IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.12.2019

C O R A M

The Hon'ble Mr.Justice M.M.Sundresh
and
The Hon'ble Mr.Justice Krishnan Ramasamy

C.M.A.No.221 of 2018
C.M.P.Nos.2541 and 7381 of 2018
C.M.P.No.24356 of 2019

The Oriental Insurance Co. Ltd.,
Motor Third Party Cell,
No.115, Broadway, II Floor,
Chennai - 600 001. ...Appellant/2nd Respondent

Vs.

1. Ramanamma
2. Minor Chenchu Lakshmi
3. Minor Obulamma
4. Minor Vamsi
5. Seethamma
6. Obaiah ..Respodnents 1 to 6/Petitioners
7. Kollu Dhanam
   (Remained ex parte before the Tribunal)
   ...7th Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed against the judgment and decree, dated 16.06.2017, passed in M.C.O.P.No.4701 of 2013, on the file of the Motor Accident Claims Tribunal (V Court of Small Causes) Chennai.

For Appellant	:	Mr.S.Arun Kumar
For Respondents 1-4	:	Mr.K.Varadha Kamaraj
For Respondent- 5	:	Died
For Respondent- 6 &7	:	No appearance

JUDGMENT

Judgement of the Court was delivered by Krishnan Ramasamy,J.

This Civil Miscellaneous Appeal has been preferred by the Insurance Company, questioning both the quantum of compensation and liability awarded by the Motor Accidents Claims Tribunal, ((V Court of Small Causes) Chennai, in and by its award, dated 16.06.2017 passed in M.C.O.P.No.4701 of 2013.

2. The respondents 1 to 6 herein, who are the petitioners/claimants before the Tribunal are wife, two daughters, son, mother and father of the deceased Alluru Chenchaiah respectively. It is the case of the claimants that on 28.11.2012 at about 20.30 hours, when the said Alluru Chenchaiah was walking along the Nellore to Mumbai High Way Road, near Peramana Village, Sangam Mandal, Nellore District, Andhra Pradesh, a LMV Motor Cab, bearing Registration No.AP-26-TV-1274 driven by its driver, came in a very and negligent and dashed against the said Alluru Chenchaiah, as a result of which, the said Alluru Chenchaiah sustained grievous injuries and died. Hence, the claimants filed a Claim Petition against the insured as well as the insurer, claiming a sum of Rs.20,00,000/- as compensation.

3. The owner of the offending Vehicle, viz., the 7th respondent herein, the Insured, remained ex parte before the Tribunal.

4. The Insurance Company resisted the Claim Petition by filing a Counter Statement, denying all the averments set out in the Claim Petition.

5. Before the Tribunal, in order to prove the claim, first claimant/wife of the deceased examined herself as P.W.1, besides examining one other eye witness as P.W.2 and marked four documents as Exs.P.1 to P.4. On behalf of the Insurance Company, one witness by name S.Babu, (Sr. Assistant of the Insurance) was examined as R.W.1 and one document was marked as Ex.R.1.

6. The Tribunal, on the basis of both oral and documentary evidence held that the accident was on account of rash and negligent driving of the driver of the Cab. By arriving at such a conclusion, the Tribunal made the calculation under different heads and passed an award for a total sum of Rs.21,74,000/- with interest at the rate of 7.5% per annum from the date of Petition till payment as the compensation to the claimants and directed the Insurance Company to pay the amount and permitted them to recover the same from the first respondent/owner of the Cab. The break up details of the compensation amount awarded by the Tribunal are as follows ;-

i)	Loss of Pecuniary Benefits	: Rs.14,04,000/-
ii)	Transportation	: Rs. 20,000/-
iii)	Loss of Consortium	: Rs. 1,00,000/-
iv)	Loss of Love and Affection	: R s.5,00,000/-
v)	Loss of Expectation of life	: Rs. 1,00,000/-
vi)	Funeral Expenses	: Rs. 50,000/-
	Total	: Rs.21,74,000/-

Aggrieved by the quantum of compensation awarded by the Tribunal and the liability fastened on them, the Insurance Company has filed the present Appeal, as already stated above.

7. Mr.Arun Kumar, the learned counsel appearing for the appellant/Insurance Company submitted that though the challenge in this Appeal is to both quantum of compensation awarded by the Tribunal and liability, the learned counsel fairly submitted that, they are restricting their claim only with regard to quantum of compensation alone. Insofar as the liability aspect is concerned, the learned counsel submitted that since the same is put to challenge in the Appeal on the basis that there is no insurance coverage, since the policy was cancelled from its inception as the appellant/Insurance Company failed to honour of the cheque issued towards premium amount, and therefore, there is no enforceable contract existing between the insurer and the insured to enable the claimants to maintain the Claim Petition, however, in view of the law laid down by the Hon'ble Apex Court, in the case of (Oriental Insurance Company Ltd., Vs. Inderjit Kumar) reported in [(1998) 1 SCC 371 that by virtue of provisions of Section 147 (5) and 149 (1) of the Motor Vehicles Act, the insurer became liable to indemnify third parties in respect of the liability, which that policy covered and to satisfy awards of compensation in respect thereof, notwithstanding its entitlement to avoid or cancel the policy for the reason that the cheque issues in payment of the premium thereon had not been honoured, the appellant is accepting the said proposition of law laid by the Hon'ble Supreme Court and is not pressing the liability aspect.

