IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 22.11.2018
CORAM

THE HONOURABLE Mr.JUSTICE M.SATHYANARAYANAN
and
THE HONOURABLE Mr.JUSTICE P.RAJAMANICKAM

CMA.No.2718 of 2018
and CMP.No.20563 of 2018

The Divisional Manager
M/s.Reliance General Insurance Co. Ltd.,
NTG Complex at B-1, NTG Complex
B1, No.14, Ramasamy Street
West Tambaram, Chennai. .. Appellant/2nd Respondent

Vs.

1.Visalakshi
2.Nirmala
3.Haridoss
4.Sharmila
5.Gokul
[Minors 4 & 5 represented by their mother Visalakshi]
6.Prakash .. Respondents/1st Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the award and decree dated 16.09.2017 made in MCOP.No.132 of 2015 on the file of the Motor Accidents Claims Tribunal, Sub Court, Cheyyar.

For Appellant : Mr.S.Arun Kumar

JUDGMENT

[Order of the Court was delivered by M.SATHYANARAYANAN.J]

The second respondent in MCOP.No.132 of 2015 on the file of the Motor Accidents Claims Tribunal, Cheyyar, Thiruvannamalai District, is the appellant and aggrieved by the quantum of compensation awarded by the Tribunal to the respondents 1 to 5/claimants in MCOP.No.132 of 2015, the Insurance Company/appellant has filed the present appeal.

2. It is the case of the claimants that while the deceased was riding a two wheeler bearing Registration No.TN21-X-8803 and proceeding towards Mulluvadi Village, at about 10.15 a.m. on 24.04.2015, a tripper lorry bearing Registration No.TN28-T-3268 driven in a rash and negligent manner and also with a great speed, had dashed against him and as a consequence, wheel of the lorry ran over the head of the victim and he died on the spot.

3. The first respondent who is the widow of the victim was aged 38 years and the second respondent is his daughter, aged about 23 years and the third respondent is his son, aged 20 years and the respondents 4 and 5 were the minor daughter and son of the victim respectively, and they filed a claim petition in MCOP.No.132 of 2015 on the file of the Motor Accidents Claims Tribunal, Cheyyar, seeking compensation of Rs.25,00,000/-.

4. A perusal of the materials placed before this Court would indicate that the husband of the first respondent was aged 45 years and as per the claim petition, he was engaged in agricultural operations and also doing dairy farming and through the said occupation, he was earning an income of Rs.20,000/- per month.

5. The Insurance Company / 2nd respondent in MCOP filed a counter statement denying the contents of the claim petition, has averred that the rider of the vehicle is not having a valid driving licence and no insurance cover at the time of accident and that the rider has solely contributed to the said accident.

6. During the course of examination, the first respondent was examined herself as P.W.1 and one Karthikeyan was examined as P.W.2 and exhibits Ext.P1 to Ext.P8 were marked on behalf of the respondents/claimants. No oral evidence was let in and no document was filed on behalf of the appellant-Insurance Company.

7. The trial Court, considered the averments made in the claim petition and also taking note of the oral and documentary evidence, awarded a compensation of Rs.17,11,000/- under the following heads:

Sl.No.	Heads of compensation	Amount (Rs.)
1	Loss of income	15,30,000.00
2	Loss of consortium & loss of love of affection for his wife, 1st respondent	50,000.00
3	Loss of love and affection for respondents 2 to 5 @ Rs.25,000/- each	1,00,000.00
4	Towards cremation	25,000.00
5	For Transportation	5,000.00
6	Loss of Amenities	1,000.00
Total :		17,11,000.00

The Tribunal has also awarded interest at the rate of 7.5% per annum on the said compensation amount from the date of claim petition till the full and final payment and has also apportioned the compensation. Aggrieved by the quantum of compensation awarded to the claimants, the present appeal is preferred by the Insurance Company.

