IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.03.2020

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A.No.2425 of 2015
M.P.No.1 of 2015

The Branch Manager,
Royal Sundaram Alliance Insurance Company Limited,
Branch Office, Krishna Plaza, 1st floor, No.1, Nachiappa Street,
Behind Bus stand, Erode-638 001. ..Appellant

Vs.

1.Rajiya Sulthana
2.Apsa(Minor)
3.Sakkabe
4.Meraj

5.S.Palanisamy,
Managing Director,
M/s.K.M.S.Logistic No.1551 A, Erode Main Road,
Lakshmi Nagar, Meetu Nasuvampalaya,
Erode Taluk & District.

6.The Secretary, M.R.Doraswamy,
P.E.S.Medical College, Nallagampalli Settipalli,
Palamaner Road,
Kuppam Taluk, Chittoor District.

7.The Branch Manager,
The Oriental Insurance Company Limited.,
1581/1, Palace Road Extension,
Kuppam Post, Chittoor District. ..Respondents

(5th respondent remained ex-parte, 6th & 7th respondents are given up)

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment & Decree dated 30.04.2015 made in M.C.O.P.No.233 of 2013 on the file of the Motor Accident Claims Tribunal (Special District Court), Krishnagiri.

For Petitioner : Mr.M.Krishnamoorthy

For Respondents : Mr.Mukund R.Pandian
for RR1 to R4.
R6 to R7-given up
R5-Ex-parte

J U D G M E N T

The Royal Sundaram Alliance Insurance Company Limited preferred the appeal challenging the judgment and decree dated 30.04.2015 passed in M.C.O.P.No.233 of 2013 mainly on the ground that the Tribunal has granted the excess compensation without considering the fact that the deceased was aged about 30 years, whose occupation and income were also not established by way of document or evidence. The Tribunal has committed an error in deducting 1/5 towards personal expenses which is against the dictum of the Hon'ble Supreme Court in Smt.Sarla Verma and others vs. Delhi Transport Corporation and another reported in 2009 (2) TNMAC 1 SC, in view of the fact that the deceased had left behind the wife, child and mother as dependent family members and the other claimants being non dependents of the deceased, the Tribunal ought to have deducted only one third for personal expenses. Thus, the compensation awarded is excessive.

2. The learned counsel appearing on behalf of the respondents/claimants disputed the contention by stating that the tribunal has granted the compensation, which is to be construed as just, in view of the fact that the deceased was aged about 30 years, at the time of accident and he was sole breadwinner of the family. Therefore, any rejection in the quantum of compensation would affect the entire family as a whole, therefore, the order of the tribunal is to be confirmed.

3. The accident occurred on 16.07.2010 at about 20.00 hours and the husband of the first petitioner late Mohammed Rafiq was travelling in the Ambulance bearing registration No.AP-03-X-2504 towards Bangalore for treatment at St.Johns Medical College along with his relatives. The driver of the Ambulance was proceeding on the left side of the road cautiously observing the rules of the road and blowing horn. When he was thus going near Kammandhoddi Maharashtra Panjabi Dhaba Hotel on Chennai to Bengaluru National Highway, the driver of the lorry bearing Registration No.TN-33-AQ-9779 belonging to the first respondent and insured with the second respondent, drove the vehicle in a rash and negligent manner, in an uncontrollable speed, without blowing horn and caused accident. Due to impact, the said Mohammed Rafiq sustained fatal injuries in his vital organs and he died subsequently.

4. Undoubtedly, the fact remains that the deceased, while going in the Ambulance vehicle to provide treatment to his relatives, met with an accident. Considering the fact that the deceased was traveling in the Ambulance vehicle, the rules are that other vehicles should give way to the ambulance vehicle. Under these circumstances, the findings of the Tribunal that the driver of the lorry committed negligence is to be taken as a whole for the purpose of awarding compensation. The Tribunal found that the coverage of policy was also established by the parties. Under these circumstances, the Tribunal awarded a total compensation of Rs.17,68,800/-.

5. As far as the arguments of the learned counsel for the appellant is concerned, admittedly, the Tribunal committed an error in following the principles laid down in Sarla Verma case, with reference to deduction of personal expenses. Therefore, the tribunal ought to have deducted 1/3 income towards personal expenses. However, 1/5 personal expenses was deducted which is not in consonance with the principles laid down by the Apex Court in Sarla Verma case.

6. This Court is of the considered opinion that the total monthly income fixed is not on the higher side and this Court consider it as reasonable. However, the Tribunal has not granted any amount for future prospects. Under such circumstances, this Court do not find anything required to be modified and by confirming the compensation, these aspects can be neutralized. The compensation for loss of income of Rs.14,68,800/- is to be construed as granted for loss of dependency, in respect of wife, minor children and mother. Therefore, this Court is of the opinion that by changing the heads, no prejudice would be caused to either of the parties. Contrarily, if any some amount is reduced from the compensation granted by the Tribunal, the same would affect the livelihood of the three dependents, more specifically, wife, minor children and aged mother. Thus, this Court is not inclined to interfere with the quantum of compensation. As far as the other conventional heads are concerned, the formal alternatives are to be made and accordingly, the entire compensation awarded by the Tribunal is re-scheduled hereunder:

Future loss of income	: Rs.14,68,800/-
Consortium	: Rs. 40,000/-
Love and affection for second respondent	: Rs. 40,000/-
Love and affection for 4th and 5th respondent	: Rs. 80,000/-

Transport		: Rs.10,000/-
Funeral Expenses		: Rs.15,000/-
Estate		: Rs.15,000/-
	Total	: Rs.16,68,800/-

7. Thus, the total compensation payable to the respondents/claimants are Rs.16,68,000/- along with interest at the rate of 7.5% per annum. The appellant is directed to deposit the entire award amount with accrued interest at the rate of 7.5% per annum by deducting the amount already deposited within a period of six weeks from the date of receipt of a copy of this Judgment and on such deposit, the respondents 1 to 4 are permitted to withdraw the entire amount, as per the apportionment granted by the Tribunal and by depositing the minor's amount in any one of the Nationalized Bank in the interest bearing deposit scheme and the payments are to be made through RTGS. Accordingly, the judgment and decree dated 30.04.2015 made in M.C.O.P.No.233 of 2013 is to be quashed and the Civil miscellaneous Appeal stands allowed. No costs. Consequently, connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

ssb

To

The Motor Accident Claims Tribunal
(Special District Court), Krishnagiri.

Copy to:
The Section Officer,
VR Section, High Court,
Madras.

+1cc to Mr.M.Krishnamoorthy, Advocate, S.R.No.20757
+1cc to Mr.Mukund R.Pandiyan, Advocate, S.R.No.21405

C.M.A.No.2425 of 2015

KS(CO)
CB(28/04/2021)