IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :30.08.2018

CORAM:

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

C.M.A.No.3516 of 2017
& C.M.P No.22514 of 2017

Royal Sundaram Alliance Insurance Co., Ltd.,
Subramani Building 2nd Floor,
No.1, Club House Road,
Mount Road, Chennai-600 002. ...Appellant/2nd respondent

Vs.

1.Vahitha Bee
2.Minor Vahithul Gani
3.Minor Kattafi
(Minors 2nd and 3rd respondents rep. by their natural guardian of their mother Vahitha Bee 1st respondent herein)
No.33/15, Lakshmipuram,
Vadapalani, Chennai-600 026.

4.Ranjan Shambhu Singh,
At post Kalher, Bhiwandi Tk,
Thane, Maharashtra -421 302.
...Respondents/1 to 3 Claimants/1st Respondent

Prayer:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award dated 28.04.2017 made in MCOP No.2390 of 2012 on the file of the Motor Accidents Claims Tribunal, II Court of Small Causes, Chennai.

For Appellant : Mr.G.Vasudevan
For Respondents : Mr.F.Terry Chellaraja for M/s V.Velu for R1 to R3
No appearance for R4

J U D G M E N T

(Judgment of the Court was made by R.SUBRAMANIAN,J.)

The Civil Miscellaneous Appeal has been filed as against the award dated 28.04.2017 made in MCOP No.2390 of 2012 on the file of the Motor Accidents Claims Tribunal, II Court of Small

Causes, Chennai.

2. The Insurance Company, which suffered an award for a sum of Rs.17,48,000/- granted as compensation for the death of one A.K.Rahamathulla in a motor accident that occurred on 08.06.2011, is the appellant. The compensation was sought for by the wife and two minor children. According to the claimants, the deceased driving Eicher Van bearing Registration No.TN-07-B-3485 belonging to the fourth respondent insured with the appellant insurance company from Chennai to Bengaluru. When the van was nearing Sankarapandi Chathiram, the lorry, which was going ahead of this vehicle suddenly stopped without any signal, which resulted in the deceased losing control of the vehicle, dashing against the lorry from the rear. The deceased succumbed to the injuries on the spot. A First Information Report was lodged by the Village Administrative Officer against the deceased.

3. The Insurance Company resisted the claim contending that the deceased being the responsible for the accident, cannot seek the compensation. The Tribunal having found that the Insurance company has not examined any person to prove the negligence on the part of the deceased, concluded that the accident as a result of the negligence of the driver of the lorry.

4. Though Mr.G.Vasudevan, learned counsel appearing for the appellant-Insurance Company, attempted to canvass the finding of the Tribunal on the ground of negligence, we do not see any evidence worth consideration to enable us to interfere with the factual finding of the Tribunal on the question of negligence.

5. On the quantum, the Tribunal has fixed the monthly income of the deceased at Rs.12,000/- and added 30% towards future prospects after deducting 1/3 towards personal expenses and applying the multiplier of 11, a sum of Rs.13,72,800/- was awarded towards pecuniary loss.

6. Mr.G.Vasudevan, learned counsel for the appellant-Insurance company, would rely upon the judgment of the Larger Bench of the Hon'ble Supreme Court in National Insurance Company Limited v. Pranay Sethi and other, reported in 2018 (1) Law Weekly 331, to contend that addition of 30% towards future prospects is on the higher side. As per the said judgment, if the deceased is aged about 50 years and above the claimants would be entitled to an addition of only 10% towards future prospects.

7. Though Mr.G.Vasudevan, learned counsel for the appellant-Insurance company, attacked the fixation of monthly

income at Rs.12,000/-, we do not find that the said attack could be sustained inasmuch as sufficient materials has been produced by the respondents 1 to 3 to show that the deceased was the owner cum driver of the Van insured with the appellant-Insurance company. We, therefore, find that the fixation of monthly income at Rs.12,000/- is just and reasonable. Adding 10% with the said sum towards future prospects after deducting 1/3 towards personal expenses, the monthly loss of dependency was works out to Rs.8,800/- (Rs.12,000+Rs.1200 -Rs.4400/- =Rs.8,800/-). The deceased was aged about 54 years at the time of the accident. Therefore, multiplier of 11 should be applied. Thus, the total loss of dependency works out to Rs.11,61,600/- (Rs.8,800 x 12 x 11). A sum of Rs.2,00,000/- awarded by the Tribunal towards loss of love and affection to the two minor children is reduced to Rs.80,000/- and a sum of Rs.1,00,000/- awarded towards loss of consortium to the first respondent is reduced to Rs.40,000/- in terms of judgment of Larger Bench of the Hon'ble Supreme Court in National Insurance Company Limited v. Pranay Sethi and others referred supra. The Tribunal has awarded a sum of Rs.25,000/- towards funeral expenses and Rs.50,000/- towards loss of estate. The amounts awarded under these two heads are sustained. The Tribunal has not awarded any amount towards transportation. Considering the fact that the accident has occurred in Chennai- Bangaluru Highway almost near Bangalore. A sum of Rs.10,000/- is awarded towards transportation and the total compensation works out to Rs.13,66,000/-.

8. The details of the modified compensation as per the above discussion are as under:-

Loss of dependency	Rs.11,61,000/-
Loss of love and affection	Rs. 80,000/-
Loss of consortium	Rs. 40,000/-
Loss of estate	Rs. 50,000/-
Funeral expenses	Rs. 25,000/-
Transportation	Rs. 10,000/-
Total	Rs.13,66,000/-

The same is rounded off to Rs.13,70,000/-.

9. The Civil Miscellaneous appeal is partly allowed and the award of the Tribunal is modified to Rs.13,70,000/- (Rupees thirteen lakhs and seventy thousand only) as against the compensation of Rs.17,48,000/- awarded by the Tribunal with proportionate interest at 7.5% per annum from the date of petition till the date of deposit. It is stated by the learned counsel for the Insurance company that 50% of the compensation has already been deposited. Therefore, the

Insurance company is directed to deposit the remaining award amount within a period of four weeks from the date of receipt of the copy of this order to the credit of M.C.O.P.No.2390 of 2012 on the file of II Court of Small Causes, Chennai.

10. The compensation awarded is apportioned as follows:

Respondents 2 and 3-minor claimants are entitled to Rs.4,00,000/- (Rupees four lakhs) each with proportionate interest.

The first respondent-wife of the deceased is entitled to Rs.5,70,000/- with proportionate interest;

On such deposit, the first respondent would be entitled to withdraw her share with proportionate interest as per the apportionment made above. The Tribunal is directed to deposit the shares of the minor claimants in a Nationalised Bank in interest earning fixed deposit till they attain majority. The first respondent-mother of the minor children is permitted to withdraw accrued interest once in three months for the maintenance of the minor children. There will be no order as to costs in this appeal. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

raa

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

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

+1cc to Mr.S.Vasudevan, Advocate SR.No.599732

+1cc to Mr.v.Velu, Advocate SR.No.60002

C.M.A.No.3516 of 2017

SSI(CO)
GMY(30/10/2019)