7.1 So far as the quantum of compensation awarded by the Tribunal under the heads, i) Loss of Pecuniary Benefits at Rs.14,04,000/-, and ii) Transportation at Rs.20,000/- are concerned, the learned counsel appearing for the appellant fairly submits that the same are just and fair and warrants no interference. However, the learned counsel contended that so far as the compensation awarded by the Tribunal under the heads, i) Loss of Consortium at Rs.1,00,000/- and Funeral Expenses at Rs.50,000/- is concerned, the same are on the higher side and in support of his contention, the learned counsel placed reliance on the judgment of the Constitution Bench in the case of National Insurance Company Limited Vs. Pranay Sethi reported in 2017 2 TNMAC 609 (SC) wherein, the Hon'ble Supreme Court fixed the ratio for awarding compensation towards Loss of Consortium for the wife of the deceased at a sum of Rs.40,000/- and Rs.15,000/- towards Funeral Expenses.

7.2. Further, the learned counsel contended that, the compensation fixed by the Tribunal towards Loss of Love and Affection to the claimants 2 to 6, who are two minor daughters, one minor son and mother and father of the deceased at

Rs.5,00,000/- is on the higher side and compensation in respect of the parents of the deceased is concerned, the same can be awarded under a separate head, 'Filial Consortium'. In this regard, he would like to refer to the decision of the Hon'ble Supreme Court, in Magma General Insurance Company Vs. Nanu Ram alias CHUHRU RAM and others, reported in [(2018) II SCC 892] wherein, it is held that, where a parent has lost their minor child, son or daughter, the parents are entitled to be awarded compensation under the head of Filial Consortium and even in such case, only a maximum amount of Rs.40,000/- can be awarded. Lastly, the learned counsel contended that the compensation awarded by the Tribunal towards i) Loss of Expectation of Life at Rs.1,00,000/- is on the higher side, and the Tribunal, having awarded compensation under the heads of Loss of Pecuniary Benefits and Loss of Love of Affect, ought not to have awarded a separate compensation under the head of Loss of Expectation of Life. Thus, the learned counsel sought for suitable reduction of the compensation amount awarded by the Tribunal under the aforesaid heads.

8. Per contra, Mr.K.Varadha Kamaraj, the learned counsel appearing for the claimants made his submission supporting the award passed by the Tribunal. It is, in fact, his grievance that the Tribunal failed to award any compensation towards Loss of Estate, and as per the ratio laid down by the Hon'ble Supreme Court in Pranay Sethi's case, the claimant of the deceased are entitled to a sum of Rs.15,000/- towards Loss of Estate. Therefore, the learned counsel sought for dismissal of the Appeal and to award compensation towards the Loss of Estate.

9. We have heard the submissions made by the learned counsel for both sides and perused the materials placed on record.

10. Since the present Appeal is filed only questioning the quantum of compensation and so far as the liability aspect is concerned, the same is not pressed upon by the appellant, in view of the law laid down by the Hon'ble Supreme Court, in the case of Oriental Insurance Company Ltd., Vs. Inderjit Kumar (supra) except, the issue concerning quantum of compensation, we are not traversing into the other aspects of the award passed by the Tribunal.

11. So far as the quantum of compensation awarded by the Tribunal towards i) Loss of Consortium and ii) Funeral Expenses are concerned, as rightly pointed out by the learned counsel appearing for the appellant/Insurance Company, the Tribunal ought not to have awarded such an exorbitant sum of

Rs.1,00,000/- and Rs.50,000/- under the respective heads. Thus, following the decision of the Hon'ble Supreme Court in the case of Pranay Sethi's (supra), the sum of Rs.1,00,000/- awarded by the Tribunal under the head of Loss of Consortium is hereby modified and reduced to Rs.40,000/- and similarly, the sum of Rs.50,000/- awarded by the Tribunal towards Funeral Expenses is hereby modified and reduced to Rs.15,000/-.

11.1. Insofar as the compensation awarded by the Tribunal at a sum of Rs.5,00,000/- towards Loss of Love and Affection is concerned, we are of the view that the same is on the higher side, and same is modified and reduced to a sum of Rs.40,000/ in the form of a Parental Consortium to each of the minor claimants, viz., claimants 2 to 4. So far as the compensation to be awarded to the father and mother of the deceased is concerned, viz., the fifth respondent and sixth respondents, in the light of the law laid down by the Hon'ble Supreme Court, in the case of Magma General Insurance Company Vs. Nanu Ram alias CHUHRU RAM and others (supra), we are inclined to award a sum of Rs.40,000/- each to the fifth and sixth respondents under the separate head, Filial Consortium.

