

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.No.4334 of 2019
& Cross Objection No. 10 of 2020

M/s.Reliance General Insurance Co. Ltd.,
Rais Tower, 2nd Floor,
Plot No.2054, 2nd Avenue,
Anna Nagar, Chennai - 40.

... Appellant
in CMA No.4334/19/2nd Respondent
... 1st Respondent
in Cros.Obj No.10/2020

Vs.

1.K.Menaka
2.Minor K.Karthick,
3.Minor K.Abinaya
[Minors 2 and 3 Rep. by their Mother R1]
4.Muniyammal
5.Sampath

... Respondents 1 to 5
in CMA No.4334/19/Claimants
...Cross Objections/
in Cros.Obj.No.10/2020

6.S.Manikandan

... 6th Respondent
in CMA No.4334/19/1st Respondent/
... 2nd respondent
in Cros.Obj.No.10/2020

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Prayer : Appeal filed under Section 173 of the Motor Vehicles Act, 1988 and the Cross Objection filed under Order 41 Rule 22 of CPC against the judgment and decree dated 20.08.2018 in M.C.O.P.No.7267 of 2014 on the file of Motor Accidents Claims Tribunal, II Court of Small Causes, Chennai.

For Appellant in
CMA No.4334/19
For 1st respondent : Mr.S.Arun Kumar
in Cros.Obj
No.10/2020

For R1 to R5 in
CMA No.4334/19
For Cross : Ms.Ramya V.Rao
Objections in
Cross.Obj.No.
10/2020

For R6 in CMAs
2nd Respondent in
Cross Obj 10/2020 : No Apperance

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

As both the appeal the cross objection are pertaining to the quantum alone, we are not inclined to go into the unnecessary facts governing.

2. Before the Tribunal, the claimants 1 to 5/cross-objectors contended that the age of the deceased was about 31 years whereas the insurer contended that the age of the deceased was 35 years. Placing reliance upon Ex.P5 - Driving licence of the deceased, the age has been fixed as 28 years. The Tribunal fixed the monthly income at Rs.12,000/- after giving certain percentage towards the future prospects as per the judgment of the National Insurance Company Ltd. v. Pranay Sethi, reported in (2017) 16 SCC 680 and the deduction of one-fifth has been adopted. Towards the conventional heads, a total sum of Rs.50,000/- has been awarded towards the loss of love and affection and Rs.40,000/- towards the loss of consortium. The claimants are five in number. Thus, in toto, the Tribunal awarded Rs.29,11,760/- as compensation.

3. The learned counsel appearing for the Insurance Company submits that the Tribunal has wrongly taken into consideration the age of the deceased at 28 years. Even according to the claimants 1 to 5, the age was 31 years at the time of the death. The deduction towards the personal expenses is not correct. Instead of one-fifth deduction, one-fourth has been deducted since the claimants are five in number. Therefore, the appeal will have to be allowed.

4. The learned counsel appearing for the cross-objectors/claimants submitted that the Tribunal fixed the income at Rs.12,000/- who was working as Mason. No sufficient amount has been awarded under the conventional heads. Therefore, appropriate orders will have to be passed.

5. Insofar as the age is concerned, the Tribunal took into consideration Ex.P5 - driving licence. Though claimants 1 to 5 themselves stated that the age of the deceased was 31 years at the time of death, Ex.P5 - the document which is not in dispute, the Tribunal rightly took into consideration by fixing the age at 28 years.

6. Insofar as the income aspect, the Tribunal fixed monthly income at Rs.12,000/- and in the absence of any contra evidence, the same cannot be found fault with. The accident occurred in the year 2014. The income at the relevant point of time for a Mason has to be borne in mind. However, the Tribunal had committed a mistake in deducting one-fifth as against one-fourth towards the personal expenses. Thus, the loss of income is arrived at Rs.25,70,400/- (Rs.12,000/- x 12 x 7 + 40% F.P.= Rs.34,27,200/- (-) Rs.8,56,800/- (1/4th deduction) = Rs.25,70,400/-) after adopting the same multiplier by the Tribunal, which is not in dispute before us.

7. Towards the conventional heads such as for the loss of love and affection, we are inclined to grant a sum of Rs.1,60,000/- as against Rs.50,000/- awarded. Towards loss of estate and funeral expenses Rs.15,000/- each has been awarded respectively while confirming the loss of consortium awarded by the Tribunal.

8. Thus, the total compensation arrived at is Rs.28,00,400/- with the interest at 7.5% per annum from the date of the petition till the date of realization as against 9% interest awarded by the Tribunal.

9. The appellant/Insurance Company is directed to deposit the compensation awarded by this Court, less the amount, if any, already deposited to the credit of M.C.O.P.No.7267 of 2014 on the file of Motor Accidents Claims Tribunal, II Court of Small Causes, Chennai within a period of eight weeks from the date of receipt of a copy of the judgment. The reduced compensation amount shall be apportioned amongst the claimants in the same ratio as ordered by the Tribunal.

10. We also direct the Tribunal to transfer the respective shares of the award amount by way of RTGS to the bank accounts of claimants 1,4 and 5 within a period of three weeks from the

date of deposit of the award amount. On such transfer, the claimants are entitled to withdraw the same. Insofar as the share of the minor claimants 2 and 3 are concerned, the Tribunal is directed to deposit the same in a Nationalized Bank till they attain majority. The mother of the minor claimants is entitled to withdraw the interest accrued on the minors' deposit once in three months directly from the Bank.

11. The Civil Miscellaneous Appeal stands allowed and the Cross objection is dismissed. No costs. Consequently, connected C.M.P.No.26967 of 2019 is closed.

Sd/-
Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

ssm

To

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

+1cc to Mr.S.Arun Kumar, Advocate SR.No.12515

+2ccs to Mr.AN.Viswanatha Rao, Advocate SR.No.12327

C.M.A.No. 4334 of 2019
& Cross Objection No. 10 of 2020

TM(CO)
GMY(18/03/2020)

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