IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.02.2020

CORAM

THE HONOURABLE MR. JUSTICE M.M. SUNDRESH
AND
THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

C.M.A.Nos.2131 of 2016 and 2100 of 2018
and
C.M.P.No.15388 of 2016

M/s.National Insurance Company Ltd.,
2nd Floor, Maruthi Complex,
F-215, Omalur Main Road, Salem - 4. ... Appellant in C.M.A.No.2131 of 2016

1.Krishnakumari
2.Minor M.Prasanna Priadarsan
3.Minor M.Kave Priadarsni
4.Minor M.Lekaa Darani
(minor appellants 2 to 4 are rep. by their next friend, guardian and mother first appellant) ... Appellants in C.M.A.No.2100 of 2018

Vs.

N.Madheswaran (died)
1.Krishnakumari
2.Minor M.Prasanna Priadarsan
3.Minor M.Kave Priadarsni
4.Minor M.Lekaa Darani
(minors R2 to R4 are rep. by their next friend, guardian and mother R1)
N.Sarojini (died)
5.N.Rajesh
6.N.Arun
7.National Insurance Co. Ltd., Salem. ... Respondents in C.M.A.No.2131 of 2016

(R2 to R4 and N.Sarojini (died) are impleaded as per order dated 19.08.2013 in I.A.No.1347 of 2013)

1.M/s.National Insurance Company Ltd.,
2nd Floor, Maruthi Complex,
F-215, Omalur Main Road, Salem - 4.

2.N.Rajesh
3.N.Arun
4.M/s.National Insurance Company
Limited, Salem. ... Respondents in C.M.A.No.2100 of 2018

Appeals filed under Section 173 of Motor Vehicles Act,1988 against the decree and judgment dated 05.03.2014 made in M.C.O.P.No.1424 of 2008 on the file of the Motor Accidents Claims Tribunal (I Additional District Judge), Salem.

For Appellants : Mr.S.Vadivel in C.M.A.No.2131 of 2016
Mr.M.R.Thangavel in C.M.A.No.2100 of 2018

For Respondents : Mr.M.R.Thangavel for R1 to R4
R5 - No appearance
R6 & R7 - Given up
in C.M.A.No.2131 of 2016
Mr.S.Vadivel for R1 to R4
R2 & R3 - Notice sent
in C.M.A.No.2100 of 2018

COMMON JUDGMENT
(Delivered by M.M.SUNDRESH.,J)

As both the appeals arise out of the same award, they are taken up together and disposed of by a common order.

2.For the sake of convenience, the parties are referred to as per their ranks in C.M.A.No.2131 of 2016.

3.The deceased claimant filed M.C.O.P.No.1424 of 2008 claiming a sum of Rs.75 lakhs. The Tribunal was pleased to award a sum of Rs.30,43,703/-. The award of the Tribunal was not only for the death of the deceased. The deceased claimant died during the pendency of the proceedings. Respondents 1 to 4/claimants marked Exs.P1 to P38 while examining five witnesses. On behalf of the insurer, neither any documentary evidence was marked nor any witness has been examined.

4.P.W.1 is the wife of the deceased claimant. P.W.2 is the doctor who speaks about Ex.P23 discharge summary. Ex.P4 is the wound certificate indicating the the deceased was suffering fracture of both legs. Under Ex.P14, the right leg above knee was amputated. The fracture was till the pelvis which resulted in immobilisation of the deceased. P.W.2 has further deposed that this resulted in hypertension and diabetes leading to heart ailment which ultimately caused the death of the deceased claimant. One more witness has been examined by way of P.W.4 - Physiotherapist, who was giving continuous treatment to the deceased after the accident and even one week prior to the death of the deceased. The documents have been marked to show the treatment undergone by the deceased after the accident and even thereafter. Medical bills have been produced under Ex.P26 and P27 series. Cash bill issued by the Ganga Medical Centre was also marked along with the discharge bills and discharge summary. Under Ex.P25, high technology artificial limb bill has also been produced. Taking into consideration the above said aspects, the Tribunal passed the award.

5.Learned counsel appearing for the appellant insurance company submitted that the deceased survived for 4 ½ years. Therefore, the Tribunal was wrong in considering the compensation for his death. The death of the deceased could have occurred for some other reason.

6.Learned counsel appearing for respondents 1 to 4/claimants submitted that the Tribunal considered the entire material available on record. P.Ws. 2 and 4 have clearly deposed about the condition of the deceased and the treatment taken thereafter. It has to be seen along with Exs.P1 to P38. Thus, the Tribunal ought to have awarded higher amount. The Tribunal has also not awarded any amount towards conventional heads. Therefore, the appeal filed by them will have to be allowed as against the one filed by the insurance company.

7.Inasmuch as there is no dispute with respect to the negligence part, we are not inclined to go into the same. On the question of quantum also, the Tribunal has considered all the relevant materials. Numerous documents have been filed before the Tribunal. We are dealing with a case where the deceased claimant suffered multiple fracture. He has also lost his limb. The removal part went upto the pelvis. He was immbolised and able to stand with the artificial limb which is also of high technology and advanced as normal one could not be used. The evidence of P.Ws.1, 2 and 4 would show the continuous treatment that was carried on. This evidence would also indicate the fact that the deceased died due to the accident but not immediately. The fact remains that the deceased was taking continuous treatment. In such view of the matter, we are not inclined to interfere with the main part of the award passed by the Tribunal. However, we find that the Tribunal has awarded Rs.10,000/- each for loss of love and affection to the three claimants and Rs.10,000/- for loss of consortium while awarding only Rs.10,000/- towards funeral expenses apart from not awarding any amount towards loss of estate. Thus, instead of Rs.30,000/- awarded for loss of love and affection, we are awarding Rs.1,20,000/- (Rs.40,000/- x 3). For loss of consortium, we are granting Rs.40,000/- as against Rs.10,000/- awarded by the Tribunal. Similarly, we award Rs.15,000/- for funeral expenses as against Rs.10,000/- awarded by the Tribunal. For loss of estate, we are awarding Rs.15,000/-. Since the medical bills are not being disputed, they are taken as such. Thus, a sum of Rs.31,83,703/- is arrived as compensation, which is rounded off to Rs.31,84,000/-. The interest awarded by the Tribunal at 7.5% stands confirmed.

8.In view of the above, C.M.A.No.2131 of 2016 is dismissed and C.M.A.No.2100 of 2018 is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

9.The appellant insurance company is directed to deposit the enhanced compensation amount along with proportionate interest, less the amount if any already deposited, to the credit of M.C.O.P.No.1424 of 2008 on the file of the Motor Accidents Claims Tribunal (I Additional District Judge), Salem within a period of eight weeks from the date of receipt of a copy of the judgment.

10.We also direct the Tribunal to transfer the share of the first claimant by way of RTGS to her bank account within a period of three weeks from the date of deposit of the award amount. On such transfer, the first claimant is entitled to withdraw the same. Insofar as the shares of minor claimants 2 to 4 are concerned, the same shall be deposited in any one of the Nationalised Banks under reinvestment scheme till they attain majority. The first claimant/mother of minor claimants 2 to 4 is permitted to withdraw the interest accrued on the minors' deposit once in three months directly from the Bank.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

The I Additional District Judge,
Motor Accidents Claims Tribunal,
Salem.

Copy to
The Section officer
VR Section
High Court, Madras 104.

+2 Ccs to Mr.S.Vadivel, Advocate sr 12136, 12135.

C.M.A.Nos.2131 of 2016
and 2100 of 2018

EV(CO)
SP(17/09/2020)