IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.10.2018

CORAM:

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

CMA.No.2145 of 2018
and CMP No.16757 of 2018

M/s. Reliance General Insurance Co. Ltd.,
570, Naigaum Cross Road,
Next to Royal Industrial Estate,
Wadala (W), Mumbai 400 031. ... Appellant/2nd Respondent

-vs-

1. Rathinam

2. Kandasamy ..Respondents 1 & 2 /Claimants 1 & 2

3. Kuppusamy ... 3rd Respondent/1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree in MCOP No.187 of 2012, dated 28.03.2017 on the file of the Motor Accidents Claims Tribunal, Sub Court, Sankari.

For Appellant : Mr. S.Arunkumar
For Respondents : Mr.C.Kulanthaivel for R1 & 2

J U D G M E N T

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

The Insurance Company which suffered an award for payment of a sum of Rs.16,05,000/- as compensation for the death of one Sanjaykumar in the motor accident that occurred on 16.02.2012 is the appellant. The parents of the deceased are the claimants.

2. According to the claimants, when the deceased Sanjaykumar was standing in the mud portion of the Salem to Sankari Main Road, the Taurus lorry, bearing Registration No.TN-47-X-6845, going from Salem to Sankari, driven by its driver in a rash and negligent manner ran over the deceased and capsized on the left side of the road. Due to the accident the said Sanjaykumar died on the spot. The deceased Sanjaykumar was working as a salesman in Tasmac shop No.7230 in Salem and was also doing designing of

Fancy Sarees as a part time job. Claiming that he was earning about Rs.10,000/- per month, the claimants sought for a compensation of Rs.15,00,000/-.

3. The claim was resisted by the Insurance Company contending that the lorry was not responsible for the accident. It is claimed that the deceased negligently crossed the road without looking for on coming vehicles, resulting in the accident. The lorry capsized because of the effort made by the driver to avoid hitting the pedestrian, namely the deceased who crossed the road all of a sudden. The Insurance Company has also denied the age and income particulars of the deceased.

4. The Tribunal which heard the original petition concluded that the accident occurred due to the rash and negligent driving of the driver of the lorry. In coming to the conclusion, the Tribunal relied upon the FIR, which was marked as Ex.P1 and the evidence of P.W.3, who was an eye-witness to the accident. The contents of Ex.P6, the Rough Sketch was also taken into account by the Tribunal. Since the fact that the lorry had an Insurance cover was admitted, the Tribunal concluded that the appellant Insurance Company is liable to pay the compensation.

5. As regards the quantum, the Tribunal took the monthly income of the deceased at Rs.7,000/- and added 50% towards future prospects. The Tribunal deducted 1/3 towards personal expenses of the deceased and applied a multiplier of 17. On such calculation, the Tribunal concluded that the total loss of dependency would be Rs.14,30,000/-. The Tribunal awarded a sum of Rs.1,50,000/- towards loss of love and affection to the parents and Rs.25,000/- towards funeral expenses. In all, the total award worked out to Rs.16,05,000/-.

6. It is this award, which is challenged in this appeal.

7. We have heard Mr.S.Arunkumar, learned counsel appearing for the appellant/Insurance Company and Mr.C.Kulanthaivel, learned counsel appearing for respondents 1 & 2/claimants. The 3rd respondent, the owner of the lorry had remained ex-parte before the Tribunal and hence, notice to him in this appeal is dispensed with.

8. Mr.S.Arunkumar, learned counsel appearing for the Insurance Company would contend that the claimants had admitted that the deceased was drawing a salary of Rs.3,600/- from

Tasmac. This being so, the Tribunal, according to Mr.S.Arunkumar, erred in fixing the monthly income at Rs.7,000/-. He would also fault the Tribunal for adding 50% towards future prospects, in view of the decision of the larger Bench of the Hon'ble Supreme Court in National Insurance Company Ltd., Vs. Pranay Sethi reported in 2018 (1) LW 331. He would also contend that the amount awarded towards loss of love and affection is on the higher side, considering the parameters suggested by the larger Bench of the Hon'ble Supreme Court in Pranay Sethi 's case cited supra.

9. Contending contra Mr.C.Kulanthaivel, learned counsel appearing for the respondents 1 and 2/ the claimants, would submit that the accident has occurred on 16.02.2012 and therefore, the Tribunal was not right in taking the monthly income at Rs.7,000/-. He would therefore submit that if the monthly income is enhanced, the same would set off the higher compensation awarded under the head of loss of love and affection.

10. We have considered the rival submissions.

11. Considering the date of the accident and the age of the deceased, we are of the considered opinion that his income could be safely taken at Rs.9,000/- per month. Adding 40% towards future prospects and deducting one half towards personal expenses, the monthly loss of dependency would be Rs.6,300/-. The deceased was admittedly aged about 30 years and the multiplier applicable would be 17. Thus worked out the total loss of dependency would be

Rs.6,300/- x 12 x 17 = Rs.12,85,200/-.

12. As already pointed out, the award of the Tribunal towards loss of love and affection is on the higher side. Hence, the same is reduced to Rs.80,000/-, at Rs.40,000/- each of the claimants. The award of Rs.25,000/- towards funeral expenses is confirmed. The Tribunal has not awarded any amount towards loss of estate. Hence we award a sum of Rs.15,000/- towards loss of estate. Thus, the total award works out to Rs.14,05,200/-. The same is rounded off to Rs.14,05,000/-.

13. In fine the appeal is partly allowed. The award of the Tribunal is modified and reduced to Rs.14,05,000/- instead of Rs.16,05,000/-. The award will carry interest at 7.5% per annum.

14. We had by our interim order dated 25.09.2018, directed the Insurance company to deposit the entire award amount and on such deposit, we have permitted the claimants to withdraw 50% of the amount without furnishing security. The learned counsel appearing for the Insurance company is unable to state as to whether the amount was deposited or not. We direct the Insurance Company to deposit the modified award amount, less the amount, if any, already deposited, within a period of six weeks from the date of receipt of a copy of the judgment. On such deposit, the claimants are permitted to withdraw the same. No costs. Consequently connected miscellaneous petition is closed.

-s/d-
Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

jv
To

The Motor Accidents Claims Tribunal
Subordinate Judge
Sankari.

Copy to

The Section officer
VR Section, High Court, Madras 104.

+1 CC to Mr.C.Kulanthaivel, Advocate sr 74986.
+1 CC to Mr.S.Arunkumar, Advocate sr 74972

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BS(CO)
SP(20/02/2019)