly income at Rs.30,000/- after deducting a sum of Rs.3,434/- towards Income Tax. The Tribunal has added 50% towards future prospects and arrived Pecuniary loss at Rs.39,60,000/-.

4. Mr.S.Arun Kumar, learned counsel for the Insurance Company would contend that the fixation of Future Prospects at 50% and adoption of "11" as multiplier when the deceased had only 5 years of service left, is excessive. He would contend that the Tribunal should have adopted only 15% towards future prospects. Considering the age of the deceased, the Tribunal should have applied a split multiplier because the deceased had only five years of service left as on the date of the accident.

5. Mr.R.Sreedhar, learned counsel appearing for the Claimants is unable to controvert the said submission of Mr.S.Arun Kumar. We are therefore of the opinion that the compensation awarded by the Tribunal on the head of loss of dependency needs to be re-worked.

6. Accordingly, taking monthly income of the deceased at Rs.30,000/- and adding 15% towards future prospects, the monthly income for the purpose of determination of loss of dependency is taken as Rs.34,500/- and deducting 1/4 towards personal expenses and applying multiplier of "5" since the deceased had only 5 years service left, the loss of dependency works out to Rs.15,52,500/-. Since the deceased was aged about 55 years at the time of the accident, the multiplier to be applied according to the decision of the Hon'ble Supreme Court reported in (2009) 6 SCC 121 [Sarla Verma and others Vs. Delhi Transport Corporation and another is "11". The deceased would have got a pension at 50% of the salary drawn by him. Therefore, for the remaining six years, the loss of dependency is worked out as follows:-

Rs.30,000/- x 15% - (1/4) - 50/100 x 12 x 6 = Rs.9,31,500/-

7. The Tribunal has awarded Rs.10,000/- towards Loss of love and affection to all the three claimants. The wife of the deceased is also alive. Therefore, the Award on the head of loss of love and affection is enhanced to Rs.50,000/-. The Tribunal has not awarded any amount towards Loss of Estate, Loss of Consortium and Transportation Charges. Hence, we award

Rs.15,000/- towards Loss of Estate, Rs.40,000/- towards Loss of Consortium and Rs.5,000/- towards Transportation. The Tribunal has awarded a sum of Rs.5,000/- towards Funeral Expenses, which is enhanced to Rs.25,000/- . Thus, total compensation worked out to Rs.26,19,000/- and the same is rounded off to Rs.26,20,000/-.

8. In the result, the Civil Miscellaneous Appeal is allowed in part as follows:-

(i) The award of the Tribunal is modified and reduced from Rs.39,75,000/- to Rs.26,20,000/-

(ii) The award amount will carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit with proportionate costs.

(iii) Since the wife of the deceased was the owner of the vehicle, she was shown as a first respondent in the claim petition and she figures as 4th respondent in the appeal. Merely because she was shown as the respondent in the claim petition, she cannot be denied her legitimate share in the compensation.

(iv) The compensation is apportioned as follows:-

i) The 4th respondent in the appeal will be entitled to Rs.8,20,000/- with proportionate interest.

ii) The respondents 1 to 3 will be entitled to Rs.6,00,000/- each with proportionate interest and costs.

v) The appellant Insurance Company is directed to deposit the modified award amount, less the amount, if any, already deposited, along with interest within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the claimants are permitted to withdraw the entire amount as per the Award granted by this Court with proportionate interest and cost.

vi) The remaining amount is to be paid over to the appellant Insurance Company.

No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

(svki)

To

The Motor Accidents Claims Tribunal,
Special Subordinate Judge, Cuddalore.

Copy to

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

+1cc to M/S.R.Sreedhar, Advocate Sr.62077
+1cc to M/S.S.Arunkumar, Advocate Sr.62715

CMA No.2715 of 2014

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srg 17/10/2018