11.2 So far as the compensation awarded by the Tribunal under the head of Loss of Expectation of Life at Rs.1,00,000/- is concerned, as rightly pointed out by the learned counsel for the appellant/Insurance Company, the same is not required, when the Tribunal awarded compensation under the heads of Loss of Pecuniary Benefits and Loss of Love and Affection. Therefore, we set aside the compensation awarded by the Tribunal under the head of Loss of Expectation of Life at Rs.1,00,000/-

11.3 Since no amount has been awarded by the Tribunal under the head "Loss of Estate", as rightly contended by the learned counsel for the claimants, following the ratio fixed by the Hon'ble Supreme Court, in the case of Pranay Sethi's (supra), we are inclined to award a sum of Rs.15,000/- towards Loss of Estate.

11.4 Therefore, the compensation awarded by the Tribunal under the heads of i) Loss of Pecuniary Benefits at Rs.14,04,000/-, ii) Transportation at Rs.20,000/- stands confirmed and insofar as the compensation awarded under the head, Loss of Expectation of Life at Rs.1,00,000/-, the same is set aside. So far as the compensation awarded by the Tribunal under other heads are concerned, the same are modified to the extent as indicated infra.

Sl. No.	Heads	Tribunal Award	High Court	MODIFIED/CONFIRMED
1	Loss of Pecuniary Benefits	Rs.14,04,000/-	Rs.14,04,000/-	Confirmed
2	Transportation	Rs.20,000/-	Rs.20,000/-	Confirmed
3	Loss of Consortium (wife)	Rs.1,00,000/-	Rs. 40,000/-	Modified
4	Loss of Love and Affection/Parental Consortium	Rs.5,00,000/-	Rs.1,20,000/-	Modified
5	Filial Consortium (Parents)	Nil	Rs.80,000/-	Awarded
6	Loss of Expectation of life	Rs. 1,00,000/-	Nil	Set aside
7	Funeral Expenses	Rs.50,000/-	Rs.15,000/-	Modified
8	Loss of Estate	Nil	Rs.15,000/-	Awarded
	Total	Rs.21,74,000/-	Rs.16,94,000/-	

11.5 Consequently, the total compensation amount of Rs.21,74,000/- awarded by the Tribunal is hereby modified and reduced to Rs.16,94,000/-. The interest awarded by the Tribunal at the rate of 7.5% per annum is unaltered. The said compensation shall be shared by the claimants 1 to 6/respondents 1 to 6 herein in the following manner :-

i) The wife of the deceased, who is the first respondent herein shall receive a sum of Rs.7,50,000/-;

ii) The two daughters and one son of the deceased are entitled to a sum of Rs.2,50,000/- each.

iii) Since it is stated that the mother of the deceased, who is the fifth respondent herein died during the pendency of this Appeal, her share of Rs.1,00,000/- had to be received by the 6th respondent.

iv) The father of the deceased, sixth respondent is entitled to a sum of Rs.94,000/-.

12. The appellant/Insurance Company is directed to deposit the modified compensation amount of Rs.16,94,000/- with

interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal shall transfer the compensation payable to the first claimant of Rs.7,50,000/- and sixth claimant a sum of Rs.1,94,000/- to their respective bank accounts through NEFT or RTGS within a period of three weeks thereon. Since it is seen that this Court had granted conditional stay order, dated 13.02.2018, in C.M.P.No.2541 of 2018, directing the appellant/Insurance Company to deposit a sum of Rs.17,00,000/- to the credit of the Claim Petition, if the appellant/Insurance Company has complied with the said order, we direct the Tribunal to transfer the award amount determined by this Court along with interest by way of RTGS to the respective accounts of the first and sixth claimants directly within three weeks from the date of receipt of a copy of this judgment and the appellant/Insurance Company is entitled to withdraw the balance amount, if any, in deposit with proportionate accrued interest after settling the claimants.

13. So far as the share in respect of the minor claimants, viz., second, third and fourth respondents herein is concerned, i.e. a sum of Rs.,2,50,000/- each, the same shall be deposited by the Tribunal in any one of the Nationalised Banks, in an interest bearing Fixed Deposit and till the minors attain majority, the 1st respondent being the mother of the second, third and fourth respondents, she is permitted to withdraw the quarterly interest from the said deposit for the purpose of spending the same for the education, upkeep and maintenance of the minor children.

14. Since the owner of the vehicle has not preferred any Appeal against the judgment rendered by the Tribunal, the finding of the Tribunal that the Insurance Company shall pay first and recover it from the owner later also becomes final.

15. In the result, the Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CO MDU)

//True copy//

Sub Assistant Registrar

sd

To

1.The Motor Accident Claims Tribunal/
(V Court of Small Causes) Chennai.

2. The Section Officer,
VR Section, High Court, Madras-104

+1cc to Mr.S.Arun Kumar, Advocate SR.No.100823

+1cc to Mr.K.Varadha Kamaraj, Advocate SR.No.100621

C.M.A.No.221 of 2018

GMR(CO)
GMY(25/08/2020)