IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.NO.2357 OF 2019
AND
C.M.P.NO.10661 OF 2019

M/s.Reliance General Insurance Co. Ltd.,
Rai Tower, 2nd Tower, Plot No.2054,
2nd Avenue, Anna Nagar,
Chennai – 40. ... Appellant

vs.

1.Padma
2.Vignesh
3.Minor.Aswini
Minor rep. by her mother & NF Padma
4.Rani
5.M.Bhuvaneswari ...Respondents

Prayer:
Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree dated 27.09.2018 made in M.C.O.P.No.5607 of 2014 on the file of the Motor Accidents Claims Tribunal, Chief Judge, Court of Small Causes, Chennai.

For Appellant: Mr.S.Arun Kumar

JUDGMENT
[Judgment of the Court was made by ABDUL QUDDHOSE, J.]

The instant appeal has been filed by the Insurance Company challenging the award and decree dated 27.09.2018, passed by the Motor Accidents Claims Tribunal, Chief Judge, Court of Small Causes, Chennai in M.C.O.P.No.5607 of 2014.

Brief facts leading to the filing of the instant appeal:

2.A person by named Suresh died on 25.02.2014 as a result of an accident caused due to the rash and negligent driving by the driver of the car bearing Registration No.TN 09 BS 3624, in which he was travelling on the ill fated day. The said car is owned by the fifth respondent and insured with the Appellant. The accident happened at ECR Road, Ranganathapuram, due to the rash and negligent driving by the driver of the car which dashed against a roadside tree. Suresh died on the spot.

3.The first respondent being the wife, the second respondent being the son, the third respondent being the daughter and the fourth respondent being the mother are the dependants of the deceased Suresh. They preferred a claim before the Motor Accidents Claims Tribunal, Chief Judge, Court of Small Causes, Chennai in M.C.O.P.No.5607 of 2014 against the Appellant and the fifth respondent, seeking a compensation of Rs.60,00,000/- for the death of Suresh as a result of the accident.

4.The Motor Accident Claims Tribunal by its award dated 27.09.2018 in M.C.O.P.No.5607 of 2014, directed the Appellant as well as the fifth respondent jointly and severally to pay the respondent Nos.1 to 4 a sum of Rs.31,40,004/- together with interest at the rate of 7.5% per annum from the date of claim till the date of realization excluding the period of default if any with proportionate costs as compensation. Out of the total compensation amount of Rs.31,40,004/-, the Tribunal determined that the first respondent is entitled to Rs.10,00,000/-, the second respondent is entitled to Rs.7,40,004/-, the third respondent (minor) is entitled to Rs.10,00,000/-, the fourth respondent is entitled to Rs.4,00,000/-.

5.Aggrieved by the adverse finding of negligence against the insured vehicle as well as the assessment of compensation, the instant appeal has been filed by the Insurance Company.

6.Heard Mr.S.Arun Kumar, learned counsel for the Appellant. The fifth respondent has remained exparte both before the Tribunal as well as before this Court.

Discussion:

7.The Appellant Insurance Company has challenging the adverse finding of negligence against the insured vehicle and they have also challenged the quantum of compensation assessed by the Tribunal.

8.Before the Tribunal, the respondent Nos.1 to 4/claimants filed 21 documents which were marked as exhibits P1 to P21. FIR was registered only against the driver of the insured car bearing Registration No.TN 09 BS 3624 for his negligent driving. Due to the rash and negligent driving, the car dashed against the roadside tree causing extensive damage to the car which resulted in the death of Suresh on the spot.

9.Before the Tribunal, three witnesses were examined on the side of the respondent Nos.1 to 4/claimants, namely, PW1, who is the first respondent, PW2 is an eye witness by named Jayakumar and PW3 Mr.Mir Dawood Ali, Superintendent, Zonal Office-IX, Chennai Corporation. On the side of the Appellant neither witnesses were examined nor documents filed.

