IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.08.2018

CORAM:

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

C.M.A. No.674 of 2018
and
C.M.P.No.5919 of 2018

Shriram General Insurance Co. Ltd.,
10003-E, RICCO Industrial Area,
Sitapura, Jaipur,
Rajasthan - 302022.

... Appellant/2nd Respondent

-vs-

1.G.Shyamali
2.N.Vishwanath
3.G.Rukmani ...1 to 3 Respondents/Petitioners
4.K.Rohini ...4th Respondent/1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the decree and judgment dated 20th day of January 2017 made in MCOP.No.5328 of 2012, on the file of the Motor Accident Claims Tribunal (II Court of Small Causes), Chennai.

For Appellant : Mr.S.Dhakshinamoorthy

For Respondents: Mr.A.S.Bilal for R1 and R2

J U D G M E N T
[Judgment of the Court made by R.SUBRAMANIAN,J.]

The Insurance Company which had suffered an award for a sum of Rs.27,95,000/- as compensation for the death of one K.Natrajan aged about 63 years in a motor accident that occurred on 27.06.2011 is the appellant.

2. The claimants who are the wife, son and mother-in-law of the deceased had sought for a compensation of about Rs.20,00,000/- for the death of said Natrajan claiming that, though, he had retired as a Professor, he had been re-employed in Magna College of Engineering, Chennai - 55 and drawing a salary of Rs.33,000/-. Contending that the claimant had suffered pecuniary loss due to the death of the deceased in the road accident claimed a sum of Rs.20,00,000/- as stated above.

3. The claim petition was resisted by the Insurance Company inter alia contending that the rash and negligent driving on the part of the driver of the car bearing registration No.TN-21-AC-3964 was not the cause for the accident. It was also contended that the driver of the car did not have a valid driving license. The re-employment as well as the income stated by the claimants were also denied as excessive.

4. The Tribunal on a consideration of the evidence on record, particularly the evidence of the eye witness PW2 as well as the FIR filed by the Olakur Police marked as Ex.P1 concluded that the accident was caused by the rash and negligent driving of the car and as the owner and insurer of the car the 4th respondent and the appellant/ Insurance Company are jointly and severally liable to pay the compensation.

5. On the question of quantum, the Insurance Company determined the age of the deceased as 63. The Tribunal, also relying upon the Form 16 produced for the assessment year 2011-12 concluded that the deceased was receiving a salary of Rs.33,000/- per month. The Tribunal also took note of the fact that there is a loss in the pension to the tune of Rs.20,000/- per month to the family of the deceased. Considering the evidence of PW1, PW4 and PW5, the Tribunal fixed the monthly income of the deceased at Rs.45,000/-. The Tribunal applied the multiplier of '7' and after deducting 1/3rd for personal expenses, the Tribunal arrived at the total pecuniary loss at Rs.25,20,000/-. The Tribunal also awarded a sum of Rs.1,00,000/- towards loss of consortium to the wife, Rs.1,00,000/- towards loss of love and affection and Rs.50,000/- towards loss of estate and Rs.25,000/- towards funeral expenses. The Tribunal thus awarded a total sum of Rs.27,95,000/-. Aggrieved by the said award, the Insurance Company has come forward with this appeal.

6. We have heard Mr.S.Dakshinamoorthy, learned counsel appearing for the Insurance Company and Mr.A.S.Bilal, learned counsel appearing for the respondents 1 to 3/ claimants. The 4th respondent though served has not appeared either in person or through counsel.

7. Mr.S.Dakshinamoorthy, learned counsel appearing for the Insurance Company/ appellant would confine his challenge only to the quantum of compensation awarded by the Tribunal. Referring to the evidence on record, particularly the bank statement and the pension book, the learned counsel would contend that there was no loss in pension. The learned counsel would point out that the last pension received by the deceased was Rs.30,000/- and after his death, his wife is drawing about Rs.44,000/- towards pension. The fact that the wife of the deceased viz., 1st respondent herein is drawing a much higher pension than what was last drawn pension of the deceased is borne out by documentary evidence.

8. Mr.A.S.Bilal, learned counsel appearing for the respondents 1 to 3 is unable to dispute the veracity of the documents, since those documents have been filed by the claimants themselves.

9. Therefore, the Tribunal was not right in adding a sum of Rs.20,000/- under the head of loss of pension. The Tribunal has fixed the monthly income of the deceased at Rs.45,000/- on a notional basis. When concrete documentary evidence is available to show that the deceased was drawing a salary of Rs.33,000/- only, at the time of the accident, the Tribunal ought not to have fixed a notional income, taking into account the alleged, non-existant loss of pension. Therefore, the pecuniary loss caused to the dependents by the death of the deceased could be calculated on the basis that he was drawing a sum of Rs.33,000/- as monthly salary. If worked out on that basis, the pecuniary loss would be as follows:-

10. Monthly income is taken as Rs.33,000/-, considering the number of dependents, 1/3rd has to be deducted towards personal expenses. Therefore, the loss of monthly pecuniary loss would be Rs.22,000/-. So the total pecuniary loss would be Rs.22,000 x 12 x 7 = Rs.18,48,000/-.

11. Coming to the award of conventional damages viz., loss of consortium and loss of love and affection, the Tribunal had taken note of the judgment of the Hon'ble Supreme Court in Rajesh Vs. Rajbir Singh and others reported in 2013 ACJ 1403 SC, and awarded a sum of Rs.1,00,000/- under each head. In view of the subsequent pronouncement of the larger bench of the Hon'ble Supreme Court in National Insurance Co. Ltd Vs. Pranay Sethi and others reported in 2018 (1) LW 331, the compensation that could be awarded under the conventional heads could only be at Rs.40,000/- for loss of consortium and Rs.40,000/- for loss of love and affection.

12. In view of the above, the award of the Tribunal needs modification and the same is modified as follows:

The Compensation towards		Amount
Loss of pecuniary benefits	-	Rs. 18,48,000/-
Loss of consortium	-	Rs. 40,000/-
Loss of love and affection	-	Rs. 40,000/-
Loss of estate	-	Rs. 50,000/-
Funeral expenses	-	Rs. 25,000/-
Total	-	Rs.20,03,000/-

The same is rounded off to Rs.20,00,000/-.

13. For the foregoing reasons, the appeal is partly allowed, the award of the Tribunal is modified granting a sum of Rs.20,00,000/- with 7.5% interest as compensation for the death of the said K.Natrajan. The 3rd respondent who is the mother-in-law cannot be termed as a legal representative of the deceased or dependent of the deceased. Therefore, the award of compensation is made only to the wife, 1st respondent and son, 2nd respondent. The compensation is apportioned as follows, the wife viz., the 1st respondent would be entitled to Rs.12,50,000/- with proportionate interest and entire costs and the son who is the 2nd respondent would be entitled to Rs.7,50,000/- with proportionate interest. There will be however no order as to costs in this appeal. Consequently, the connected miscellaneous petition is also closed.

dsa

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To
The Motor Accident Claims Tribunal,
II Court of Small Causes, Chennai.

+1cc to Mr.S.Dhakshinamoorthy, Advocate Sr.No.60219
+1cc to Mr.A.S.Bilal, Advocate Sr.No.59196

SJ(CO)
sm:28.9.2018