BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 16.08.2019
CORAM :
THE HONOURABLE MRS.JUSTICE J.NISHA BANU
CMA(MD)No.167 of 2018
and
CMP(MD)Nos.2527 of 2018 & 2751 of 2019

Cholamandalam MS General Insurance Co.,Ltd.,
Through its Branch Manager ... Appellant/2nd Respondent

vs.

1.Umarani
2.Minor Sambathkumar
3.Minor Jeyabharathi
(Minor Petitioners through their mother
& Guardian 1st Respondent herein)
... Respondents/Petitioners

4.Parthiban ... Respondent/1st Respondent

PRAYER: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree made in M.C.O.P.No.1031 of 2014 dated 11.05.2017 on the file of the Motor Accidents Claims Tribunal (Special Sub Court), Tirunelveli and allow this Civil Miscellaneous Appeal.

For Appellant : Mrs.K.R.Shiva Shankarai
For R1 to R3 : Mr.R.J.Karthick
For R4 : No appearance

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the Judgment and decree made in M.C.O.P.No.1031 of 2014 dated 11.05.2017 on the file of the Motor Accidents Claims Tribunal/Special Sub Court, Tirunelveli.

2.It is the case of the respondents/claimants that on 07.09.2014 at about 10.50 a.m, the deceased was riding a motorcycle bearing registration number TN-58-T-6897 from south to north on the Tenkasi-Madurai near Bharathi Nagar Bus stop at Thalavaipuram on the left side of the road. At that time, a Mini lorry bearing Registration No.TN-76-P-3362 belonging to the 4th respondent herein insured with the appellant came from Pillaiyar Koil Street from west to east, without verifying any vehicle coming on the main road, rashly entered into the main road and negligently turned the vehicle towards South on the right side of the road and hit against the motorcycle. As a result of which, the deceased was fell down on the road and sustained serious head injuries. Immediately, the deceased was taken to Government Hospital at Rajapalayam and after that, he was taken to Tirunelveli Medical College hospital at Palayamkottai, where he succumbed to his injuries later. The wife of the deceased filed M.C.O.P.No.1031 of 2014 on the file of the Motor Accidents Claims Tribunal/Special Sub Court, Tirunelveli, claiming compensation of Rs.25,00,000/-.

3.The appellant Insurance Company filed counter contending that the driver of the 4th respondent's Mini Lorry was not having a valid permit at the time of accident. The accident occurred only due to the rash and negligent driving of the deceased and therefore, the appellant/Insurance Company is not liable to pay compensation to the respondents/claimants.

4.The Tribunal considering the oral and documentary evidence adduced on either side held that the driver of the bus belonging to the appellant Insurance Company was responsible for the accident and accordingly, awarded compensation of Rs.13,60,000/- with interest at 9% per annum. The Tribunal directed the appellant insurance company to pay compensation at the first instance and thereafter, recover the same from the owner of the offending vehicle / 4th respondent herein. Aggrieved by the said award, the appellant Insurance Company has filed this appeal questioning the quantum.

5. The learned counsel for the appellant/Insurance Company would submit that the Tribunal has erroneously added 30% of the income towards future prospects of the deceased instead of 25%. Further, the Tribunal has awarded exorbitant compensation of Rs.1,00,000/- towards loss of consortium and the award of Rs.3,00,000/- towards loss of love and affection is extremely on the higher side. It is also contended that the award of Rs.25,000/- each towards funeral expenses and loss of estate are to be modified as per the Pranay Sethi's Case.

6.Heard the learned counsel for the appellant/Insurance Company and the learned Counsel for the respondent Nos. 1 to 3 and perused the materials available on record.

7.Perusal of record shows that the deceased was aged 44 years at the time of accident. He was working as a Power Saver Operator and he earned Rs.20,000/- per month. However, in the absence of proof, the Tribunal fixed the monthly income of the deceased at Rs.6,500/-. After adding 30% of the income towards future prospects, deducting 2/3rd towards personal expenses and applying 13 multiplier, has awarded Rs.8,78,800/- towards loss of income.

