IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.07.2019

CORAM:

THE HONOURABLE MRS. JUSTICE S.RAMATHILAGAM

C.M.A.No.325 of 2015
and
M.P.No.1 of 2015

M/s.Reliance General Insurance Company Limited,
Rai's Towers, 2nd Floor,
Flat No. 2054, 2nd Avenue,
Anna Nagar, Chennai - 600 040.
... Appellant/ 2nd Respondent

Vs.

1.Kanniyammal
2.Manickkam,
3.Balakrishnan
4.Kalavathy
5.Bhuvaneswari
6.Babu ... Respondents 1 to 6 / Petitioners
7.E.Seenu ... 7th Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173(1) of the Motor Vehicles Act, 1988 against decree and judgment in M.C.O.P.No.4239 of 2012 dated 26.02.2014 on the file of the Motor Accident Claims Tribunal, II Court of Small Causes, Chennai.

For Appellant : Mr.M.B.Gopalan

For R1 to R6 : Mr.S.Kesavan
For R7 : No appearance

J U D G M E N T

This Civil Miscellaneous Appeal has been preferred by the Reliance General Insurance Company Limited, against the judgment and decree made in M.C.O.P.No.4239 of 2012 dated 26.02.2014 on the file of the Motor Accident Claims Tribunal, II Court of Small Causes, Chennai. The Insurance Company has preferred this appeal to set aside the compensation awarded by the Tribunal.

2. The brief case leading to the claim application is as follows:

The deceased met with an accident on 22.05.2012 at about 20.30 hours, while she was walking along ECR road from the North to South direction. At that time, a car bearing Registration No.TN-31-AB-3415, driving by its driver in a rash and negligent manner, in a dangerous speed from the same direction and hit behind of the deceased and thereby the deceased sustained fatal injuries and died on 30.05.2012. The claimants claimed a sum of Rs.7,00,000/- as compensation against the Insurance Company and owner of the vehicle.

3. The second respondent/Insurance Company denied the mode of accident as stated by the claimants in the claim application and also stated that there was no proper relevant documents for the vehicle viz., the Insurance Policy, RC Book, Driving licence, and Badge etc., in respect of the first respondent/owner of the vehicle at the time of accident. Apart from that, the rash and negligence driving on the part of the driver of the car also denied and stated that due to the negligence on the part of the deceased, accident had occurred. The compensation claimed by the claimants under various heads are also very much denied as excessive one.

4. The Tribunal considered the contentions raised by both the sides and it has given finding that the accident occurred only due to the negligent driving on the part of the driver of the car and hence, the second respondent/Insurance Company and the first respondent as owner were fixed with a liability to pay the compensation. The Tribunal, by verifying the age, income and occupation of the deceased, awarded a sum of Rs.6,02,450/- as compensation under various heads as follows:

S.No	Head	Compensation (in.Rs.)
1.	Loss of income	3,24,000.00
2.	Funeral expenses	10,000.00
3.	Love and affection	40,000.00
4.	Loss of estate	70,000.00
5.	Transportation	8,000.00
6.	Mental agony	30,000.00
7.	Pain and suffering	30,000.00
8.	Medical expenses	90, 450.00
Total		6,02,450.00

5. Aggrieved against the compensation and liability, the second respondent/Insurance Company has preferred this appeal.

6. The appellant is very much aggrieved against the compensation by stating that the sum awarded by the Tribunal is arrived in a mechanical way, that the deceased was survived by married children, the claimants are not the dependants of the deceased and these facts were not considered by the Tribunal and in an usual manner the sums were awarded by the Tribunal. The method of calculation adopted by the Tribunal is not proper since the crucial aspect is only the dependency, whereas the claimants are not the dependants. Moreover, the income of the deceased at Rs.4,500/- has been taken by the Tribunal irrespective of the fact that the deceased was 60 years old at the time of accident and hence the determination of income by Tribunal is very much on the higher side and not based on facts. Hence, the Insurance Company sought for setting aside the award made by the Tribunal by stating that it is an excessive one.

7. Heard both the parties and perused the documents.

8. On a perusal of the records, it is seen that the Tribunal has fixed the age of the deceased as 60 years by verifying the documents, records, discharge summary and the death certificate. The claimants are the legal heirs of the deceased, which was also by very much placed before the Tribunal by Ex.P6 and the Tribunal has observed the fact that the deceased, who was aged about 60 years would normally earn a sum of Rs.4,000/- per month. While considering the date of accident as 22.05.2012, notional income taken by the Tribunal at Rs.4,000/- is not on the higher side. Regarding the multiplier applied by the Tribunal at 9 and by taking the loss of income arrived as Rs.3,24,000/- is very much reasonable. The vehement argument made by the appellant is that the claimants, who are aged about 38, 36, 33 and 32 years are not depending upon the income of the deceased and hence, the loss of income that has been mechanically arrived by the Tribunal is not proper one. One cannot see that though the claimants are not independent earning persons, they are not depending on the income of the deceased, when the deceased person only 60 years, very well the children to some extent will be dependents, in fact not because of the dependency but by way of unity and affection. Hence, there is no fault in calculating the said loss of income arrived by the Tribunal. Further, the sum awarded by the petitioner at Rs.40,000/- to the petitioners are very much reasonable and one cannot deny that the family members who lost the head of the family, will definitely loss the care and attachment of the said person though the said sum is only by way of compensation, the said loss cannot be measured or compensated by way of money. The sum awarded under the heavy loss of estate Rs.70,000/- is

also very much reasonable. Further, the sum awarded towards transport to hospital at Rs.8,000/- is very much reasonable, the sum awarded for mental agony to the petitioners since she was under treatment for five days and the same claimed by the claimants against Rs.70,000/- was awarded as Rs.30,000/- is also not on the higher side. The petitioner has observed that the mental agony that was sustained by the claimants i.e., the daughters and sons of the deceased, suffering for a lot for five days due to the severe injuries, the sum awarded is also very much reasonable because the claimants also very much upset by physically as well as mentally and the sum awarded as medical expenses by verifying Ex.P5, the medical bills and the award of Rs.90,450/- is very much perfect and reasonable. Hence, the sum awarded under the above heads are very much reasonable, which are all based on documents and also the discussions that the age of the deceased as also, the age of the surviving claimants, the loss by way of income, medical expenses, love and affection, pain and suffering are all very much reasonable and hence there is no substance available to interfere with the award made by the Tribunal.

9. In the result, this Civil Miscellaneous Appeal is dismissed. The Reliance General Insurance Company Limited, shall deposit the award amount as ordered by the Tribunal with interest, after deducting the amount if any already deposited, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the deposited amount to the Savings Bank Account of the claimant, forthwith, through RTGS. No costs. Consequently, connected MP is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To:
1.The Motor Accident Claims Tribunal,
II Court of Small Causes, Chennai.

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

+1cc to Mr.M.B.Gopalan, Advocate Sr.59288
+1cc to Mr.S.Kesavan, Advocate Sr.59032

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srg 20/02/2020