IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.09.2018

CORAM:

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

C.M.A.No.1850 of 2018
and
C.M.P.No.14319 of 2018

National Insurance Co. Ltd.,
Branch - III, Thanthai Periyar Market Complex,
Govindasamypillai Street,
Near Old Bus Stand, Salem.
... Appellant/2nd Respondent

-vs-

1.Rajeswari
Angammal (died)
2.Gunasekaran

... Respondents/Petitioner & 1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the award and decree dated 03.07.2017 made in MCOP.No.742 of 2011 on the file of the Motor Accident Claims Tribunal, Sub Court, Sankari.

For Appellant : Mr.S.Arunkumar

For Respondents : Mr.C.Paraneedharan for R1
R2 - Not ready

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

This appeal is at the instance of the Insurance Company challenging the award of a sum of Rs.62,25,000/- for the death of one Gopalakrishnan, in a road accident that occurred on 02.07.2011.

2. According to the claimant, the accident occurred when the deceased was riding the motor cycle bearing registration No.TN-34-E-3526 on the extreme left side of the Tiruchengode road, the

Mahindra tempo van bearing registration No.TN-33-AX-0922 driven by its driver in a rash and negligent manner and dashed against the said Gopalakrishnan causing his death on the way to the hospital. It is also contended that a case was registered against the driver of the Mahindra van in Crime No.275 of 2011. contending that the deceased was earning about Rs.10,000/- per month, the claimant sought for a compensation of Rs.10,00,000/-.

3. The claim was resisted by the Insurance Company contending that the deceased himself was responsible for the accident, inasmuch as he was talking on his cell phone and riding the vehicle in a careless manner.

4. According to the Insurance Company, it was the deceased who hit against the diesel tank of the Mahindra van and fell down near the right wheel. It is also the contention of the Insurance Company that the driver of the Mahindra van was not having a driving license and was also under the influence of alcohol at the time of the accident. Since the policy conditions were violated by the owner of the Mahindra van, according to the Insurance Company, it cannot be made liable for the award.

5. The Tribunal on a consideration of the evidence on record concluded that the driver of the Mahindra van was responsible for the accident. In coming to the said conclusion, the Tribunal relied upon the FIR as well as the charge sheet which were marked as Exs.R1 and R3. The Tribunal also faulted the Insurance Company for not examining the driver or the owner of the Mahindra van.

6. On quantum, the Tribunal took the income of the deceased at Rs.4,00,000/- per annum, based on the evidence that was available in the form of income tax returns. The Tribunal granted 50% towards future prospects after deducting 1/3rd towards personal expenses and applying the multiplier of '15', the Tribunal arrived at the loss of dependency at Rs.60,00,000/-. The Tribunal 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. Thus, in all the Tribunal awarded Rs.62,25,000/- as compensation with 7.5% interest from the date of petition till date of payment.

7. The Tribunal also found that the driver of the Mahindra van did not possess a valid driving license at the time of the accident. Hence, the Tribunal gave liberty to the Insurance Company to recover the award amount from the owner as per law. It is this award that is questioned by the Insurance Company.

8. We have heard Mr.S.Arunkumar, learned counsel appearing

for the appellant Insurance Company and Mr.C.Paraneedharan, learned counsel appearing for the 1st respondent. Notice to the 2nd respondent is dispensed with, inasmuch as the 2nd respondent remained exparte before the Tribunal.

9. Mr.S.Arunkumar, learned counsel appearing for the Insurance Company would confine his arguments only to the quantum of compensation. The fixation of annual income at Rs.4,00,000/- by the Tribunal is not very seriously challenged inasmuch as the same is backed by valid documentary evidence in the form of income tax returns.

10. Mr.S.Arunkumar would however contend that the Tribunal was not correct in adding 50% towards future prospects. Relying upon the decision 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, Mr.S.Arunkumar would contend that since the deceased was aged about 39 years and was a self employed person future prospects could be taken at 40% only. He would also contend that the conventional damages awarded by the Tribunal at Rs.1,00,000/- towards loss of consortium and Rs.1,00,000/- towards loss of love and affection are on the higher side.

11. Mr.C.Paraneedharan, learned counsel appearing for the respondent/ claimant would submit that the award on the whole is reasonable.

12. We have considered the rival submissions. We find justification in the arguments of Mr.S.Arunkumar, learned counsel appearing for the Insurance Company. 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 referred to supra, we are unable to uphold the addition of 50% towards future prospects. The award of Rs.1,00,000/- towards loss of consortium and Rs.1,00,000/- towards loss of love and affection are also on the higher side. Therefore, the award of the Tribunal has to be reworked and modified as follows:

Loss of Dependency = Rs.4,00,000/- + 40% x 2/3 x 15
= [Rs.4,00,000/- + Rs.1,60,000/-] x 2/3 x 15
= Rs.55,99,999/-

The same is rounded off to Rs.56,00,000/-

Award towards		Amount
Loss of Dependency	:	Rs.56,00,000/-
Loss of Consortium	:	Rs. 40,000/-
Loss of Love and affection	:	Rs. 25,000/-

Award towards		Amount
Funeral expenses	:	Rs. 25,000/-
Loss of Estate	:	Rs. 15,000/-
Total	:	Rs.57,05,000/-

Thus, the total award works out to Rs.57,05,000/-, the award will carry interest at 7.5% per annum with proportionate interest and costs.

13. Inasmuch as the 2nd claimant mother of the deceased had died even during the pendency of the original petition before the Tribunal, the 1st claimant, wife / 1st respondent herein will be entitled to the entire compensation. The Insurance Company is directed to deposit the compensation as per the modified award within six (6) weeks from the date of receipt of the copy of the judgment and on such deposit the claimant shall withdraw the same.

14. The Tribunal has recorded a finding that the driver of the Mahindra van did not have a valid driving license. In view of the same, the Insurance Company will be entitled to recover the award amount from the owner of the van without recourse to separate proceedings.

15. In fine, the appeal is partly allowed. The award of the Tribunal is modified and reduced to Rs.57,05,000/- with interest at 7.5% per annum giving liberty to the Insurance Company to recover the award amount form the 2nd respondent, owner of the offending vehicle. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

The Motor Accident Claims Tribunal,
Subordinate Judge Sankari.

Copy to:
The Section Officer,
VR Section, High Court, Madras.

+1cc to Mr.S.Arunkumar, Advocate, S.R.No.67032

C.M.A.No.1850 of 2018

GSP(12/11/2018)