IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05.12.2019

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

C.M.A.Nos.1787, 1886 and 1887 of 2018
and C.M.P.No.13760 of 2018

C.M.A.No.1787 of 2018
The New India Assurance Company Ltd.,
Motor Third Party Claims Hub,
No.751, Anna Salai, 3rd Floor,
Chennai - 1. .. Appellant /2nd Respondent

vs.

1.Kavitha
2.Balaji (minor)
3.Srimathi (minor)
4.Gowri ...Respondents 1 to 4/Claimants
5.G.Prabhu ..5th Respondent/1st Respondent
(minor respondents 2 and 3 are rep. by their mother and next friend R1)

C.M.A.No.1886 of 2018

1.A.Kavitha
2.Balaji
3.Srimathi
4.Gowri
(minor appellants 2 and 3 are rep. by their mother and next friend first appellant) .. Appellants /Claimants

vs.

1.G.Prabhu

2.The New India Assurance Company Ltd.,
Motor Third Party Claims Hub,
No.751, Anna Salai, 3rd Floor,
Chennai - 1. .. Respondents 1&2/Respondents 1&2

C.M.A.No.1887 of 2018

Kavitha .. Appellant /Claimant

vs.

1.G.Prabhu

2.The New India Assurance Company Ltd.,
Motor Third Party Claims Hub,
No.751, Anna Salai, 3rd Floor,
Chennai - 1. .. Respondents/Respondents

Appeals filed under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 29.04.2017 made in M.C.O.P.Nos. 4808 and 4900 of 2015 on the file of the Motor Accidents Claims Tribunal (II Court of Small Causes), Chennai.

For Appellants : Mr.R.Neethi Perumal in C.M.A.No.1787 of 2018
Mr.F.Terry Chellaraja in C.M.A.Nos.1886 and 1887 of 2018

For Respondents : Mr.F.Terry Chellaraja for R1 to R4 in C.M.A.No.1787 of 2018
R5 exparte in C.M.A.No.1787 of 2018
Mr.R.Neethiperumal for R2
R1- exparte in C.M.A.Nos.1886 and 1887 of 2018

COMMON JUDGMENT

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

As all the appeals are emanating from the common judgment rendered in M.C.O.P.Nos.4808 and 4900 of 2015 between the same parties, they have been taken up together and disposed of by a common order.

2.For the sake of brevity, the appellant in C.M.A. No.1787 of 2018 has been taken as such as against the respondents therein for all the cases.

3.The appellant is the insurer of the lorry bearing Regn. No.TN 64 H 1977. The deceased was travelling in a vehicle bearing Regn. No.TN 29 AK 9016 along with respondents 1 to 4/claimants. It is the case of respondents 1 to 4 that the vehicle insured with the appellant was driven in a rash and negligent manner and thus responsible for the death of the deceased and causing injuries on respondents 1 to 4.

4.The Tribunal, while fixing the negligence on the part of the owner of the vehicle which has been insured with the appellant, awarded compensation in favour of respondents 1 to 4/claimants. Thus, compensation has been awarded for the death of the deceased and the injuries sustained by respondents 1 to 4. Challenging the award passed in MCOP No.4808 of 2015, C.M.A.No.1787 of 2018 has been filed. Seeking enhancement, respondents 1 to 4 filed C.M.A. No.1886 of 2018 (MCOP No.4808 of 2015). C.M.A. No.1887 of 2018 (MCOP No.4900 of 2015) has been filed seeking enhancement of the compensation awarded to the injuries suffered by respondents 1 to 4.

5.Learned counsel appearing for the appellant would submit that the Tribunal ought not to have fixed Rs.15,000/- as the income of the deceased when he is only a driver. There are no sufficient materials to come to the aforesaid conclusion. Higher amounts have been granted under the conventional heads such as loss of love and affection, loss of estate, loss of consortium and funeral expenses. Thus, the appeal in CMA No.1787 of 2018 will have to be allowed to that extent.

6.Learned counsel appearing for respondents 1 to 4 submits that the Tribunal did take into consideration Exs.P7, P8 and R9. After having done so, the income has been wrongly fixed at Rs.15,000/- per month. Insofar as the injuries suffered by respondents 1 to 4, the Tribunal did not take into consideration the relevant materials.

