IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.10.2021

CORAM:

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

C.M.A.No.2799 of 2021
and
C.M.P.No.15961 of 2021

M/s Royal Sundaram General Insurance Company Limited,
Legal Department,
Subramaninam Building,
2nd Floor, No.1, Club House Road,
Anna Salai, Chennai – 600 002.

...Appellant/2nd Respondent in Tribunal below

Vs.

1.S.Karpagam
2.Minor S.Subasree
3.Minor S.Likshika Shree
4.Avilyammal

(Minors 2 and 3 are represented by next friend and Natural guardian their mother, the first respondent)

5.R.Malu,S/o Ramasamy Devar,
SMT Transport,
No.15, E.B. Road, Trichirapalli-620 008.

...Respondents/Petitioners 1 to 4 and 1st Respondent in Tribunal below

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988 against the Judgment and Decree made in MCOP No.2418 of 2017 dated 15.10.2020 on the file of the Motor Accident Claims Tribunal, In the IV Court of Small Causes, Chennai.

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

For Respondents :Mr.K.Varadha Kamaraj
(for R1 to R4)

JUDGMENT

[Judgment of the Court was delivered by V.SIVAGNANAM, J.]

This appeal arises out of the order passed by the Motor Accident Claims Tribunal, In the IV Court of Small Causes, Chennai. in MCOP No.2418 of 2017 dated 15.10.2020.

2.This is the case of fatal accident. The case of the claimants is that on 07.02.2017 at 01.15 p.m, the deceased A.Subbiah was riding a motorcycle bearing Reg.No.TN-55-M-8420 with properly wearing the helmet and when he was proceeding from east to west near Vembuli Amman Koil Signal, Vanagaram, P.H.Road, Chennai, a lorry bearing Reg.No.TN-34-C-0243 came from the same direction driven in a rash and negligent manner at a greater high speed without following the traffic rules in a jig jag manner and the left side body of the lorry hit the handle bar of the deceased motorcycle. Due to which, the deceased fell down and the left side outer wheel of the lorry run over the deceased. In the accident, the deceased sustained head injury and multiple fatal injuries all over the body. Immediately, he was taken to Government K.M.C Hospital, Kilpauk, Chennai and he was died on the way to Hospital. The fifth respondent herein is the owner of the lorry and the appellant is the insurer of the lorry. Alleging that the accident had taken place due to the rash and negligent driving of the driver of the offending lorry, the claimants laid a petition, claiming compensation of Rs.30,00,000/-.

3.Resisting the claim, the appellant Insurance Company filed their counter disputing the manner of accident, age, avocation and income of the deceased and its liability to pay the compensation. It was also contended that the claim is excessive and exorbitant.

4.To substantiate the case, on the side of the claimants, P.Ws.1 to 3 were examined and Exs.P1 to Ex.P.13 were marked. On the side of the appellant/Insurance Company, no witnesses were examined and no document was marked.

5.The Tribunal, after considering the oral and documentary evidence, held that the driver of the lorry was responsible for the accident and awarded compensation of Rs.36,86,000/- to the claimants under the following heads:-

Heads	Rs.
Loss of Dependency 15000-1/3=10000+6000 (40%)=16000x12x18	34,56,000/-
Loss of Estate	15,000/-
Loss of Love and Affection	1,00,000/-
Funeral Expenses	15,000/-
Loss of Consortium	1,00,000/-
Total	36,86,000/-

Assailing the award, the appellant Insurance Company has filed the present appeal.

6.This appeal has been filed only challenging the quantum, hence, the other issues need not be dealt with herein.

7.The learned counsel for the appellant Insurance Company Mr.E.Rajadurai would submit that the income and dependency fixed by the Tribunal are excessive in the absence of any reliable evidence of the occupation and earning of the deceased. He would further submit that the Tribunal erred in not making proper deduction for personal expenses of the deceased, which is mandatory. Hence, the appellant seeks reduction of compensation.

8.Per contra, the learned counsel appearing for the respondents/claimants Mr.K.Varadha Kamaraj submitted that the impugned Judgment and Decree awarding the aforesaid compensation is well reasoned and it requires no interference and therefore, this Civil Miscellaneous Appeal is liable to be dismissed.

9.We have considered the rival submissions of both the counsels and perused the materials available on records.

10.Perusal of the records reveal that the monthly income of the deceased was fixed by the Tribunal as Rs.15,000/- only based on the oral evidence of P.W.3, the employer of the deceased. Besides this, there was no proof to show that the deceased was receiving a sum of Rs.15,000/- per month. Therefore, considering the cost of living and prevailing situation, this Court fixes a sum of Rs.14,000/- as notional income of the deceased. It is also seen that there were four claimants in the claim petition, but the Tribunal instead of deducting 1/4th has deducted 1/3rd from the income of the deceased. Hence, after deducting 1/4th, the monthly income of the deceased would be Rs.10,500/- and by adding 40% towards future prospects, notional income works out at Rs.14,700/-. By applying multiplier '18', this Court here awards only Rs.31,75,200/- (14,700 x 12 x 18) towards loss of dependency. The Tribunal has awarded Rs.1,00,000/- towards loss of love and affection and Rs.1,00,000/- towards loss of consortium. 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 and hence, the amount awarded by the Tribunal under the head of loss of love and affection and the loss of consortium are set aside. Instead, this Court awards Rs.40,000/- each towards consortium, which comes to Rs.1,60,000/-. The amount awarded for loss of estate and for funeral expenses are confirmed. Accordingly, the compensation awarded by the Tribunal to the appellants is re-quantified as follows:-

Heads	Rs.
Loss of dependency 14700x12x18	31,75,200/-
Loss of consortium (40000 x 4)	1,60,000/-
Funeral expenses	15,000/-
Loss of Estate	15,000/-
Total	33,65,200/-
Rounded Off	33,65,000/-

11.In such view of the matter, this Civil Miscellaneous Appeal is partly allowed. The appellant/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. On such deposit, the first claimant/wife of the deceased is entitled to withdraw a sum of Rs.15,65,000/-; the second and third claimants/daughters of the deceased are entitled for a sum of Rs.7,00,000/- each; the fourth appellant/mother of the deceased is entitled to withdraw a sum of Rs.4,00,000/- together with proportionate interest and costs. The major claimants are permitted to withdraw their share after filing a memo, along with a copy of this order, less the amount if already withdrawn. 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 the first claimant, who is the guardian of the minor claimants, is permitted to withdraw interest once in three months directly from the bank. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

skn

To

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

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

+1 CC to Mr.K.Varadha Kamaraj, Advocate sr 55753.

C.M.A.No.2799 of 2021
and
C.M.P.No.15961 of 2021

NRJK(CO)
SP(06/01/2022)