IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.09.2018

CORAM:

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

CMA.No.801 of 2018
and
CMA.No.1819 of 2018

CMA.No.801 of 2018

1. Mahalingam
2. Susila ... Appellants/Petitioner

-vs-

1. D. Vatchala

2. Reliance General Insurance Co Ltd.,
Reliance House 6th Floor,
Nungambakkam, Chennai - 600 006. ... Respondents/Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 is to allow the present appeal award enhanced compensation in judgment and decree dated 11.12.2017 in M.C.O.P.No. 1407/2015 passed by the Motor Accident Claims Tribunal (IV Small Causes Court), Chennai.

For Appellants : M/S.R.Nalliyappan

For Respondents: Mr.S.Arunkumar for R1-N.A

CMA.No.1819 of 2018

1. Reliance General Insurance Co Ltd.,
Reliance House 6th Floor,
Nungambakkam, Chennai - 600 006. .. Appellant

-vs-

1. Mahalingam
2. Susila
3. D. Vatchala ... Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 is to allow the present appeal award enhanced compensation in judgment and decree dated 11.12.2017 in M.C.O.P.No. 1407/2015 passed by the Motor Accident Claims Tribunal (IV Small Causes Court), Chennai.

For Appellant : Mr.M.L.Ganesh

For Respondents: Mr.R.Nalliyappan for R1 & R2
No Appearane for R3

J U D G M E N T

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

The challenge in these appeals is to the award of the Motor Accident Claims Tribunal, (IV Court of Small Causes), Chennai made in MCOP No.1407 of 2015 grating a sum of Rs.16,27,000/- as compensation for the death of one Selvakumar in a motor accident that occurred on 04.01.2015.

2. The claimants, who are the parents of the deceased would claim that the accident occurred while the deceased was riding his motor cycle bearing registration No.TN-22-AM-8145 along the 80 feet road in North to South direction. The lorry bearing registration No.TN-20-CZ-9576 belonging to the 3rd respondent and insured with the appellant Insurance company which was driven in a rash and negligent manner by its driver came from behind and dashed against the motor cycle. As a result of the accident, the rider of the two wheeler Selvakumar suffered grievous injuries and succumbed to the same. They would contend that the accident occurred due to the rash and negligent driving of the lorry by its driver and hence, the appellant Insurance company, as the Insurer of the lorry is liable to pay compensation. It is the further case of the claimants that the deceased was brilliant student and was pursuing his Bachelor of Engineering at the time of the accident, he was also doing part time work and earning Rs.10,000/- per month. The claimants sought for a compensation of Rs.81,00,000/- for the death of their only son.

3. The claim petition was resisted by the appellant Insurance company contending that the deceased was responsible for the accident. The manner in which the accident occurred was disputed by the Insurance company. The Insurance company also denied the age, income and the educational qualifications of the deceased as set out in the claim petition. The Tribunal which heard the original petition concluded that the accident occurred due to the rash and negligent driving of the lorry. In coming to the said conclusion, the Tribunal relied upon the evidence of PW1 and PW2 and the copy of the First Information Report which

was marked as Ex.P1. The Tribunal took into account that the lorry had come from behind and dashed against the two wheeler. The Tribunal also concluded that the liability to pay compensation is on the Insurance company, inasmuch as the existence of Insurance cover was admitted.

4. On the quantum, the Tribunal took notional income of the deceased at Rs.10,000/-, added 40% towards future prospects and deducted 50% towards personal expenses. Applying a multiplier of 18, the Tribunal arrived at the total loss of dependency at Rs.15,12,000/-. The Tribunal granted a sum of Rs.1,00,000/- for loss of love and affection and Rs.15,000/- towards funeral expenses. Thus, in all, the Tribunal awarded a sum of Rs.16,27,000/- with interest at 7.5% per annum from the date of petition till date of payment.

5. Terming the award as excessive, the Insurance company has come forward with the appeal in CMA No.1819 of 2018. The claimants have filed CMA No.1801 of 2018 seeking enhancement. We have heard Mr.M.L.Ganesh for the appellant, Insurance company, in CMA No.1819 of 2018 and 2nd respondent in CMA 1801 of 2018 and Mr.R.Nalliyappan learned counsel for the appellant in CMA No.1801 of 2018 and respondents 1 and 2 in CMA No.1819 of 2018. Notice to the owner of the lorry who figures as the 1st respondent in CMA No.1801 of 2018 and 3rd respondent in CMA No.1819 of 2018 is dispensed with, since, he had remained ex-parte before the Tribunal.

6. Mr.M.L.Ganesh learned counsel appearing for the Insurance company would contend that the Tribunal was not right in taking the monthly income at Rs.10,000/-. He would also term the award of Rs.1,00,000/- for loss of love and affection as excessive.

7. Per contra, Mr.R.Nalliyappan learned counsel for the claimants/appellants in CMA No.1801 of 2018 would contend that considering the fact that the accident took place in 2015, the Tribunal was not justified and adopting notional income at Rs.10,000/- for an Engineering student.

8. We find considerable force in the submissions of learned counsel for the claimants/appellants in CMA No.1801 of 2018. Admittedly, the deceased was a student of engineering and was aged 20 years at the time of the accident. The accident had occurred on 04.01.2015. We, therefore, fix the notional income of the deceased at Rs.15,000/- per month. Adding 40% towards future prospects, the loss of dependency would be Rs.21,000/-. Since, the deceased was a bachelor and the dependents are only his parents, 50% is to be deducted towards his personal expenses. This leaves a sum of Rs.11,500/- as monthly loss of dependency. Admittedly, the deceased was aged 20 years at the time of the accident, therefore, multiplier applicable is 18.

Thus, the total loss of dependency would be (11500 x 12 x 18 = 24,84,000)

Loss of Dependency	- Rs.24,84,000/-
Loss of love and affection for the parents (Rs.25,000 each)	- Rs. 50,000/-
Funeral Expenses	- Rs. 15,000/-
Transportation charges	- Rs. 5,000/-
Loss of estate	- Rs. 15,000/-
Damage to clothing and articles	- Rs. 5,000/-
Total	Rs.25,74,000/-

9. The appeal in CMA No.801 of 2018 is partly allowed, grating a sum of Rs.25,74,000/- as compensation. The appeal in CMA No.1819 of 2018 filed by the Insurance company will stand dismissed. The parties has directed to bear their own costs in both the appeals. The award will carry interest at 7.5% per annum. The award is apportioned as follows:

The 2nd claimant, the mother of the deceased will take Rs.15,74,000/- with proportionate interest and entire costs. The 1st claimant, the father of the deceased will be entitled to Rs.10,00,000/- with proportionate interest. The Insurance company is directed to deposit the award amount as per the modified award, less the amount, if any, already deposited within a period of 6 weeks from the date of receipt of the copy of this judgment. On such deposit, the claimants would be entitled to withdraw the same.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1. Motor Accident Claims Tribunal,
 (IV Court of Small Court) Madras.

2. The Record Keeper, VR Section,
 High Court, Madras.

+ 1 cc to MR. S. Arunkumar, Advocate Sr.67569
+ 1 cc to Mr. R. Nalliappan, Advocate Sr.67906

CMA.No.801 of 2018
and
CMA.No.1819 of 2018

RGN(CO)
EU(14/11/2018)