IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.M. SUNDRESH
AND
THE HONOURABLE MR. JUSTICE C.SARAVANAN

C.M.A. No. 2302 of 2017

ICICI Lombard General
Insurance Company Limited
ICICI Lombard House
No.414, Veer Sevarkar Marg
Near Siddhi Vinayak Temple,
Prabhadevi
Mumbai - 400 026 ...Appellant/2nd Respondent

Vs.

1.V.Shankari
2.Minor V.Jaya Shree
3.Minor V.Gayathri
4.Minor V.Logith Kumar ...Respondents 1 to 4/
Petitioners 1 to 4

(Minors 2 to 4 rep.by 1st respondent)
Vasanthamma(Died)
Kanniappan(Died)

5.Aravind Road Carriers (P) Ltd,
S-9, Okhla, Phase - II,
New Delhi - 400 026. ... 5th Respondent/1st Respondent

Prayer: Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the the judgment and decree dated 29.01.2016 in M.C.O.P.No. 727 of 2013 on the file of Motor Accident Claims Tribunal (Special District Judge) at Krishnagiri.

For Appellant : Ms.R.Sree Vidhya
For Respondents: Mr.V.Viswanathan for R5
No appearance for others

JUDGMENT
(Delivered by M.M.Sundresh,J.)

Heard the learned counsel appearing on behalf of the appellant and the learned counsel appearing for the fifth respondent.

2. Despite service of notice, none appears on behalf of the contesting respondents. This is notwithstanding the fact that we adjourned the matter on the last occasion to facilitate the appearance. Therefore, we are proceeding with the matter based upon the materials available.

3. The deceased was 42 years and self-employed at the time of accident. The accident took place on 08.10.2012. The claimants 1 to 4 are the wife and the minor children. The award is challenged as submitted by the counsel appearing for the appellant only on the quantum alone.

4. The Tribunal awarded compensation of Rs.46,51,000/- as against the claim of Rs. 1,00,00,000/-. The claim was based upon the combined income of the deceased as well as that of the first respondent/claimant. The Tribunal, accordingly, took into consideration both the factors and fixed the income at Rs.5,20,000/- per year. Out of this, deduction of 20% was made towards the income tax apart from deducting one-fourth towards the personal expenses. Ultimately, a sum of Rs.3,12,000/- was fixed and multiplier '14' was adopted. Under the conventional heads, for the funeral expenses, transportation charges, damages, loss of consortium and for loss of love and affection the Tribunal awarded sum of Rs.25,000/-, Rs.5,000/-, Rs.3,000/-, Rs.1,00,000/- and Rs.1,50,000/- respectively. Thus, in all a sum of Rs. 46,51,000/- was awarded by the Tribunal as compensation.

5. Learned counsel appearing for the appellant would submit that the Tribunal has committed an error in combining both the income of the deceased and the first claimant/respondent. This is not permissible in law. There is no loss of estate insofar as the business is being run by the first respondent/claimant. Even if we take the income of the deceased as fixed and add 25% towards future prospects, by deducting one-fourth towards the personal expenses and income tax deduction, only a sum of Rs. 30,51,562/- could be arrived at. Similarly, deductions are required on the conventional heads also.

6. We find force in the submissions made by the learned counsel appearing for the appellant. Considering the recent Constitution Bench judgment in National Insurance Company Ltd. v. Pranay Sethi, reported in (2017) 16 SCC 680, the future prospects for unorganized sectors will have to be fixed at 25% particularly by taking into consideration the age of the deceased being 42 years. We also find that the sum fixed towards the loss of consortium and the loss of love and affection is also high. The judgment, referred supra, would govern these aspects in the case on hand. In such view of the matter, we are inclined to reduce the compensation awarded from Rs.46,51,000/- to Rs.32,46,562/- in the following manner i.e.,

Loss of dependency is fixed at Rs.30,51,562/- by taking into consideration the annual income at Rs.2,32,500/- and adding future prospects and making due deduction, as stated above. Accordingly, a sum of Rs.30,51,562/- is awarded. Thus, no deduction is made towards the income tax payable as the aforesaid amount is lesser than the taxable income. Similarly, the following amount is entitled to be paid to the respondents/claimants under the conventional heads:-

1	Loss of dependency	Rs.30,51,562/- (Rs.2,32,500 + 25% x ¼ x 14)
2	Transport	Rs.5,000/-
3	Damages	---
4	Funeral expenses	Rs.15,000/-
5	Loss of consortium	Rs.40,000/-
6	Loss of love and affection	Rs.1,20,000/-
7	Loss of estate	Rs.15,000/-
	Total	Rs.32,46,562/-

7. Accordingly, a sum of Rs. 32,46,562/- is directed to be paid by the appellant in favour of the respondents/claimants. The appellant is directed to deposit the entire amount, less the amount already deposited, within a period of eight weeks from the date of receipt of a copy of this order along with interest as awarded by the Tribunal. On such deposit, the first respondent/first claimant is directed to withdraw Rs.11,46,562/-. Each of the minor claimant is entitled to Rs.7,00,000/- towards compensation. The share of minor claimants shall be deposited in a Nationalized Bank in interest bearing account. The respondents/minors 2 to 4 are permitted to withdraw the aforesaid amount after attaining majority. The 1st respondent/claimant is permitted to withdraw the accrued interest on the minor's interest once in three months.

In view of the above, the appeal is allowed accordingly. No costs. Consequently, connected C.M.P. No. 12302 of 2017 is closed.

Sd/-
Assistant Registrar(Insp.Cell)

//True Copy//

Sub Assistant Registrar

ssm

To:-

The Special District Judge
Motor Accident Claims Tribunal,
Krishnagiri.

Copy To: The Section Officer,
V.R.Section, High Court, Madras.

+1 cc to Mr.R.Sreevidhya, Advocate, Sr.No. 29975

C.M.A. No. 2302 of 2017

CSL/10.07.2019