IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.09.2019

CORAM

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.2610 of 2018
and C.M.P.No.19708 of 2018

M/s.IFFCO TOKIO General Insurance Company Ltd.,
No.28, North Usman Road,
T.Nagar, Chennai - 600 017.

... Appellant/2nd Respondent

vs.

1.A.Selvam
2.S.Pavithran (Minor)
3.S.Vijay (Minor)
Respondents 2 and 3 Minors Rep. by
his Father and next friend A.Selvam

...Respondents 1 to 3/Claimants 1 to 3

4.G.Narendran ... 4th Respondent/1st Respondent
(4th respondent herein remained exparte)

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 19.12.2017 made in M.C.O.P.No.1923 of 2013 on the file of the Motor Accidents Claims Tribunal cum III Court of Small Causes, Chennai.

For Appellant : Mr.K.Poomalai
For Respondents : Mr.J.Ashok for R1 to R3

: Mr.D.Danil Ambrose for R4

JUDGMENT

[Judgment of the Court was made by ABDUL QUDDHOSE, J.]

This appeal has been filed by the Insurance Company challenging the Judgment and decree dated 19.12.2017 passed by the Motor Accident Claims Tribunal, III Court of Small Causes, Chennai in M.C.O.P.No.1923 of 2013.

Brief facts leading to the filing of this appeal:

2.A person by name S.Jamuna Rani died on 31.01.2013 as a result of an accident caused by a two wheeler bearing Registration No.TN 03 K 2558 owned by the fourth respondent and insured with the Appellant. The accident had happened while the deceased was crossing the Road at Rajiv Gandhi Salai near Kandan Chavadi Indian Oil Petrol Bunk, when the two wheeler bearing Registration No.TN 03 K 2558 dashed against S.Jamuna Rani which resulted in her death.

3.The dependants of the deceased are her husband and two minor children. They preferred a claim before the Motor Accidents Claims Tribunal, III Court of Small Causes, Chennai against the Appellant Insurance Company as well as the fourth respondent, seeking a compensation of Rs.20,90,000/- which was restricted to Rs.15,00,000/- for the death of S.Jamuna Rani.

4.The Motor Accidents Claims Tribunal by its award dated 19.12.2017 in M.C.O.P.No.1923 of 2013, directed the Appellant Insurance Company to pay the claimants a sum of Rs.21,31,000/- together with interest at 7.5% per annum from the date of numbering of the claim petition i.e.03.04.2013, till the date of realization and costs.

5.Aggrieved by the Award dated 19.12.2017, passed in M.C.O.P.No.1923 of 2013, the instant appeal has been filed by the Insurance Company.

6.Heard Mr.K.Poomalai, learned counsel appearing for the Appellant, Mr.J.Ashok, learned counsel appearing for the respondent Nos.1 to 3 and Mr.D.Danil Ambrose, learned counsel appearing for the fourth respondent.

Discussion:

7.It is the case of the Appellant Insurance Company that the rider of the two wheeler (insured vehicle) did not possess a valid driving license, as he was holding only a learner's license (LLR) at the time of the accident. According to them, an instructor ought to have accompanied the rider of the two wheeler and in his absence, the Insurance Company is not liable to pay compensation.

8.The Appellant Insurance Company has also challenged the assessment of notional monthly income of the deceased at Rs.12,000/- by the Tribunal. According to them, being a cook – homemaker, the assessment of notional monthly income of the deceased at Rs.12,000/- is excessive. It is also their case that the multiplier applied by the Tribunal at 15 is also erroneous. They have also challenged the quantum of compensation awarded by the Tribunal under various other heads namely, towards loss of love and affection and towards funeral expenses.

9.The Appellant has also challenged the Award on the ground that the claim was made only for a sum of Rs.15,00,000/-. But the Tribunal has awarded a sum of Rs.21,31,000/- which is contrary to the pleadings and weight of evidence.