8.The grievance of the appellant is that as per Pranay Sethi Case, the Tribunal ought to have awarded 25% towards future prospects. This Court finds merit in the said submission. If 25% is awarded towards future prospects, loss of income will be Rs.8,45,000/-(6500+(6500X25%) X12X13X2/3). Apart from the above, the Tribunal has awarded Rs.1,00,000/- towards loss of consortium and Rs.3,00,000/- towards loss of love and affection. At the time of accident, the first respondent/wife of the deceased, aged 40 years, she lost love and affection of her husband at the young age. Further, the deceased died leaving behind one Son and Daughter aged 13 and 12 years respectively. Though the learned counsel for the appellant/Insurance Company contended that the award under the above heads are extremely on the higher side, having regard to the fact that the first respondent/wife of the deceased lost the consortium of her husband at the age of 40 years and the respondent nos. 2 and 3/minor children aged about 13 and 12 years respectively have lost their love and affection and guidance of their father at very young age, this Court is not inclined to interfere with the above award amount. All the more, the deceased is a skilled labour and since the claimants did not produce any proof, Rs.6,500/- has been taken as monthly income which amount has been fixed for a Vegetable Vendor and therefore, if more amount is fixed towards the monthly income of the deceased, the compensation will be more and therefore, I am not inclined to interfere with the award passed towards the loss of love and affection. As per Pranay Sethi's Case, award of Rs.25,000/- towards funeral expenses and loss of estate is reduced to Rs.15,000/- each. Except the above award, under the other heads are not interfered with.

Accordingly, the following compensation is calculated;

1.	Total loss of Income	Rs.8,45,000.00
2	Loss of Consortium	Rs.1,00,000.00
3.	Loss of love and affection	Rs.3,00,000.00
4.	Loss of Transportation	Rs. 10,000.00
5.	Loss of Funeral Expenses	Rs. 15,000.00
6.	Attendant and Nutritious Charges	Rs. 11,200.00
7.	For mental agony	Rs 10,000.00
8.	For Loss of Estate	Rs. 15,000.00
	Total	Rs.13,06,200.00
	(Less)Amount awarded by the Tribunal	Rs.13,60,000.00
	Reduced compensation	Rs. 53,800.00

9.In the result, the respondents 1 to 3/ claimants are entitled to modified compensation of Rs.13,06,200/- with interest at 9% p.a. from the date of petition till the date of deposit. The appellant/Insurance Company is directed to deposit the modified compensation of Rs.13,06,200/- with interest at 9% per annum from the date of petition till the date of deposit and cost, less the amount already deposited, if any, to the credit of the claim petition, within a period of eight weeks from the date of receipt of copy of this Judgment. The appellant/Insurance Company is directed to deposit the award amount at the first instance and thereafter, he is at liberty to recover the same from the 4th respondent/ owner of the vehicle as ordered by the Tribunal by following mode of recovery incorporated in the judgment of the Hon'ble Supreme Court in ***Oriental Insurance Co.Ltd., Vs. Shri Nanjappan and others,*** reported in ***I (2004) ACC 524 (SC)***:-

> ''*(7) ....For the purpose of recovering the compensation amount from the insured, the insurer shall not be required to file a suit. It may initiate a proceeding before the concerned Executing Court as if the dispute between the insurer and the insured was the subject matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer. A notice shall be issued to the insured to furnish security for the entire amount. The offending vehicle shall be attached as a part of the security. If necessity arises, the Executing Court shall take assistance of the concerned Regional Transport Authority. The Executing Court shall pass appropriate orders in accordance with law as to the manner in which the insured, owner of the vehicle shall make payment to the insurer. In case there is any default it shall be open to the Executing Court to direct realisation by disposal of the securities to be furnished or from any other property of the insured. ....*''

10. On such deposit, the 1st respondent/claimant is permitted to withdraw her share with interest as apportioned by the Tribunal. The shares of the respondents 2 and 3/minors shall be deposited in a Nationalised Bank in Fixed Deposit till they attain majority. The interest accruing on such deposit is permitted to be withdrawn by the 1st respondent/mother of minors, once in three months directly from the bank. After attaining majority, it is for the minor claimants to withdraw their respective shares by making necessary application before the Tribunal discharging guardianship.

11.Accordingly, the Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

msa

To

1.The Motor Accidents Claims Tribunal
(Special Sub Court),
Tirunelveli.

Copy to: The Section Officer,
E.R.Section/V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.S. SRINIVASA RAGHAVAN, Advocate SR-82156.
+1 CC to M/s.R.J.KARTHICK, Advocate SR-82121.

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