

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.02.2019

CORAM:

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

C.M.A. No. 2766 of 2017
and
Cross.Obj.Sr.No. 104268 of 2018

C.M.A. No. 2766 of 2017

M/s. Reliance General Insurance Co. Ltd.,
6th Floor, 6, Haddows Road,
Nungambakkam,
Chennai - 600 034 ... Appellant/2nd Respondent

Vs.

1. Selvi
2. Minor.Sundar
3. Minor.Logesh
(Minor Respondent 2 & 3 are
rep by their Mother and natural
Guardian Selvi)
4. Muthupillai
5. Pachaiaammal ... Respondents 1 to 5/Petitioner 1 to 5
6. E. Thanikachalam ... 6th Respondent/1st Respondent

Cross.Obj.Sr.No. 104268 of 2018

1. Selvi
2. Minor.Sundar
3. Minor.Logesh
(Minor Petitioners 2 & 3 are
represented by their Mother and
natural Guardian Selvi)
4. Muthupillai
5. Pachaiaammal ..Petitioners/
Cross Objectors

Vs.

1. E. Thanikachalam

2.M/s. Reliance General Insurance Co. Ltd.,
6th Floor, 6, Haddows Road,
Nungambakkam,
Chennai - 600 034

...Respondents/Respondents

Prayer in CMA No.2766 of 2017: Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 12-01-2017 made in M.C.O.P.No.2303 of 2012 on the file of The Motor Accident Claims Tribunal, II Court of Small Causes, Chennai.

Prayer in Cross.Obj.Sr.No. 104268 of 2018: Cross objection filed against the judgment and decree dated 12.01.2017 in MCOP No.2303 of 2012, on the file of Motor Accident Claims Tribunal, II, SCC Chennai.

For Appellant in
CMA 2766/17
& 2nd respondent in Cross Obj.
Sr. No.104268/18 : Mr.S.Arunkumar

For Respondents 1 to 5
in CMA 2766/17
& petitioners 1 to 5 in
Cross Obj.Sr.No.104268/19: Mr.A.N.Viswanatha Rao
No appearance for R6
in CMA 2766/17
1st respondent in
Cross Objection SR

COMMON JUDGMENT

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

Both the cross appeal and the main appeal are taken up together and disposed of by way of a common order.

2. The claimants are the legal heirs of the deceased. The deceased was aged about 27 years. The occurrence took place on 09.02.2012. When the deceased was riding a motor cycle, the driver of the vehicle, which is JCB, driven in a rash and negligent manner dashed the two-wheeler driven by the deceased.

FIR has been registered and since the driver has not deposed before the Court, the Tribunal has rightly fixed the negligence on the part of the driver. The aforesaid finding being one of the fact, we are not inclined to interfere with it.

3. The Tribunal has awarded a sum of Rs.25,33,400/- as against the claim made for Rs. 20,00,000/-. The monthly income was fixed at Rs.8,000/- as against Rs.10,000/-. One-fifth of the deduction has been made for the personal expenses. Under conventional heads, namely, loss of consortium, loss of love and affection, loss of estate and for funeral expenses Rs.1 lakh, Rs. 4 lakhs, Rs.50,000/- and Rs. 25,000/- was awarded respectively. Accordingly, a total sum of Rs.25,33,400/- has been awarded as compensation. Challenging the same, the present appeal and cross objection have been filed.

4. We find that the Tribunal was not right in taking into consideration Rs.8,000/- as monthly income especially when the deceased was a driver. There is no material to hold that he was earning less than what is claimed. Accordingly, we are inclined to fix the monthly income at Rs.10,000/- as such. However, we find that the Tribunal was not right in awarding the deduction of one-fifth towards the personal expenses as against one-fourth. Thus, we are of the view that the one-fourth deduction is right deduction to be made. If we do so, the loss of personal earning would come to Rs.21,42,000/-. For loss of consortium, as per the judgment of the Apex Court, a sum of Rs.40,000/- should have been awarded. Therefore, the same is reduced from Rs.1 lakh to Rs.40,000/-. For loss of love and affection Rs.4 lakhs awarded by the Tribunal is reduced to Rs.1 lakh. There cannot be any loss of estate for a driver. Therefore, the aforesaid amount is also reduced. Funeral expenses is maintained as such. In addition to the above, transport expenses of Rs.10,000/- is awarded. Thus, we arrive at a sum of Rs. 23,17,000/- as compensation.

5. Accordingly, the award of the Tribunal stands modified to Rs.23,17,000/-, particularly when the claim itself for Rs.20,00,000/-. Though there is no legal bar for awarding enhanced compensation, we feel that the aforesaid amount is a just and fair compensation. Out of the award, the 1st claimant (wife of the deceased) is entitled to get Rs.13,17,000/- and the 2nd, 3rd claimants (minor sons of the deceased) are entitled to get Rs.3,00,000/- each and the 4th the 5th claimants (parents of the deceased) are entitled to get Rs. 2,00,000/- each. All other conditions regarding deposit and withdrawal of amount as directed by the Tribunal hold good. Since the entire amount has

already been deposited by the Insurance Company, after due deduction of the amount as awarded above, the balance amount may be withdrawn by the Insurance Company.

The appeal is allowed and cross objection (SR) is disposed of in the above terms. No costs. Consequently, connected CMP No. 18079 of 2018 & CMP No. 15738 of 2017 is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

ssm

To:

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

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

+2cc to Mr.A.N.Viswanatha Rao, Advocate Sr.11417
+1cc to Mr.S.Arunkumar, Advocate Sr.11547

C.M.A.No. 2766 of 2017

br [co]
srg 03/06/2019

WEB COPY