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.2873 OF 2017
& C.M.P. Nos.16428 & 20414 of 2017
Caveat Petition No.2013 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.2873 of 2017]

versus

1.M.Mala
2.G.Mohan
3.Minor M.Vidhya
D/o.G.Mohan,
Minor rep. by her mother &
Guardian M.Mala,
All are residing at No.3/67A,
Bagavanth Singh Street,
Padmavathi Nagar,
Jalladdanpet,
Chennai - 600 100. .. respondents / petitioners
[in C.M.A.No.2873 of 2017]

4.C.Devaraj .. 4th respondent / 1st respondent
[in C.M.A.No.2873 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.5948 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.2873 of 2017]

For Respondent Nos.1 to 3 : Mr.R.Arun Dattan
[in C.M.A.No.2873 of 2017]

For Respondent No.4 : Dispensed with
[in C.M.A.No.2873 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.5948 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 to 3 is as follows:

2.1. On 16.08.2014 at about 9.00a.m., while the deceased [M.Aswin Kumar] was riding a motor cycle bearing Registration No.TN-11-X-3300 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 fourth 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 dependants of the deceased [M.Aswin Kumar], the parents and sister 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.25,00,000/- for the death of M.Aswin Kumar. 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 driver, who drove the Lorry, which was insured with the appellant and awarded compensation of Rs.14,01,000/- with interest at the rate of 7.5% per annum, against which, the present Appeal has been preferred.

3. According to the case of claimants, in the alleged accident apart from the deceased [M.Aswin Kumar], one Backiyalakshmi, who was the pillion rider of the motor cycle also died, for which, the mother [Vijaya] of the deceased Backiyalakshmi has filed a Claim Petition and the same was taken on file as M.C.O.P.No.5947 of 2014 and disposed of along with M.C.O.P.No.5948 of 2014. In the Claims Tribunal, the first claimant [Mala] was examined as P.W.2. The first petitioner [Vijaya] in M.C.O.P.No.5947 of 2014 was examined as P.W.1. One Manohar, who is the eye-witness for 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 respondents 1 to 3.

5. Admittedly, the deceased [Aswin Kumar] was a Bachelor, the parents and sister of the deceased are the claimants. P.W.2 [M.Mala], the mother of the deceased in her evidence stated that the alleged accident had happened only due to the rash and negligent act of the driver, who drove the lorry. Admittedly, the offending vehicle [lorry] was owned by the fourth respondent in this appeal. Further, it is not disputed by the appellant that the offending lorry was insured with them.

6. Today when the matter is taken up for consideration, 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. In the said circumstances, the only issue to be decided in this appeal is whether the compensation fixed by the Claims Tribunal is correct or not. In order to calculate the Loss of Dependency, the following factors have to be decided;

i. Yearly income of the deceased,
ii. Age of the deceased,
Iii. Future prospects,
iv. Personal and living expenses, and
v. Appropriate multiplier.

7. With regard to the annual income, the Claims Tribunal came to the conclusion that the monthly income of the deceased [M.Aswin Kumar] was Rs.8,000/-, for which, the evidence given by the first claimant [P.W.2] was considered by the Claims Tribunal. P.W.2 in her evidence stated that at the time of accident, her son was studying in Bharat Polytechnic College in DME first year and also working as part time data entry operator in Data Services and earned Rs.8,000/- per month. For which, she produced Identity Card of the deceased which was marked as Ex.P.18. Further, the Salary Certificate was marked as Ex.P.19. Those documents confirm that the deceased was a DME first year student in Mechanical Engineering. Further, he was working as data entry operator and earned Rs.8,000/- per month. Even assuming that the deceased was not working as data entry operator, considering the cost of living and education qualification, it would be appropriate to fix Rs.8,000/- per month as income of the deceased.

8. Regarding the Future Prospects, it is necessary to follow the judgment of NATIONAL INSURANCE COMPANY LIMITED vs. PRANAY SETHI AND OTHERS reported in 2017 ACJ 2700, in which, our Honourable Apex Court has held that if a person is self-employed and under the age of 40 years, 40% of the established monthly income to be the Future Prospects for calculating the Loss of Dependency. Therefore, the total monthly income of the deceased is calculated as follows:

Total Monthly Income:: Rs.8,000/- (+) 40% (Rs.8,000/-)
:: Rs.8,000/- (+) Rs.3,200/-
:: Rs.11,200/-

9. Coming to the Personal and Living Expenses, the size of the family is taken into account for calculating the Personal and Living Expenses. Admittedly, the deceased was a Bachelor, the Claim Petition has been filed by the parents and sister of the deceased. So, it is appropriate to deduct 50% of the total income towards Personal and Living Expenses of the deceased. After deducting 50% towards Personal and Living Expenses, the monthly income of the deceased comes to Rs.5,600/- [Rs.11,200 - 50% (11,200)].

10. 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 Secondary School Leaving Certificate which was exhibited as Ex.P.17, the date of birth of the deceased was mentioned as 16.08.1995. Further, Ex.P.15 is the copy of the Postmortem Certificate which also confirms the age of the deceased as 20 years. In the said circumstances, the evidence given by P.W.2 that the deceased was aged about 19 years at the time of accident is found to be correct. So, choosing the multiplier 18 by the Claims Tribunal is appropriate. Accordingly, the Loss of Dependency is calculated as follows:
Loss of Dependency :: Rs.5,600 x 12 x 18
:: Rs.12,09,600/-

11. 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 added on account of conventional heads of Loss of Estate [Rs.15,000/-] and Funeral Expenses [Rs.15,000/-]. In these circumstances, the learned counsel appearing for the respondents 1 to 3 made a submission before this Court that losing the son in their elderly age cannot be compensated by any means. After the marriage of their daughter, the parents of the deceased would not be having any support in their elderly life. So, the award of some amount towards loss of Love and Affection is nothing but akin to the loss of consortium to the wife. The above submission is a

reasonable one. Hence, we decided to award Rs.75,000/- towards Loss of Love and Affection to the claimants. Accordingly, the claimants/respondents 1 to 3 are entitled to the compensation as follows:

Head	Amount (Rs.)
Loss of Dependency	12,09,600.00
Funeral Expenses	15,000.00
Loss of Estate	15,000.00
Loss of Love and affection	75,000.00
Total	13,14,600.00

Hence, the compensation arrived at by the Claims Tribunal is modified to the extent of Rs.13,14,600/-.

12. The rate of interest awarded by the Tribunal at 7.5 % per annum remains unaltered. Accordingly, the award of the Tribunal (i.e.,) Rs.14,01,000/- is reduced to Rs.13,14,600/-. 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 respondents 1 to 3 / claimants through RTGS/NEFT within a period of one week. On such deposit being made, the respondents 1 and 2 are permitted to withdraw their respective shares, from the total compensation payable to them, as per the modified award passed by this Court, in the ratio fixed by the Tribunal. The share in respect of the third respondent, who is a minor, shall be deposited in any one of the Nationalised Banks, in interest bearing Fixed Deposit, till she attains majority. The first respondent being the mother of the third respondent is permitted to withdraw the quarterly interest from the said deposit.

13. In the result, the Civil Miscellaneous Appeal is partly allowed. Consequently 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.

Copy to:

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

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

C.M.A. No.2873 OF 2017

gj(co)
nr 03/07/2018