10.The Tribunal has passed the following Award:

Loss of Dependency	Rs.20,16,000/- (Rs.1,34,400 x15)
Loss of Love and Affection	Rs.1,00,000/-
Funeral Expenses	Rs.15,000/-
Total	Rs.21,31,000/-

11.Before the Tribunal, the claimants have filed 9 documents which were marked as Exs.P1 to P9 and two witnesses were examined as PW1, being the husband of the deceased and PW2 - an eye witness. On the side of the Appellant Insurance Company four documents were filed which were marked as Exs.R1 to R4 and a witness was also examined as RW1.

12.The deceased was a pedestrian when the two wheeler dashed against her which resulted in her death. FIR was also registered only against the rider of the two wheeler. A rough sketch marked as Ex.P2 also indicates that the accident would have happened only due to the rash and negligent driving by the rider of the motorcycle.

13.The Tribunal after considering the oral and documentary evidence has come to the right conclusion that S.Jamuna Rani, the deceased died only due to the rash and negligent driving by the rider of the two wheeler. Admittedly, the rider of the motorcycle was possessing a valid learner's license to drive the two wheeler which was marked as Ex.R1. It is a settled law for the purpose of awarding compensation to accident victims, learners license is a valid license. The age of the deceased was 38 years at the time of the accident which was proved through Ex.P3 postmortem certificate. The Tribunal has rightly held that there is no violation of policy conditions by the insured.

14.The deceased was a domestic worker - cook. The Tribunal has fixed her notional monthly income at the time of the accident as Rs.12,000/-. Before the Tribunal, no contra evidence has been produced by the Appellant Insurance Company to disprove the claim that the deceased was a domestic worker - cook. No evidence has also been produced by the Appellant Insurance Company to disprove the assessment of the monthly notional income of the deceased by the Tribunal.

15.The accident happened in the year 2013 and considering the same, the assessment of the monthly notional income at Rs.12,000/- is a correct assessment. Considering the age of the deceased which was 38 years at the time of the accident, the Tribunal has rightly applied 15 multiplier. The claimants being three in number, who are the husband and two minor children of the deceased, the Tribunal has rightly deducted 1/3rd towards personal expenses of the deceased if she was alive. The compensation awarded under the heads namely, Rs.1,00,000/- towards loss of love and affection and Rs.15,000/- towards funeral expenses is in accordance with the Constitution Bench judgment of the Hon'ble Supreme Court in the case of National Insurance Company Limited vs. Pranay Shethi and Others reported in 2017 (16) SCC 680 and therefore, there is no infirmity in the said finding of the Tribunal.

16.The Motor Accidents Claims Tribunal has to Award just compensation to the victims of motor accidents. Even though, the claim was made only for a sum of Rs.15,00,000/-, applying the just compensation principle, the Tribunal has rightly awarded Rs.21,31,000/- as compensation to the claimants based on the oral and documentary evidence available on record. Infact, the claimants assessed the compensation payable to them at Rs.20,90,000/- in the claim petition, but restricted the claim to Rs.15,00,000/- may be due to their inability to pay the Court fees. Being a benevolent legislation, the Tribunal has rightly assessed the quantum of compensation payable to the claimants for the death of S.Jamuna Rani. Therefore, we reject the contention of the Appellant Insurance Company that the Tribunal exceeded its jurisdiction by awarding a higher sum as compensation than what was claimed in the claim petition.

Conclusion:

17.In the result, we do not find any merit in this appeal and accordingly the appeal is dismissed. The Appellant Insurance Company is directed to deposit the entire award amount as per the award of the Tribunal along with interest and costs after deducting the amount, if any already deposited, to the credit of M.C.O.P.No.1923 of 2013 within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the award amount to the first respondent through RTGS within a period of four weeks thereafter. The second and third respondents being minors, their respective shares of compensation shall be deposited in an interest bearing fixed deposit in any Nationalized bank till the minors attain majority. However, the accrued interest under the fixed deposit shall be permitted to be withdrawn by the first respondent once in 6 months till the minors attain majority. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

// True Copy//

Sub Assistant Registrar

pam

To

1.The Motor Accident Claims Tribunal,
III Court of Small Causes, Chennai.

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

+1cc to Mr.D.Daniel Ambrose, Advocate, SR.No.81099.
+1cc to Mr.K.Poomalai, Advocate, SR.No.81088.

C.M.A.No.2610 of 2018

VBA (CO)
CSR(16/12/2019)