IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 27.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and
THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

C.M.A. No.2872 OF 2017
& C.M.P. Nos.16427 & 20413 of 2017

M/s.Reliance General Insurance Co. Ltd.,
Rai's Towers, 2nd Floor, No.2054,
2nd Avenue, Anna Nagar,
Chennai - 600 040. .. appellant / 2nd respondent
[in C.M.A.No.2872 of 2017]

versus

1.Vijaya .. 1st respondent / petitioner
[in C.M.A.No.2872 of 2017]

2.C.Devaraj .. 2nd respondent / 1st respondent
[in C.M.A.No.2872 of 2017]

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the order and decree dated 20.02.2017 made in M.C.O.P.No.5947 of 2014 on the file of the Motor Accidents Claims Tribunal [Chief Court of Small Causes], Chennai.

For Appellant : Mr.S.Arun Kumar
[in C.M.A.No.2872 of 2017]

For Respondent No.1 : Mr.R.Arun Dattan
[in C.M.A.No.2872 of 2017]

For Respondent No.2 : Dispensed with
[in C.M.A.No.2872 of 2017]

J U D G M E N T

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

Aggrieved over the award passed by the Motor Accidents Claims Tribunal [Chief Court of Small Causes], Chennai in

M.C.O.P.No.5947 of 2014 dated 20.02.2017, the Insurance Company/appellant herein, who is the second respondent in the above said M.C.O.P. has preferred this Appeal to set aside the award passed by the Claims Tribunal as erroneous.

2. The case of the claimants/respondents 1 and 2 is as follows:

2.1. On 16.08.2014 at about 9.00a.m., while the deceased [R.Backiyalakshmi] was travelling as a pillion rider in a motor cycle bearing Registration No.TN-11-X-3300 driven by one M.Aswin Kumar in Mambakkam Main Road near Navin Mary Apartment, from north to south direction, the driver of the Lorry bearing Registration No.TN-21-X-3123 owned by the second respondent insured with the appellant came in a rash and negligent manner at a great speed and hit against the motor cycle, due to which, the deceased sustained multiple fatal injuries and died on the spot.

2.2. Subsequently, being the dependant of the deceased [Backiyalakshmi], her mother [Vijaya] has filed the Claim Petition under Section 166 of the Motor Vehicles Act and Rule 3 of the Motor Accidents Claims Tribunal Rules, claiming compensation of Rs.15,00,000/- for the death of Backiyalakshmi. After elaborate enquiry, the Claims Tribunal came to the conclusion that the alleged accident had happened due to the rash and negligent act of the Lorry driver, which was insured with the appellant and awarded compensation of Rs.10,27,000/- with interest at the rate of 7.5% per annum, against which, the present Appeal has been preferred by the Insurance Company.

3. In the Claims Tribunal, the first respondent [Vijaya] was examined as P.W.1. Further, the Claim Petition filed by the first respondent was tried along with M.C.O.P.No.5948 of 2014. So, the first petitioner [Mala] in M.C.O.P.No.5948 of 2014 was examined as P.W.2. One Manohar, who was an eye-witness to the alleged occurrence was examined as P.W.3. Further, for both Claim Petitions, 30 documents were marked as Ex.P.1 to Ex.P.30 on the side of the claimants. None was examined on the side of the appellant and no document was marked on their side.

4. Today, we heard the arguments advanced by Mr.S.Arun Kumar, learned counsel appearing for the appellant and Mr.R.Arun Dattan, learned counsel appearing for the first respondent.

5. During the course of arguments, the learned counsels appearing on either side have not disputed the liability of the insurer and also accepted the findings of the Tribunal with regard to the rash and negligent act of the driver, who drove the lorry. So, the only issue to be decided in this appeal is quantum.

6. Admittedly, the deceased [Backiyalakshmi] was a spinster, the mother of the deceased is the claimant. P.W.1, the mother of the deceased in her evidence stated that her daughter was studying in XII standard at the time of accident. To prove the same, she filed a copy of the Identity Card of the deceased, which shows that the deceased was a XII standard student. In general at the age of 16, being a student, there is no scope available for earning money through employment. Considering the said aspect, the claims Tribunal fixed the notional income of the deceased as Rs.6,000/-. We also agree with the view taken by the Claims Tribunal. Therefore, in order to calculate the Loss of Dependency, the notional income of the deceased was fixed as Rs.6,000/-.

