In the High Court of Judicature at Madras

Dated : 24.10.2018

Coram

The Honourable Mr.Justice K.K. SASIDHARAN
AND
The Honourable Mr.Justice R. SUBRAMANIAN

C.M.A.No.2407 of 2018
and CMP No.18354 of 2018

M/s Reliance General Insurance Co Ltd.,
Rai's Towers, II Floor,
Plot No.2054, 2nd Avenue,
Anna Nagar,
Chennai - 600 040 ... Appellant/2nd Respondent

vs

1. Yanadamma
2. Boda Penchalaiah ... Respondents 1 & 2/ Petitioners

3. Doma Narasimmah ... 3rd Respondent/ 1st Respondent

Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, against the judgment and decree in MCOP No.4824 of 2013 dated 14.03.2017 on the file of Motor Accidents Claims Tribunal, (II Court of Small Causes), Chennai.

For Appellant : Mr.S. Arun Kumar

For R.1 & R.2 : Mr.Varadha Kamaraj

JUDGMENT

(Judgment of the Court was delivered by R. SUBRAMANIAN, J.)

Challenge in this appeal by the Insurance Company, is to the Award dated 14.03.2017 in MCOP No.4824 of 2013 passed by Motor Accidents Claims Tribunal, (II Court of Small Causes), Chennai granting a sum of Rs.14,90,000/- for the death of one Penchala Ratnaiah in the motor accident that had occurred on 13.12.2012.

2. By consent of both sides, the main appeal is taken up

for final hearing.

3. Heard Mr.S. Arun Kumar, learned counsel for the appellant Insurance Company and Mr.Varadha Kamaraj, learned counsel for the respondents 1 and 2. Since the third respondent, owner of the offending vehicle remained ex-parte before the Tribunal, notice to him, in this appeal is dispensed with.

4. According to the claimants/respondents 1 and 2, on 13.12.2012, while the deceased Penchala Ratnaiah was travelling as a load man in APE Load Auto bearing Registration No.AP-03-X-1440 at Peddacheruvu Tank Bund Palamaner Town, Palamaner Mandal, Chittoor District, Andhra Pradesh, a lorry bearing Registration No.AP-11-X-5499, driven by its driver in a rash and negligent manner, hit against the APE Load Auto. As a result of this, the deceased sustained grievous injuries and subsequently died. The claimants also contended that the deceased was a Load man in APE Auto and was earning a sum of Rs.10,000/- per month and claimed compensation of Rs.15,00,000/-.

5. The claim petition was resisted by the appellant Insurance Company contending that the driver of the auto was responsible for the accident. The age and income of the deceased were also disputed.

6. In order to prove their claim, the mother of the deceased was examined as P.W.1 and one Mr.Ravindra, who is an eyewitness was examined as P.W.2. Exs.P.1 to P.6 were marked. No oral or documentary evidence was let in on the side of the Insurance Company.

7. The Tribunal, after considering the oral and documentary evidence came to the conclusion that the accident was caused due to rash and negligent driving of third respondent's vehicle insured with the appellant Insurance Company and accordingly, the Tribunal fixed the entire liability on the Insurance Company.

8. On quantum, the Tribunal took the monthly notional income of the claimant as Rs.7,500/- and by adding 50% towards future prospects, fixed the income of the deceased as Rs.11,250/-. After deducting 50% towards personal expenses the Tribunal arrived Rs.5,625/- (11,250-5,625) as loss of contribution by the deceased to his family. The Tribunal, based on the age of the deceased, namely, 23 years, applied the multiplier of "18" and calculated the loss of dependency at Rs.12,15,000/- (5,625 x 12 x 18).

9. Further, the Tribunal awarded a sum of Rs.25,000/- towards funeral expenses; a sum of Rs.2,00,000/-; towards loss of love and affection to respondents 1 and 2/claimants (Rs.1,00,000/-each) and Rs.50,000/- towards loss of estate and thus, the total award worked out to Rs.14,90,000/- with interest at 7.5% p.a. from the date of petition till the date of deposit. The break up of the details of the compensation awarded by the Tribunal is as follows:

| | |
|---|---|
| Loss of income | : Rs.12,15,000 |
| Loss of love and affection to respondents 1 and 2 | : Rs. 2,00,000 |
| Funeral expenses | : Rs. 25,000 |
| Loss of estate | : Rs. 50,000 |
| | Rs.14,90,000 |

Aggrieved, the Insurance Company is on appeal.

