IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.11.2018

CORAM:

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

C.M.A. Nos.3509 of 2017 & 2298 of 2018
and
C.M.P.Nos.22339 of 2017, 22338 of 2017 & 10078 of 2018 in
CMA.No.3509 of 2017

CMA.No.3509 of 2017:

M/s.Reliance General Insurance Co. Ltd.,
Gee Jay Arcade, First Floor,
141/71- Thiruvenkataswamy Road West,
R.S.Puram Post, Coimbatore District.
... Appellant/R3

-vs-

1.R.Gulam Mohammed
2.G.Fathima ..RR1 & 2/Petitioners
3.V.Santhoshkumar ..R3/R1
4.E.Venkataramana ..R4/R2

CMA.No.2298 of 2018:

1.R.Gulam Mohammed
2.G.Fathima
... Appellants/Petitioners

-vs-

1.V.Santhoshkumar
2.E.Venkataramana
3.M/s.Reliance General Insurance Co. Ltd.,
Gee Jay Arcade, First Floor,
141/71- Thiruvenkataswamy Road West,
R.S.Puram Post, Coimbatore District.
... Respondents/Respondents

PRAYER in CMA.No.3509 of 2017: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the award dated 07.10.2016 made in MCOP.No.759 of 2012 on the file of the Motor Accidents Claims Tribunal, Sub Court, Dharapuram.

PRAYER in CMA.No.2298 of 2018: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 to set aside the award dated 07.10.2016 made in MCOP.No.759 of 2012 on the file of the Motor Accidents Claims Tribunal/ Sub Court, Dharapuram.

For Appellants : Mr.S.Arunkumar in CMA.No.3509/17
Mr.S.Santhan in CMA.No.2298/18

For Respondents: Mr.S.Santhan for R1 & 2 in CMA.No.3509/17
Mr.S.Arunkumar for R3 in CMA.No.2298/18
RR3 & 4 in C.M.A.3509/2017-NA
RR1 & 2 in C.M.A. 2298/2018-NA

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

1. The challenge in both these appeals is to the award in MCOP.No.759 of 2012 on the file of the Motor Accident Claims Tribunal, Sub-Court, Dharapuram, in and by which, the Tribunal awarded a sum of Rs.38,77,200/- as compensation for the death of one Shiraj in a motor accident that occurred on 03.12.2011.

2. According to the claimants, the deceased was travelling in a motor car bearing registration No.KA-53-6325 as a passenger proceeding from Udagamandalam to Masinagudi. The driver of the 1st respondent drove the car in a rash and negligent manner and lost control as a result of which the car capsized. Due to the accident, the passenger Shiraj was thrown off the vehicle and died on the spot. The claimants who are the parents of the deceased Shiraj would claim that he was earning about Rs.3,00,000/ per annum and sought for a compensation of Rs.60,00,000/-.

3. The Insurance Company resisted the claim contending that the accident did not occur due to the rash and negligent driving of the car. The Insurance Company would also dispute the quantum of income claimed by the parents of the deceased as well as the quantum of compensation.

4. The Tribunal on appreciation of the evidence on record concluded that the accident was caused due to the rash and negligent driving of the driver of the car. In coming to the said conclusion, the Tribunal relied upon the FIR filed as Ex.P1, rough sketch and the observation mahazar marked as Ex.P3 and Ex.P4. The final report filed by the Inspector of Police in CCB No.45 of 2012 was also taken note of by the Tribunal.

5. On the quantum, the Tribunal found that the deceased was employed as Group Leader, Finance and Accounts in Outsource Partners International Pvt. Ltd., Bangalore. Though, a salary

certificate evidencing his monthly salary at Rs.34,146/- was filed, the Tribunal after taking into account the deductions made, took the monthly income at Rs.26,000/-. The Tribunal also added 50% towards future prospects and arrived at the monthly income for the purposes of determination of the loss of dependency at Rs.39,000/-. The Tribunal deducted 10% towards income tax and applying a multiplier of 17, the Tribunal awarded a sum of Rs.37,50,200/- towards loss of dependency.

6. The Tribunal awarded a sum of Rs.1,00,000/- towards loss of love and affection, Rs.25,000/- towards funeral expenses and Rs.2,000/- towards loss of clothing and other articles. It is this award which is challenged by the Insurance Company in CMA.No.3509 of 2017 as being on the higher side, while the claimants, parents of the deceased, have come forward with the appeal in CMA.No.2298 of 2018 seeking enhancement.

7. We have heard Mr.S.Arunkumar, learned counsel appearing for the appellant Insurance Company in CMA.No.3509 of 2017 and for the 3rd respondent in CMA.No.2298 of 2018 and Mr.S.Santhan, learned counsel appearing for the respondents 1 and 2 in CMA.No.3509 of 2017 and the appellants in CMA.No.2298 of 2018.

8. While Mr.S.Arunkumar would term the award as being on the higher side, Mr.S.Santhan would contend that the award is too low. Mr.S.Arunkumar, would invite our attention to the evidence of PW4 who was examined to prove the income of the deceased, wherein, PW4 had admitted that they do not have any accounts for payment of salary. Relying upon the said evidence Mr.S.Arunkumar would contend that the Tribunal erred in fixing the monthly income at Rs.26,000/-.

9. Per contra Mr.S.Santhan would submit that the salary certificate would show that the deceased was drawing a sum of Rs.34,146/- as salary at the time of his death and hence the Tribunal should not have taken only Rs.26,000/- towards the monthly income.

10. We have considered the rival submissions. Of course PW4, has deposed that there are no records to show the income of the deceased except the salary certificate. But, the Tribunal had taken into account the circumstances and had fixed the monthly income at Rs.26,000/-. We do not find any ground to reduce the same. The Tribunal has taken 50% as future prospects which is not in tune with 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. Therefore, we take the future prospects at 40%. The Income tax payable on the above said income would be Rs.41,200/-. If we deduct the said income tax payable as well as 50% of the amount towards personal expenses of the deceased the loss of dependency works out to Rs.33,62,600/- (Rs.26,000/- + 40% x 12 - Rs.41,200/- (Income

tax) - 50% x 17).

11. The awards of the Tribunal under the heads of Funeral expenses and loss of estate are confirmed. The Tribunal has awarded Rs.1,00,000/- towards loss of love and affection and the same is reduced to Rs.80,000/- at Rs.40,000/- each to the parents. The Tribunal has not awarded any amount towards transportation. We award a sum of Rs.10,000/- towards transportation, thus the total award works out to Rs.34,82,600/- and the same is rounded off to Rs.34,83,000/-.

12. For the foregoing reasons the appeal in CMA.No.3509 of 2017 is allowed in part. The compensation is reduced to Rs.34,83,000/-. The award will carry interest at 7.5% per annum. The claimants will share the award amount equly. The Insurance Company is directed to deposit the award amount less the amount if any already deposited within a period of 6 weeks from the date of receipt of a copy of this judgment. On such deposit, the claimants are permitted to withdraw the entire amount of compensation.

13. In fine, the appeal in CAM.No.3509 of 2017 is partly allowed as indicated above and CMA.No.2298 of 2018 is dismissed. There shall be no costs in both the appeals. Consequently, the connected miscellaneous petitions are also closed.

s/d-

Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

To

1.The Subordinate Judge,
Motor Accident Claims Tribunal,
Dharapuram.

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

+2 Ccs to Mr.S.Santhan, Advocate sr 75977 & 76286.
+1 CC to Mr.S.Arunkumar, Advocate sr 76114.

C.M.A. Nos.3509 of 2017 & 2298 of 2018

EV(CO)
SP(22/01/2019)