10.PW2 (eye witness) in his proof affidavit has deposed that the insured car was driven by one Dinesh and the deceased Suresh as well as four others were travelling in the same car which lost its control and dashed against the roadside tree which resulted in the death of deceased Suresh as well as the other occupants of the car. PW2 was also cross-examined by the Appellant, but, no adverse inference has been drawn from the cross-examination of PW2 to disprove the evidence of PW2. The Tribunal has also observed that the Appellant Insurance Company has not chosen to produce the investigation report to disprove the contention of the respondent Nos.1 to 4/claimants.

11.This Court has perused and examined the impugned award as well as the evidence and materials available on record. We are of the considered view that the Tribunal has rightly given a finding that only due to the rash and negligent driving by the driver of the insured car, the accident had happened which resulted in the death of Suresh.

12.Insofar as the assessment of the compensation by the Tribunal is concerned, the deceased was 40 years at the time of the accident and he was employed as a driver in the Chennai Corporation. The Service Register, which is marked as Ex.P14 proves his date of birth as 10.02.1974. The legal heirship certificate of the deceased Suresh has also been marked as Ex.P4 which confirms that the respondent Nos.1 to 4/claimants are his legal heirs.

13.Ex.P16 is the salary certificate of the deceased Suresh and it is an attested copy produced by PW3, who is an employee of the Chennai Corporation and the salary certificate has been issued by the Zonal Office, Chennai Corporation. As per the salary certificate, the salary of the deceased during January and February 2014 was Rs.17,208/-. After deduction, the net salary paid to the deceased Suresh is between Rs.12,000/- and Rs.13,000/-.

14.Since the deceased was an employee of the Chennai Corporation and Ex.P16 salary certificate proves his salary at the time of the accident, as rightly observed by the Tribunal, there is no reason to suspect Ex.P16. Hence, the assessment of the monthly income of the deceased at the time of the accident by the Tribunal at Rs.17,208/- is correct.

15.The Tribunal has also applied the correct multiplier of 15, as per the decision of the Hon'ble Supreme Court in the case of Smt.Sarala Verma and Others vs. Delhi Transport Corporation and Another reported in 2009 (2) TN MAC 1 (SC), considering the age of the deceased at the time of the accident was 40 years. The Tribunal has rightly deducted 1/4th towards personal expenses of the deceased considering the fact that there are four dependents being his wife, two minor children and his mother.

16.The Tribunal has also rightly awarded Rs.15,000/- towards loss of estate, another Rs.15,000/- towards funeral expenses, Rs.40,000/- towards loss of consortium and Rs.50,000/- towards love and affection which is in accordance with the Constitution Bench judgment of Hon'ble Supreme Court in the case of National Insurance Company Limited vs. Pranay Sethi and Others reported in 2017 (16) SCC 680. The apportionment of total compensation between the respondent Nos.1 to 4/claimants by the Tribunal is also in accordance with the settled principles of law and does not call for any interference.

17.For the forgoing reasons, we are of the considered view that there is no merit in this appeal.

18.In the result, the appeal is dismissed and the Appellant-Insurance Company as well as the fifth respondent are directed to deposit the entire award amount jointly and severally as per the award of the Tribunal along with interest and costs after deducting the amount, if any already deposited, to the credit of MCOP.No.5607 of 2014 within a period of six weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the share of the first, second and fourth respondents as per the order of this Court through RTGS within a period of four weeks thereafter. The third respondent being a minor, the share of her compensation shall be deposited in an interest bearing fixed deposit in any Nationalized bank till the third respondent attains majority. However, the accrued interest under the fixed deposit shall be permitted to be withdrawn by the first respondent once in 6 months till the minor attains majority. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accidents Claims Tribunal,
   Chief Judge, Court of Small Causes, Chennai.

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

+1cc to Mr.S.Arunkumar, Advocate in sr.no.77433

C.M.A.No.2357 of 2019

VBA(CO)
CS/08/06/2020