IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.10.2018

CORAM:

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

CMA.No.246 of 2018
and CMA No.1188 of 2018 & CMP No.9765 of 2018

1. Bhuvaneshwari
2. Minor Sreenath
3. Minor Naveenraj
4. Saraswathi
5. Kuppusamy

Minor petitioners No.2 & 3 are
Rep. By their next friend Guardian
Mother Bhuvaneshwari

... Appellants in CMA No.246/2018
Respondents 1 to 5 in CMA No.1188/2018

vs

1.Kasinathan

... 1st Respondent in CMA 246/18
6th Respondent in CMA No.1188/2018

2.The Manager,
The New India Assurance Co. Ltd.,
2nd Floor, Sedhu Krishna Trade Centre,
133/33-1, Trichy Main Road, Gugai,
Salem 636 006.

... 2nd Respondent in CMA 246/18
Appellant in CMA 1188/2018

Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree in MCOP No.1141 of 2015, dated 22.09.2017 on the file of the Motor Accidents Claims Tribunal, I-Additional District Judge, Salem.

For Appellant: Mr. C.Paraneedharan
Appellants in CMA No.246/2018
Respondents 1 to 5 in CMA No.1188/2018

For Respondents : Mr.J.Chandran
2nd Respondent in CMA 246/18
Appellant in CMA 1188/2018

COMMON JUDGMENT

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

Both these appeals arise out of the award passed by the Motor Accident Claims Tribunal (1st Additional District Judge) Salem in MCOP No.1141 of 2015, in and by the said award the Tribunal had directed the Insurance Company/appellant in CMA No.1188 of 2018 to pay a sum of Rs.55,05,000/- as compensation for the death of one Senthil Kumar in a motor accident that occurred on 28.02.2015.

2. Aggrieved by the quantum of compensation, the Insurance Company has come forward with the appeal in CMA 1188 of 2018 and claimants have sought for enhancement in CMA No.246 of 2018.

3. According to the claimants, the deceased was riding his Motor Cycle bearing Registration No.TN 28 R 4956 from Tiruchengodu to Namakkal. While he was riding the Motor Cycle on the extreme left side of the road near Sengunthar Engineering College, the lorry bearing Registration No.TN 28 Y 6966, belonging to the 6th respondent, insured with the appellant Insurance Company, driven by its driver in a rash and negligent manner came in the opposite direction and dashed against the two-wheeler. As a result of the accident, the rider of the two-wheeler, namely Senthil Kumar suffered grievous injuries and died on the spot. Claiming that the deceased Senthil Kumar, was owning six lorries and earning about Rs.30,000/- per month, the claimants sought for a compensation of Rs.25,00,000/-.

4. The Claim Petition was resisted by the Insurance Company contending that the accident occurred due to the rash and negligent driving of the deceased himself and the lorry driver was not responsible for the accident. The age, occupation and income of the deceased were also denied by the Insurance Company.

5. The Tribunal, which heard the Original Petition, on the appreciation of the evidence on record concluded that the accident occurred due to the rash and negligent driving of the driver of the lorry. In coming to the said conclusion, the Tribunal relied upon Ex.P1 FIR, Ex.P3 Sketch and Ex.P4 Charge Sheet, which were filed against the driver of the lorry.

6. On the quantum, the Tribunal took the monthly income at Rs.25,000/- added 50% towards future prospects and arrived at the monthly loss of income at Rs.37,500/-. After deducting ¼th towards personal expenses, the Tribunal arrived at the monthly

loss of dependency at Rs.28,255/-. Considering the fact that the deceased was aged about 35 years at the time of the accident, the Tribunal applied the multiplier of 16 and arrived at the total loss of dependency at Rs.54,00,000/-. The Tribunal awarded a sum of Rs.5,000/- towards Transportation, Rs.20,000/- towards funeral expenses, Rs.20,000/- towards loss of consortium, Rs.40,000/- towards loss of love and affection to the minor children [Rs.20,000/- x 2], Rs.20,000/- towards loss of love and affection to the parents [Rs.10,000/- x 2]. Thus the total compensation worked out to Rs.55,05,000/-.

7. While the Insurance Company would contend that the compensation awarded is excessive, the claimants term as low and seek enhancement.

8. We have heard Mr.J.Chandran, learned counsel appearing for the Insurance Company and Mr.C.Paraneedharan, learned counsel appearing for the claimants. The owner of the lorry, namely the 6th respondent had remained ex-parte before the Tribunal and hence, notice to him, in this appeal, is dispensed with.

9. Mr.J.Chandran, learned counsel appearing for the Insurance Company would contend that the Tribunal erred in taking the monthly income at Rs.25,000/-. He would submit that since the deceased owned about six lorries and the business is being continued by the 1st claimant wife, the Tribunal should have taken into account only the supervisory charges as loss of income. He would also further contend that while filing the claim petition, the claimants had stated that the deceased was not an Income Tax Assessee, but however, after the death, they had filed an income tax return by Ex.P19 only with a view to claim excessive compensation.