8. Mr.S.Arun Kumar, learned counsel appearing for the appellant/Insurance Company would submit that in the absence of proof of avocation, a sum of Rs.8,500/- fixed by the Tribunal as monthly income is very much on the higher side and granting additional 50% on the monthly income towards future prospects is purely on assumption, and would further add that in the absence of producing documents showing the age of the victim, the multiplier of '15' adopted by the Tribunal is totally erroneous. It is also submitted by the learned counsel for the appellant that the sum awarded towards Loss of Consortium, Love and Affection are also very much on the higher side and prays for interference.

9. This Court has carefully considered the submission made by the learned counsel appearing for the appellant and also perused the materials placed before it.

10. No doubt, the first respondent, the wife of the victim was examined as P.W.1 and she has spoken about the occupation and earning capacity of her husband, and there is no contra-evidence let in by the first respondent either in the form of oral or documentary evidence. The Tribunal has also taken note of the fact that though there is no documentary evidence proving the age as well as income earned by the deceased, however, it fixed the monthly notional income of the deceased at Rs.8,500/-, considering the dependants of his family and also by relying on the post-mortem report, Ext-P6, wherein the deceased stated to be at the age of 45 years at the time of accident, and hence, as stated in the claim petition, fixed the age of the victim as 45 years. The Tribunal has also taken into consideration Ext.P7 and Ext.P8 viz., the death certificate and legal heirship certificate.

11. The Tribunal has also taken note of the fact that the offending vehicle, insured with the appellant/Insurance Company was the sole cause for the accident and the said vehicle had proper licence and coverage of insurance as per Ext.P2 to Ext.P5, and that the driver of the offending vehicle was also having licence and badge to drive the vehicle, at the time of accident.

12. Insofar as the income of the deceased is concerned, the Tribunal has fixed his monthly notional income at Rs.8,500/- and after deducting $1/3^{rd}$ towards his personal expenses (which would amount to Rs.2,834/-) he

would have contributed 2/3rd of his income towards the family, which would be approximately Rs.5,667/- and adding 50% to it (i.e.,50% of Rs.5,666/- is Rs.2,833/-), the income of the deceased was reckoned at Rs.8,500/- (Rs.5,667 + 2,833).

13. In the considered opinion of the Court, even in the absence of documentary evidence, the Tribunal has rightly taken note of the monthly notional income of the deceased at Rs.8,500/- and applying multiplier of '15', it has rightly awarded a sum of Rs.15,30,000/- (Rs.8,500 x 12 x 15) under the head of Loss of Income. Hence, the amount granted under this head cannot be said to be on the higher side. It is also pertinent to note at this juncture that the first respondent, the wife of the deceased, was aged 38 years at that relevant time and on account of sudden and tragic demise of her husband, she owns the responsibility to take care of her two daughters and two sons, who are aged 23, 17, 20 and 15 years respectively and therefore, the award amount granted by the Tribunal under the head of Loss of Income cannot be said to be on a higher side and also the amount awarded by the Tribunal on other non-conventional heads are also found reasonable.

14. This Court, on an independent application of mind to the entire materials available before it, is of the considered view that the compensation awarded by the Tribunal is a just, fair and reasonable one, and the reasons assigned by the Tribunal cannot be said to be perverse or based on no evidence and found no error apparent on the face of the record and therefore, the impugned award does not warrant any interference in exercise of it's appellate jurisdiction.

15. In the result, this Civil Miscellaneous Appeal is dismissed and the judgement and decree dated 16.09.2017 made in MCOP.No.132 of 2015 on the file of the Motor Accidents Claims Tribunal, Sub Court, Cheyyar, is hereby confirmed. The appellant-Insurance Company is directed to deposit the entire award amount as determined by the Tribunal along with the interest at the rate of 7.5% per annum, less if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgement. On such deposit, the claimants are permitted to withdraw the amount in the manner as apportioned by the Tribunal. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS iv)

//True Copy//

Sub Assistant Registrar

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To:

1.The Sub Court
Motor Accidents Claims Tribunal
Cheyyar.

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

+1cc to Mr.S.Arun Kumar, Advocate SR.No. 79709

CMA.No.2718 of 2018

ASK(03/01/2019)