IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.09.2018

CORAM:

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

C.M.A. No.3271 of 2017
and
C.M.P.No.20442 of 2017

M/S Reliance General Insurance Co. Ltd.,
2nd Avenue Road, 13th Main Road,
Anna Nagar,
Chennai - 600 040. ... Appellant /2nd Respondent

-vs-

1.G.Bindu
2.Minor Vaishali
(Rep by her mother and natural
Guardian 1st Respondent)
...1st and 2nd Respondents/Petitioners
3.Varalakshmi
... 3rd Respondents /1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the award and decree dated 09.03.2017 made in MCOP.No.1859 of 2011 on the file of the Motor Accident Claims Tribunal, III Court of Small Causes, Chennai.

For Appellant : Mr.S.Arun Kumar

For Respondents: Mr.K.Suryanarayanan for R1 and 2
R3 - Not ready

J U D G M E N T

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

The appeal is at the instance of the Insurance Company. The challenge is to the award dated 09.03.2017 awarding a sum of Rs.57,79,100/- towards compensation for the death of one Gnanasekaran in a motor accident that occurred on 22.02.2011.

2. We have heard Mr.S.Arun Kumar, learned counsel appearing for the appellant Insurance Company and Mr.K.Suryanarayanan, learned counsel appearing for the claimants.

3. Mr.S.Arun Kumar does not challenge the findings of the Tribunal on the question of negligence and liability. Only the quantum of compensation is questioned. The Income Tax returns for the years 2007-08, 2008-09 and 2009-10 were produced as Ex.P15 before the Tribunal. The income consisted of two parts viz., salaried income and income from business. The Tribunal took the total returned income and thereafter once again added the income from salary which amounted to double benefit. Mr.S.Arun Kumar, would contend that the mis-calculation made by the Tribunal in adding the salaried income once over again to the net assessed income had resulted in excessive award. From the judgment of the Tribunal as well as the income tax returns, we find that the contentions of Mr.S.Arun Kumar regarding double benefit is justified.

4. Mr.K.Suryanarayanan, learned counsel appearing for the claimants is also unable to dispute the same. The returned income in 2009-10 is shown as Rs.3,67,895/-, this includes the rental income of Rs.25,200/- which is not lost to the claimants. The rental income should be excluded while deciding the quantum of loss of dependency.

5. Therefore, the net income for the assessment year 2009-10 as per the income tax returns Ex.P15 is Rs.3,49,895/-, 25% is to be added towards future prospects. Therefore, the total income for the purposes of deciding the quantum of compensation works out to Rs.4,37,369/-. Since, there were three dependents 1/3rd is to be deducted towards personal expenses of the deceased. Thus worked, the total pecuniary loss would be,

$$\text{Rs.}4,37,369 \times \frac{2}{3} \times 13 = \text{Rs.}37,90,531/-.$$

6. The Tribunal has awarded a sum of Rs.1,00,000/- towards loss of consortium, Rs.1,00,000/- towards loss of love and affection, Rs.25,000/- towards funeral expenses and Rs.10,000/- towards transport expenses. The award under the head of funeral expenses is alone sustained. It is seen that the victim died on the way to hospital, therefore, the transport expense is reduced to Rs.5,000/-. The award under the heads of loss of consortium and loss of love and affection is reduced to Rs.40,000/- each in view of the judgment 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.

7. The Tribunal has not awarded any amount towards loss of estate. Hence, we award a sum of Rs.25,000/- towards loss of estate and Rs.5,000/- towards damage to clothing and other articles. Thus, the total award works out to Rs.39,30,531/-.

Award towards		Amount
Pecuniary loss	:	Rs. 37,90,531/-
Funeral expenses	:	Rs. 25,000/-
Transport expenses	:	Rs. 5,000/-
Loss of consortium	:	Rs. 40,000/-
Loss of love and affection	:	Rs. 40,000/-
Loss of estate	:	Rs. 25,000/-
Damage to clothing and articles	:	Rs. 5,000/-
Total	:	Rs.39,30,531/-

and the same is rounded off to Rs.39,30,000/- and the award will carry interest at 7.5% per annum.

8. The compensation is apportioned as follows:-

the 1st claimant, wife will be entitled to Rs.20,00,000/- and the 2nd claimant, daughter will be entitled to Rs.19,30,000/-. It is stated that the Insurance Company has deposited Rs.30,00,000/- out of which the mother has been allowed to withdraw Rs.15,00,000/-. The Insurance Company shall deposit the balance amount with interest and proportionate costs within a period of six (6) weeks from the date of receipt of a copy of this judgment. On such deposit the mother will be permitted to withdraw another Rs.5,00,000/- with proportionate interest and entire costs and the 2nd claimant daughter, who is now a major is allowed to withdraw Rs.19,30,000/- with proportionate costs. Consequently, the connected miscellaneous petition is also closed. No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

dsa

To

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

+1cc to Mr.K.Suryanarayanan, Advocate Sr.64026
+1cc to Mr.S.Arunkumar, Advocate Sr.64694

C.M.A. No.3271 of 2017

sj[co]
srg 13/11/2018