10. Per contra, Mr.Paraneedharan, learned counsel appearing for the respondents/claimants would submit that supervising a fleet of Lorries is not an easy job, it requires expertise which, admittedly, the wife does not possess. He would also submit that after the death of the said Senthil Kumar, all the lorries have been sold. He would therefore, contend that the Tribunal should have taken the entire loss of income and the loss of dependency.

11. We have considered the rival submissions.

12. The fact that the deceased owned about six lorries is not in dispute. From the documents produced, it is also seen that the deceased was being good business. He was able to re-pay the loans borrowed by him for the purchase of the lorries. We also find that the deceased must have had reasonably high income by operating the vehicles. While we see some force in the contention of Mr.J.Chandran, learned counsel appearing for the Insurance Company regarding the actual loss to

the family because of the death, we find that the quantum of loss fixed by the Tribunal at Rs.25,000/- per month is just and reasonable. The lorry owner would at least make about Rs.10,000/- per month by operating a lorry. The Tribunal had taken less than Rs.5,000/- for a lorry and took the total loss of income at Rs.25,000/- for six lorries. We, therefore, see no reason to interfere with the quantum of monthly income fixed by the Tribunal at Rs.25,000/-.

13. It is the next contention of Mr.J.Chandran that the Tribunal erred in adding 50% towards future prospects. He would submit that the Tribunal should have added only 40% as per the Larger Bench of the Hon'ble Supreme Court in National Insurance Company Ltd., Vs. Pranay Sethi reported in 2018 1 LW 331. We find that the Tribunal is in error in adopting 50% towards future prospects, the Larger Bench judgment of the Hon'ble Supreme Court as suggested only in addition of 40% towards future prospects in case of self-employment. Therefore, the quantum of compensation awarded by the Tribunal on the loss of dependency needs to be reworked, accordingly the same is re-worked as follows:

Monthly Income	Rs.25,000/-
Add 40% towards Future Prospects	Rs.10,000/-
Income for the purposes of loss of dependency	Rs.35,000/-
Deduct ¼ for personal expenses	Rs. 8,750/-
Total	Rs.26,250/-

Rs.26,250/- x 12 x 16 = Rs.50,40,000/-

Thus, the total loss of dependency is fixed at Rs.50,40,000/-

14. Mr.Paraneedharan, learned counsel appearing for the claimants would submit that the amounts awarded under various heads of conventional damages is below par and he would seek enhancement of the same. The Tribunal has awarded Rs.20,000/- towards loss of consortium to the 1st claimant wife, the same is enhanced to Rs.40,000/-. The Tribunal has awarded Rs.40,000/- to claimants 2 and 3, the minor children at Rs.20,000/- each for loss of love and affection, the same is enhanced to Rs.60,000/- (at Rs.30,000/- each). The award of Rs.10,000/- each towards loss of love and affection to the parents of the deceased, Rs.5,000/- towards transport charges, Rs.20,000/- towards funeral expenses are sustained. Thus worked out the total compensation works out to:

S.No.	Particulars	Amount
1.	Loss of Dependency	Rs.50,40,000/-
2.	Loss of Consortium	Rs. 40,000/-
3.	Loss of love and affection to the children [Rs.30,000/- x 2]	Rs. 60,000/-
4.	Loss of love and affection to the parents [Rs.10,000/- x 2]	Rs. 20,000/-
5.	Towards Transportation Charges	Rs. 5,000/-
6.	Towards Funeral Expenses	Rs. 20,000/-
	Total	Rs.51,85,000/-

15. In view of the above, the appeal in CMA No.1188 of 2018 is partly allowed and the appeal in CMA No.246 of 2018 is dismissed. The award will carry interest at 7.5% per annum, from the date of the petition till date of payment. However, there shall be no order as to costs in these appeals. Consequently, the connected miscellaneous petition is closed.

16. The award is apportioned as follows:

1. The 1st claimant wife will be entitled to Rs.13,00,000/- with proportionate interest and entire costs.

2. The minor children each will be entitled to Rs.13,00,000/- each with proportionate interest.

3. The mother namely the 4th claimant Saraswathi, would be entitled t Rs.6,85,000/- with proportionate interest and the father, the 5th claimant would be entitled to Rs.6,00,000/- with proportionate interest.

17. The Insurance Company is directed to deposit the award amount as per modified award, less the amount, if any, already deposited within a period of 6 weeks from the date receipt of a copy of the judgment. On such deposit, the major claimants, namely, the respondents 1, 4 & 5 will be entitled to withdraw their respective shares of the compensation. The Tribunal is directed to deposit the share of the minors, namely the respondents 2 & 3, in an interest earning fixed deposit in any

one of the Nationalised Banks till they attain majority and the mother namely the 1st claimant will be entitled to withdraw quarterly interest from the fixed deposit for the maintenance of the minors.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Motor Accidents Claims Tribunal,
I-Additional District Judge,
Salem.

2.The Section Officer,
VR Section, High Court,
Madras.

+1cc to Mr.J.Chandran, Advocate, S.R.No.71725

CMA.No.246 of 2018
and CMA No.1188 of 2018 & CMP No.9765 of 2018

RSK(CO)
GSP(21/01/2019)