IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.12.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.M. SUNDRESH
AND
THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

C.M.A. No.2658 of 2019
& CMP No.13094 of 2019

M/s Cholamandalam MS General
Insurance Company Limited,
Chennai. ... Appellant/2nd Respondent

Vs.

1.Karuppan

2.Papathi

3.Shahul Hameed (died)
R3 died vide Court order dated 03.12.2019 in CMA No.2658 of 2019 as per memo dated 03.12.2019 (Present in Court) are recorded (MMSJ & KRJ) ... Respondents/Petitioners & 1st Respondent

Prayer: Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 05.07.2017 made in M.C.O.P.No.180 of 2015 on the file of the Motor Accident Claims Tribunal, III Additional District Court, Kallakurichi.

For Appellant : Mr.N.Vijayaraghavan

For Respondents : Mr.R.Subramanian for Mr.Govindaraman for R1 & R2

JUDGMENT

(Judgment of the Court was delivered by M.M.Sundresh,J.)

This appeal is preferred against the award dated 05.07.2017 made in M.C.O.P.No.180 of 2015 on the file of the Motor Accidents Claims Tribunal, III Additional District Court, Kallakurichi, with respect to the quantum alone.

2. The appellant is the insurer. The Tribunal passed an award for a sum of Rs.87,93,000/- by fixing Rs.1,02,18,960/- towards loss of income, Rs.1,00,000/- towards loss of love and affection and Rs.25,000/- towards funeral expenses. Accordingly, by fixing the negligence on the part of the deceased at 15%, awarded a sum of Rs.87,92,366/- and rounded off to Rs.87,93,000/-.

3. The learned counsel appearing for the insurer would submit that the monthly income ought not to have been taken at Rs.47,300/. There was no material produced for fixing the earning capacity of the deceased. What was produced was the monthly income of another Doctor pertaining to the year 2017 whereas the occurrence took place in the year 2014. The multiplier adopted by the Tribunal is not correct. Admittedly, the deceased was a bachelor at the time of occurrence. The claimants are the parents. Therefore, 50% deduction ought to have been made. The other amounts granted towards loss of love and affection and funeral expenses are on the higher side.

4. The learned counsel appearing for the respondents 1 and 2/claimants would submit that the Tribunal has committed an error in fixing the contributory negligence on the deceased, who is a pillion rider. It may be a case where the injury would have been lesser. The accident had occurred not because of the negligence of the deceased but solely by the offending vehicle. Hence, the appeal will have to be dismissed.

5. We find some force in the submission made by both the learned counsels insofar as the monthly income fixed at Rs.47,300/- by the Tribunal. This was done based upon the monthly income of another Doctor. At the time of accident, the deceased has just completed the medical course. The deceased died in the year 2014 whereas the monthly income of the third party for the year 2017 has been wrongly taken into consideration for fixing the monthly income. In such view of the matter, we are inclined to fix a sum of Rs.40,000/- per month towards the monthly income of the deceased, especially taking into consideration the fact that the deceased has

admittedly completed the medical course, therefore, his earning capacity cannot be doubted. If 50% towards future prospects is added the monthly income works out to Rs.60,000/- (Rs.40,000 + Rs.20,000) and the annual income works out to Rs.7,20,00/- (60,000 x 12). From that amount, if 50% i.e. Rs.3,60,000/- is deducted towards personal expenses, the annual income works out to Rs.3,60,000/-. Applying the multiplier of 18, the total loss of income works out to Rs.3,60,000x18=Rs.64,80,000/-. The amount awarded towards loss of love and affection and funeral expenses are on the higher side. Accordingly, it is reduced to Rs.80,000/- and Rs.15,000/- respectively. The Tribunal has not awarded any amount towards loss of estate. Hence, a sum of Rs.15,000/- is awarded under this head. The modified compensation amount is as follows:

Loss of income	--	Rs.64,80,000/-
Loss of love and affection	--	Rs. 80,000/-
Funeral expenses	--	Rs. 15,000/-
Loss of estate	--	Rs. 15,000/-
Total compensation		Rs.65,90,000

Rounded off to Rs.66,00,000/-

6. Insofar as contributory negligence is concerned, as rightly submitted by the learned counsel for the claimants, the same would not arise for consideration, particularly, when no negligence has been caused at the hands of the deceased with respect to the accident. Therefore, the finding of the Tribunal fixing contributory negligence on the pillion rider stands set aside.

7. Accordingly, the above civil miscellaneous appeal stands allowed in part and the compensation awarded by the Tribunal is reduced to Rs.66,00,000/-. No costs. Consequently, connected miscellaneous petitions stand closed.

8. The appellant-insurance company is directed to deposit the modified compensation amount of Rs.66,00,000/- with accrued interest, less the amount, if any already deposited, to the credit of M.C.O.P.No.180 of 2015 on the file of the Motor Accidents Claims Tribunal, III Additional District Court, Kallakurichi, within a period of six weeks from the date of receipt of a copy of this judgment.

9.We also direct the Tribunal to transfer the entire amount awarded along with proportionate interest at 7.5% per annum by way of RTGS to the bank account of the claimants within a period of three weeks from the date of deposit of the award amount. On such transfer, the claimants are entitled to withdraw the same.

Sd/-
Assistant Registrar(ADI-MDU)

//True Copy//

Sub Assistant Registrar

raa

To

Motor Accident Claims Tribunal,
III Additional District Court, Kallakurichi.

+1cc to Mr.N.Vijayaraghavan, Advocate SR.106519
+1cc to Mr.S.Govindaraman, Advocate SR.105471

C.M.A. No.2658 of 2019

KS(CO)
CB(11/06/2020)