7.From the submissions made, there is no serious issue raised with respect to negligence. Therefore, we are concerned with the quantum alone. The Tribunal did fix the income of the deceased at Rs.15,000/- per month. On a perusal of the discussion made by the Tribunal, it appears that Exs.P7, P8 and R9 are not disputed. The appellant has also not produced any contra material. However, respondents 1 to 4 themselves have claimed the income of the deceased at Rs.80,000/- and he was stated to be a sub contractor. Though the aforesaid amount has been mentioned, admittedly, he was not an income tax assessee.

8.Thus, we cannot hold that the Tribunal was not correct in fixing a sum of Rs.15,000/- as monthly income, as the claim of Rs.80,000/- cannot be sustained. Merely because there was some evidence to show that for a particular month, a sum of Rs.91,700/- has been received by the deceased, the same cannot be the basis for the entire year, especially, when the deceased was not an income tax assessee. However, the aforesaid documents have not been denied or disproved. We feel that it would be safe to fix the income of the deceased at Rs.25,000/- per month. There is no quarrel over the age of the deceased and the multiplier adopted along with due deduction. Respondents 1 to 4 are the wife, mother and children of the deceased. In such view of the matter, while fixing a sum of Rs.25,000/- with 1/4 deduction and adding 25% of the income towards future prospects, we arrive at the loss of pecuniary benefits as Rs.39,37,500/- (Rs.25,000/- + 25% of Rs.25,000/- x 1/4 x 12 x 14 = Rs.39,37,500/-). Insofar as loss of love and affection is concerned, the Tribunal has awarded Rs.3 lakhs, which should have been fixed at Rs.1,20,000/-. Accordingly, we award a sum of Rs.1,20,000/- towards loss of love and affection, Rs.15,000/- for loss of estate, Rs.40,000/- for loss of consortium and Rs.15,000/- for funeral funeral expenses. Deductions have been made in tune with the judgment of the Apex Court in National Insurance Co. Ltd vs Pranay Sethi and others (2017 (2) TN MAC 271). Accordingly, in C.M.A.No.1886 of 2018, the total compensation payable is arrived at Rs.41,27,500/-. Consequently, C.M.A.No.1886 of 2018 stands allowed in part as indicated above.

9.Insofar as C.M.A.No.1887 of 2018 is concerned, we do not find any error in the award passed by the Tribunal. Admittedly, injuries sustained by the claimant are not serious. Therefore, the aforesaid appeal has been dismissed. Accordingly, C.M.A.No.1787 of 2018 filed by the insurance company also stands dismissed.

10.In the result, C.M.A.Nos.1787 and 1887 of 2018 are dismissed and C.M.A.No.1886 of 2018 is allowed in part. No costs. Consequently, connected miscellaneous petition is closed.

11.In such view of the matter, the appellant insurance company is directed to deposit the modified amount now awarded by this Court along with proportionate interest, less the amount, if any already deposited, to the credit of M.C.O.P.No.4808 of 2015 on the file of the Motor Accidents Claims Tribunal (II Court of Small Causes), Chennai and the amount awarded by the Tribunal along with proportionate interest, less the amount if any already deposited, to the credit of M.C.O.P. No.4900 of 2015 on the file of the Motor Accidents Claims Tribunal (II Court of Small Causes), Chennai within a period of eight weeks from the date of receipt of a copy of the judgment.

12.We also direct the Tribunal to transfer the entire amount deposited by way of RTGS to the bank accounts of the respective major claimants including the minor claimant in C.M.A.No.1886 of 2018 viz., Balaji within a period of three weeks from the date of deposit of the award amount. On such transfer, the major claimants are entitled to withdraw the same. The second claimant - Balaji, then minor, would have attained majority by now and he is also permitted to withdraw the compensation amount apportioned to his share along with accrued interest, after filing necessary application before the Tribunal, to declare him as major, if he has not already withdrawn. Insofar as the share of the minor claimant - Srimathi in C.M.A.No.1886 of 2018 is concerned, the Tribunal is directed to deposit the same in any one of the Nationalised Banks under reinvestment scheme, till she attains majority. The mother of the minor claimant is entitled to withdraw the interest accrued once in three months directly from the Bank.

Sd/-
Assistant Registrar(CCC)

//True Copy//
Sub Assistant Registrar

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To

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

+2cc to Mrs.M.Malar, Advocate SR.10896, 10897

C.M.A.Nos.1787, 1886
and 1887 of 2018

TM(CO)
CB(30/09/2020)