IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
and
THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

C.M.A.Nos.1407of 2020 and 796 of 2021
and
C.M.P.No.10308 of 2020

C.M.A.No.1407 of 2020:

The Reliance General Insurance Company Limited,
4th Floor, No.6, Haddows Road,
Chennai – 600 006. ... Appellant/2nd Respondent

Vs.

1.Banupriya
2.Minor Haripriya
3.Minor Kishore Kumar

(Minors 2 & 3 are represented by mother and NF, 1st respondent)

4.Jothi
5.Ganesan ...1 to 5 Respondents/Petitioners
6.S.Bhaskar
...6th Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988 against the Judgment and Decree made in MCOP No.2410 of 2017 dated 26.11.2019, on the file of the Motor Accident Claims Tribunal, III Court of Small Causes, Chennai.

For Appellant :Mr.M.B.Raghavan for
M/s M.B.Gopalan Associates

For Respondents :Mr.K.Varadhakamaraj
(for R1 to R5)

C.M.A.No.796 of 2021:

1.Banupriya
2.Minor Haripriya
3.Minor Kishore Kumar
4.Jothi
5.Ganesan
(Minors 2 & 3 are rep. by next friend
and natural guardian, their mother Ist Appellant)
... Appellants/Petitioners

Vs.

1.S.Bhaskar
2.The Reliance General Insurance Co. Ltd.,
No.6, 4th Floor, Haddows Road,
Chennai - 600 006. ... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988 against the decree and judgment dated 26.11.2019 made in MCOP No.2410 of 2017 on the file of the Motor Accident Claims Tribunal, III Court of Small Causes, Chennai.

For Appellants :Mr.K.Varadha Kamaraj

For Respondent No.2:Mr.M.B.Raghavan
M/s M.B.Gopalan Associates

COMMON JUDGMENT

[Judgment of the Court was delivered by K.KALYANASUNDARAM, J.]

CMA No.796 of 2021 is filed by the claimants being dissatisfied with the award of the Tribunal passed in MCOP No.2410 of 2017 dated 26.11.2019. CMA No.1407 of 2020 has been preferred by the Insurance Company assailing the award passed in the same MCOP.

2.The facts of the case in nutshell:-

On 05.02.2017 at 20.00 hours, when the deceased Naresh @ Naresan was crossing the road from east to west at Kannagi Nagar - 200 feet road Junction, Kolathur, Chennai, a For Registration Bajaj Pulzar Ebony Black colour motorcycle bearing Engine No.DKZCGG58273, Chasis No.MD2A13EZ8GCG41543 came in a high speed and hit against the deceased. In the impact, the deceased sustained fatal injuries and died in the hospital on 06.02.2017. The wife, children and the parents of the deceased filed the claim petition before the Tribunal. Though they claimed Rs.30,00,000/- as compensation, the Tribunal has awarded Rs.23,52,000/- together with interest at 7.5% per annum, under the following heads:-

Heads	Rs.
Loss of dependency 10000+4000=14000-1/4(3500)=10500x12x17	21,42,000/-
Loss of Consortium	40,000/-
Towards Loss of Love and Affection	1,30,000/-
Transport Expenditure	10,000/-
Loss of Estate and Funeral	30,000/-
Total	23,52,000/-

Further, the Tribunal observed that the Insurance Company has to pay compensation to the claimants and thereafter, recover the same from the owner of the vehicle. Challenging the said award, the Insurance Company has filed an appeal on the ground that the award is on the higher side and the claimants preferred an appeal to enhance the compensation as stated supra.

3.The learned counsel appearing for the Insurance Company has contended that the Tribunal erred in holding that the appellant Insurance Company is liable in a case where the motorcycle was allowed to be driven by a minor in brazen violation of Motor Vehicles Act and the policy of insurance by the owner. The Tribunal ought to have exonerated the Insurance Company and directed the owner of the motorcycle alone to pay compensation. He would further contend that the Tribunal has erred in fixing the income at Rs.10,000/- per month and adding future prospects and fixing high amount of dependency without any reliable or acceptable evidence.

4.The learned counsel appearing for the claimants would contend that since the amount awarded by the Tribunal is meager in all the heads, the claimants are entitled for higher compensation. He would further contend that the Tribunal erred in fixing the income of the deceased as Rs.10,000/- per month as against the claim of Rs.700/- per day. The Tribunal ought to have fixed income of the deceased is Rs.700/- per day as per the oral evidence of P.W.1 and prevailing economic condition on the date of accident. Hence, the claimants seek for enhancement of compensation.

5.This Court carefully considered the rival submissions and perused the materials available on record.

6.In the instant case, the claimants have proved that the deceased was earning Rs.13,000/- per month, but the Tribunal, without considering the same, has fixed notional monthly income of the deceased as Rs.10,000/-. Therefore, this Court considering the age of the deceased, fixes the monthly income as Rs.13,000/-. Further, the claimants are entitled to 40% future prospects and after deducting 1/4th for personal expenses and by applying multiplier '17', this Court awards Rs.27,84,600/- (13000+5,200=18200-4550(1/4)=13650x12x17) towards loss of dependency. In addition, as per the decision of the Hon'ble Apex Court in the case of Magma General Insurance Co. Ltd., vs. Nanu Ram and others reported in 2018(1) TN MAC 452 (SC), the claimants are entitled to Rs.40,000/- each towards consortium, which comes to Rs.2,00,000/-. Rs.15,000/- is awarded for loss of estate. Rs.15,000/- is awarded for funeral expenses. Hence, the compensation awarded by the Tribunal to the appellants is re-quantified as follows:-

Heads	Rs.
Loss of dependency	27,84,600/-
Loss of consortium	2,00,000/-
Funeral expenses	15,000/-
Loss of Estate	15,000/-
Total	30,14,600/-
Rounded Off	30,14,000/-

7.Though the learned counsel appearing for the Insurance Company has contended that the Tribunal has erroneously ordered pay and recovery and it has to be set aside, on perusal of the records, we find that the Tribunal, on proper appreciation of evidence of R.W.1 and Ex.R.2-Insurance Policy, has ordered pay and recovery and therefore, the same is confirmed. The rate of interest fixed by the Tribunal as 7.5% per annum is also confirmed. In view of the modification of the award amount, the amount of Rs.10,000/- awarded under the head of Transport Expenditure is set aside.

8.In such view of the matter, CMA No.796 of 2021 is partly allowed and CMA No.1407 of 2020 is dismissed. The Insurance Company is directed to deposit the modified award amount with accrued interest and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this order at the first instance and thereafter, recover the same from the insured. On such deposit, the major claimants are permitted to withdraw the award amount as apportioned by the Tribunal, less the amount already withdrawn, if any, together with proportionate interest and costs. Further, the Tribunal is directed to deposit the share of the minor claimants in any one of the nationalised banks, as fixed deposit under the Cumulative Deposit Scheme, till the minors attain the age of major and and the first claimant, who is the guardian of the minor claimants, is permitted to withdraw interest once in six months directly from the bank. No costs. Consequently, connected miscellaneous petition is closed.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

skn
To

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

Copy to

The Section Officer,
V.R.Section,
Madras High Court,
Chennai.

+1cc to Mr.K.Varadha Kamaraj, Advocate Sr.67251

C.M.A.Nos.1407of 2020 and 796 of 2021
and
C.M.P.No.10308 of 2020

ssv[co]
srg 24/02/2022