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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.08.2018

CORAM:

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

CMA No.3519 of 2017
and C.M.P.No.22526 of 2017

M/s. Royal Sundaram Alliance Insurance Company Limited,
3rd Floor, Subramaniam Building,
No.1, Club House Road,
Chennai-600 002. .. Appellant/2nd Respondent

-vs-

1. Mariyam Beevi
2. Julyha Beevi
3. Shahul Hameed
4. Balhees Beevi
5. Abdul Fasidh ..Respondents 1to5/Petitioners
6. P.Sumathi ..6th Respondent/1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 28.03.2017, made in M.C.O.P.No.166 of 2011, on the file of the Motor Accidents Claims Tribunal, Additional District Court (FAC), Ariyalur.

For Appellant :Mr.M.B.Raghavan

For Respondents:Mr.S.Kaithamalai Kumaran
(For R1 to 5)

No appearance (For R6)

J U D G M E N T

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

The Insurance Company has filed this appeal, challenging the award of a sum of Rs.14,09,650/- for the death of one Mohammed Haneefa, who died in a road accident that occurred on 07.05.2011.

2.The challenge is mainly on the quantum of the compensation. The deceased was aged 55 years at the time of accident. The Tribunal has fixed his monthly income as Rs.9,000/-, adding 15% increase for future prospects and adopting a multiplier of '11', arrived at the total loss of



income at Rs.13,66,200/-. Considering the number of dependants, the Tribunal made a deduction of 1/4th towards personal expenses of the deceased. The total pecuniary loss was arrived at Rs.10,24,650/-.

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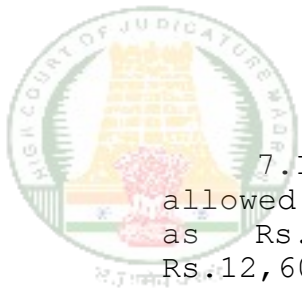
3.We have heard Mr.M.B.Raghavan, learned counsel appearing for the Insurance Company and Mr.S.Kaithamalai Kumaran, learned counsel appearing for the respondents 1 to 5/ claimants. The 6th respondent though served has not appeared either in person or through counsel.

4.Despite his best efforts, Mr.M.B.Raghavan, learned counsel for the Insurance Company is unable to point out that the compensation towards pecuniary loss arrived at by the Tribunal is excessive. Mr.M.B.Raghavan would further contend that the Tribunal has awarded a sum of Rs.2,50,000/- towards loss of love and affection for the wife as well as the children of the deceased, apart from awarding a sum of Rs.1,00,000/- towards loss of consortium for the wife. Relying upon the judgment of the larger bench of the Hon'ble Supreme Court in the case of National Insurance Co. Ltd Vs. Pranay Sethi and others reported in 2018 (1) LW 331, Mr.M.B.Raghavan would submit that the compensation awarded towards loss of love and affection to the children would be at best Rs.40,000/- per child. Therefore, the total compensation awarded under the head of loss of love and affection can only be Rs.1,60,000/- and not Rs.2,50,000/-. On the loss of consortium also, Mr.M.B.Raghavan would submit that it could only be Rs.40,000/- and not Rs.1,00,000/- as awarded by the Tribunal.

5.Mr.S.Kaithamalai Kumaran, learned counsel appearing for the claimants 1 to 5 would contend that the non-conventional compensation awarded under various heads is reasonable.

6.In view of the judgment of the larger Bench of the Hon'ble Supreme Court cited above, the compensation awarded under the non-conventional heads have to be reduced. Therefore, total compensation awarded is modified as follows:

The Compensation towards		Amount
Loss of Income	-	Rs. 10,24,650.00
Loss of love and affection	-	Rs. 1,60,000.00 (40,000 X 4)
Loss of consortium (wife)	-	Rs. 40,000.00
Loss of estate	-	Rs. 10,000.00
Funeral expenses	-	Rs. 25,000.00
Total	-	Rs. 12,59,650.00



7. In the result, the Civil Miscellaneous Appeal is partly allowed. The compensation awarded by the Tribunal is modified as Rs.12,59,650/- and the same is rounded off to Rs.12,60,000/- with 7.5% interest and proportionate cost. The compensation is apportioned as follows, the wife viz., 1st respondent would be entitled to Rs.5,00,000/- with proportionate interest and entire costs. The sons, viz., respondents 3 and 5 would be entitled for Rs.2,00,000/- with proportionate interest. The two daughters, viz., respondents 2 and 4 will take Rs.1,80,000/- each with proportionate interest. The appellant-Insurance Company is granted four (4) weeks time to deposit the award amount less the amount already deposited if any. On such deposit, the claimants would be entitled to withdraw the same as per the apportionment made above, since all the claimants have now attained majority. There will be however no order as to costs in this appeal. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

gsa

To

The Motor Accidents Claims Tribunal,
Additional District Court (FAC),
Ariyalur.

+ 1 cc to M/s. M.B. Gopalan & Associates Advocate Sr.59404
+ 1 cc to M/s. S.Kaithamalai Kumaran, Advocate Sr.58724

CMA No.3519 of 2017
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PPA(CO)
EU(29/11/2018)