7. In the Claims Tribunal, at the time of calculating the total compensation, 50% of the monthly income was added towards future prospects. Further, after deducting 50% of the total income towards personal expenses, applied the multiplier of 18 and calculated the total Loss of Dependency as Rs.9,72,000/-. In the said circumstances, the learned counsel appearing for the appellant made a submission before this Court that as per the case of NATIONAL INSURANCE COMPANY LIMITED vs. PRANAY SETHI AND OTHERS reported in 2017 ACJ 2700, if a person is self-employed and under the age of 40 years, 40% of the established monthly income to be taken into account for calculating the Future Prospects. On considering the genuinity of the argument, we agree with the submission made by the learned counsel for the appellant and calculate the monthly pecuniary loss as follows:

Total Monthly Income:: Rs.6,000/- (+) 40% (Rs.6,000/-)

:: Rs.6,000/- (+) Rs.2,400/-

:: Rs.8,400/-

8. Secondly, in the award passed by the Claims Tribunal, 50% of the total income has been deducted towards Personal and Living Expenses of the deceased. Further, multiplier 18 was applied for calculating the Loss of Dependency. Since the Claim Petition has been filed by the mother of the deceased, deducting 50% of the monthly income is proper and correct. We are also of the considered opinion that the percentage of deduction made by the Claims Tribunal is correct. After deducting 50% towards Personal and living Expenses, the monthly income of the deceased comes to Rs.4,200/- [Rs.8,400 - 50% (8,400)].

9. Now, with regard to the multiplier, it is settled law as per the case of SARLA VERMA vs. DELHI TRANSPORT CORPORATION reported in (2009) 6 SCC 121 that if the deceased is within the age of 15-20 years, the proper multiplier is 18. In this case, as per the Postmortem Certificate which was marked as Ex.P.5, the age of the deceased was 16 years. Ex.P.8 is the copy of the Secondary School Leaving Certificate which also confirms that the deceased was aged about 16 years, thereby, application of multiplier 18 by the Claims Tribunal is found to be correct. So, the Loss of Dependency is calculated as follows:

Loss of Dependency :: Rs.4,200 x 12 x 18

:: Rs.9,07,200/-

10. Further, as per the judgment of our Honourable Apex Court in Pranay Sethi's case [cited supra], addition of Rs.30,000/- would be required to be made on account of conventional heads of Loss of Estate [Rs.15,000/-] and Funeral Expenses [Rs.15,000/-]. Moreover, the claimant has lost her only daughter in the elderly age, due to the alleged accident and the claimant has lost the Love and Affection of her daughter. So award of some amount towards Loss of Love and Affection is nothing but akin to the Loss of Consortium to the wife, thereby, we decide to award Rs.25,000/- towards Loss of Love and Affection to the claimant. Accordingly, the claimant/first respondent is entitled to the compensation as follows:

Head	Amount (Rs.)
Loss of Dependency	9,07,200.00
Funeral Expenses	15,000.00
Loss of Estate	15,000.00
Loss of Love and affection	25,000.00
Total	9,62,200.00

Hence, the compensation arrived at by the Claims Tribunal is modified to the extent of Rs.9,62,200/-.

11. The rate of interest awarded by the Tribunal at 7.5 % per annum remains unaltered. Accordingly, the award of the Tribunal (i.e.,) Rs.10,27,000/- is reduced to Rs.9,62,200/-. The appellant/Insurance Company is directed to deposit the entire award amount along with interest and costs after deducting the amount already deposited, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the said amount

to the Bank Account of the first respondent / claimant through RTGS/NEFT within a period of one week.

12. In the result, the Civil Miscellaneous Appeal is partly allowed. Consequently, the connected Miscellaneous Petitions are closed. There shall be no order as to costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

sri

To

The Motor Accidents Claims Tribunal
[Chief Court of Small Causes],
Chennai.

+1cc to Mr.S.Arun Kumar, Advocate sr.no.31846
+1cc to Mr.C.Munusamy, Advocate sr.no.31675

C.M.A. No.2872 OF 2017

nr 03/07/2018