IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.09.2018

CORAM:

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

C.M.A.No.3253 of 2012 and
M.P.No.1 of 2012

The ORIENTAL INSURANCE CO.LTD.
Rep.by Branch Manager
'Spencer Towers', IV Floor,
No.770-A, Anna Salai,
Chennai - 600 002. ...Appellant/2nd Respondent

-vs-

1. L.Pappathi
2. Minor L.Mahendiran
3. Minor Iswarya
(Minors rep.by their N.F.Mother L.Pappathi)
... Respondents 1 to 3/ petitioners
4. G.Lakshmi
(R4 set ex parte before Lower Court)

5. Minor Jayaprakash
(Rep. by the guardian
Adopted father Joseph) ... Respondents 4 & 5/ Respondents 1 & 3

(Respondents 2,3 and 5 are declared as major vide Court order dated 20.09.2018 made in CMA No.3253 of 2012)

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and Decree dated 28.03.2012 made in MCOP No.388 of 2006 on the file of the Motor Accidents Claims Tribunal (Subordinate Judge) at Tirupattur, Vellore District.

For Appellant : Mr.R.Sreevidhya

For R1 to R3 : Not ready notice regarding RR1 to 3

For R4 : Set Exparte

For R5 : No Appearance

J U D G M E N T

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

The Insurance Company challenges the Award granting a sum of Rs.15,48,760/- to the claimants, who are wife and minor children of one Lucas, who died in a motor accident that occurred on 14.06.2006.

2. According to the claimants, the said Lucas was driving his Hero Honda Motor Cycle bearing Registration No.TN-23-K-4480 with his son as a pillion rider. While he was driving the vehicle on the extreme left side of the road, the car belonging to the 4th respondent insured with the appellant Insurance Company overtook the vehicle and applied sudden brake, resulting in the two wheeler colliding against the car from behind.

3. The claimants would contend that the deceased was earning a monthly salary of Rs.18,000/- through his employment as an Assistant Headmaster in a school. Thus, the claimants would quantify the loss of dependency at Rs.50 lakhs.

4. The claim petition was resisted by the Insurance Company by contending that the accident occurred due to the rash and negligent driving of Lucas, who drove the two wheeler and not the driver of the car. The Insurance Company would contend that the two wheeler came from behind and dashed against the car, which was proceeding slowly.

5. The Tribunal concluded that the accident occurred due to the negligence of the car driver. In coming to the said conclusion, the Tribunal relied upon the First Information Report as well as the evidence of the second petitioner L.Mahendiran as P.W.2, since he was the pillion rider. The Insurance Company did not examine the driver of the Car, but had chosen to examine the investigator and marked the investigation report. On quantum, the Tribunal took the monthly income at Rs.15,242/- after deducting 1/4 towards personal expenses arrived at the monthly pecuniary loss at Rs.11,430/-. Applying multiplier of "11", the Tribunal assessed the loss of dependency at Rs.15,08,760/-. The Tribunal awarded a sum of Rs.15,000/- towards loss of Consortium; Rs.15,000/- towards loss of Love and Affection; Rs.5,000/- towards Transportation Charges and Rs.5,000/- towards Funeral Expenses. Thus, in all the Tribunal awarded a sum of Rs.15,48,760/- as compensation. Hence, the Insurance Company is on appeal.

6. We have heard Ms.Sreevidhya, learned counsel for the appellant. Though the Insurance Company would contend that the

Tribunal was in error in concluding that the accident occurred due to the rash and negligent driving of the car driver, we are unable to entertain the said contention in view of the fact that the Insurance Company has not chosen to let in evidence to show the absence of negligence on the part of the car driver. The evidence of the Investigator and his report would not out weigh the statement made in the First Information Report and the evidence of P.W.2, who is an eye witness. On the quantum, we find that the Tribunal has not added any amount towards future prospects and the amounts awarded towards conventional heads are also lower than the amounts prescribed in the larger Bench judgment of the Hon'ble Supreme Court in National Insurance Co. Ltd., v. Pranay Sethi and others [2018 (1) L.W. 331].

7. In view of the same, we do not see any ground to interfere with the Award of the Tribunal. The appeal is dismissed confirming the award of the Tribunal. It is stated that the entire amount is deposited by the Insurance Company. It is seen from the records that all the claimants have become major. The apportionment of the compensation made by the Tribunal is sustained. The claimants are permitted to withdraw the compensation as apportioned by the Tribunal. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

svki

To

The Motor Accidents Claims Tribunal (Subordinate Judge)
Tirupattur, Vellore District.
(with direction to serve a copy of the Judgment through the process server to the first claimant in O.P.No.388 of 2006 in represent address)

+1 cc to Mrs.R.Sreevidhya, Advocate Sr.No.66348

C.M.A.No.3253 of 2012

SSD(CO)
CSL/31.01.2019