10. Mr.S. Arun Kumar, learned counsel for the appellant Insurance Company would contend that the fixation of the monthly notional income at Rs.7,500/- made by the Tribunal is on the higher side. He would also contend that the Tribunal should have added only 40% towards future prospects in view of the guidelines suggested by Hon'ble Supreme Court in National Insurance Company Limited v. Pranay Sethi and other, reported in 2018 (1) Law Weekly 331. He would also fault with the Tribunal for awarding a sum of Rs.2,00,000/- towards loss of love and affection.

11. Mr.Varadha Kamaraj, learned counsel for the claimants would submit that the award passed by the Tribunal is just and reasonable.

12. We have considered the rival submissions and perused the materials available on record.

13. We find that fixation of Rs.7,500/- as monthly income cannot be interfered with in view of the fact that the accident had occurred on 13.12.2012. However, we are unable to sustain addition of 50% towards future prospects. As rightly contended by the learned counsel for the appellant Insurance Company, the Tribunal should not have adopted 50% towards future prospects. Considering the guidelines suggested by Hon'ble Supreme Court in National Insurance Company Limited v. Pranay Sethi and others reported in 2018 (1) Law Weekly 331, the percentage of future prospects would be only 40%. Therefore, if we add 40% towards future prospects, the monthly income would be Rs.10,500/-. The

deceased has left behind his parents. Therefore, after deducting 50% towards personal expenses, loss of income would be Rs.5,250/- (Rs.10,500 - 5,250). Since the deceased was aged at 23 years at the time of accident by applying the multiplier "18" the loss of dependency would be Rs.11,34,000/- (5,250 x 12 x 18).

14. The Tribunal has granted a sum of Rs.2,00,000/- towards loss of love and affection to the respondents 1 and 2/claimants (Rs.1,00,000/- each), which in our view, is on the higher side. Hence, we reduce the award towards loss of love and affection to Rs.40,000/- at Rs.20,000/- each. We are also of the view that the amount of Rs.50,000/- awarded for loss of estate is on the higher side and hence we reduce the award towards loss of estate to Rs.15,000/- and also reduce the amount awarded towards funeral expenses to Rs.15,000/-. We find that the Tribunal has not awarded any amount towards transportation, therefore, we award a sum of Rs.5,000/- towards transportation charges and Rs.1,000/- towards damage to clothing. Thus, the total compensation works out to Rs.12,10,000/-.

15. The details of the modified compensation as per the above discussion is as under:-

| | | |
|---|---|---|
| Loss of dependency | : | Rs.11,34,000 |
| Loss of estate | : | Rs. 15,000 |
| Loss of love and affection | : | Rs. 40,000 |
| Funeral expenses | : | Rs. 15,000 |
| Transportation expenses | : | Rs. 5,000 |
| Damage to clothing | : | Rs. 1,000 |
| | | Rs. 12,10,000 |

16. In fine, the Civil Miscellaneous appeal is partly allowed and the award of the Tribunal is modified to Rs.12,10,000/- (Rupees Twelve lakhs ten thousand only), as against the compensation of Rs.14,90,000/- awarded by the Tribunal, with interest at 7.5% from the date of petition till the date of deposit.

17. The Insurance Company is directed to deposit the amount as per the modified award within a period of six weeks from the date of receipt of a copy of this judgment. The apportionment between the claimants 1 and 2/parents of the deceased is as follows:-

(i) The first respondent-mother of the deceased is entitled to Rs.7,00,000/- (Rupees seven lakhs only) with proportionate interest and entire costs.

(ii) The second respondent/father of the deceased is entitled to Rs.5,10,000/- (Rupees five lakhs ten thousand only)with proportionate interest.

18. On such deposit, the claimants/respondents 1 and 2 are entitled to withdraw their respective shares by making necessary application before the Tribunal. There will be no order as to costs in this appeal. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

sr

To
The Judge,Motor Accidents Claims Tribunal,
(II Court of Small Causes), Chennai.

Copy To:
The Section Officer,
V.R.Section, High Court, Madras. (2 Copies)

+1 cc to Mr.K.Varadha Kamaraj, Advocate SR.No.72460
+1 cc to Mr.S.Arunkumar, Advocate Sr.No.72652

C.M.A.No.2407 of 2018

BR(CO)
CSL/28.12.2018