IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.12.2021

CORAM

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

C.M.A. Nos.3167 and 1847 of 2021

In CMA.No.3167 of 2021

Shriram General Insurance Company Limited,
No.66, Thirumalaipillai Road,
T.Nagar, Chennai 600 017. ...Appellant/ 2nd Respondent

Vs.

1. K.Kalavathi
2. P.Priyanka Chitra
3. K.Akhiladevi Chitra
4. K.Harinivas
[As per the order in I.A.No.100/2018, amendment carried out, declaring the fourth respondent as major]
5. S.Ramar ...Respondents
[5th respondent remained ex-parte, hence notice is dispensed with]

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988 against the judgment and decree dated 28.01.2020 made in MCOP.No.5911 of 2013, on the file of Motor Accidents Claims Tribunal, Special Subordinate Court No.2, Motor Accident Claims Cases, Small Causes Court, Chennai.

For Appellant : Mr.K.Poomalai

For Respondents
for R1 : Mr.P.T.Saleem Fathima

for R2 to R4 : Notice not ready

In CMA.No.1847 of 2021

1. K.Kalavathi
2. Priyanga Chitra
3. Akiladevi Chitra
4. Harinivas ...Appellants

Vs.

1. S.Ramar
2. Shriram General Insurance Company Limited,
Now at Plot No.5, I Floor,
Ramachandran Street,
Saravanan Nagar, Seevaram,
Perungudi, Chennai 600 096. ...Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988 against the award of Motor Accident Claims Tribunal, II Special Sub-Judge, Court of Small Causes, Chennai made in MCOP.No.5911 of 2013, dated 28.01.2020.

For Appellants : Mr.P.T.Saleem Fathima

For Respondents
for R1 : Notice not ready

for R2 : Mr.K.Poomalai

COMMON JUDGMENT

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

These appeals are heard through video conferencing.

2. Being not satisfied with the quantum of compensation awarded by the Motor Accident Claims Tribunal, II Special Sub Judge, Court of Small Causes, Chennai in MOCP.No.5911 of 2013, the claimants have preferred CMA.No.1847 of 2021. Assailing the award of the Tribunal, the Insurance Company, which was arrayed as second respondent in the claim petition, has come up with CMA.No.3167 of 2021.

3. The legal heirs of the deceased Kanagaraj, who died in the motor vehicle accident on 04.08.2013, filed the claim petition seeking compensation of Rs.6 Crores. It is their case that, on the fateful day, the deceased was riding a Two Wheeler bearing Registration No.TN-60-H-4456 at Bodinayakanur. At that time, a Van bearing Registration No.TN-02-K-8762, which was coming from the opposite direction, driven by its driver in a rash and negligent manner, dashed against the Two Wheeler. In the accident, the deceased sustained multiple injuries and he was admitted in the Government Hospital, Bodinayakanur. However, he succumbed to the injuries on the same day.

4. It is the further case of the claimants that the deceased was a Tamil Nadu Cable TV Operator in Bodinayakanur Town and also Cardamom Estate Owner, thereby earning a sum of Rs.40,000/- per month.

5. The Insurance Company resisted the claim petition disputing the entire averments made therein. It is stated that the deceased was a tort-feasor, hence, the legal heirs are not entitled for compensation.

6. Before the Tribunal, on the side of the claimants, 5 witnesses were examined and 14 documents were produced. The Insurance Company neither examined any witness, nor marked any document. After analysing the entire evidence adduced by the parties, the Tribunal came to the conclusion that the accident had occurred due to the negligence of the driver of the Van and awarded a total compensation of Rs.25,83,800/- along with7.5% interest. Challenging the same, the claimants as well as the Insurance Company have come up with these appeals.

7. The learned counsel appearing for the claimants Mr.P.T.Saleem Fathima would argue that PW3 had clearly stated in his evidence that the deceased was a Cable TV Operator and he was having 1250 subscribers. Each subscriber paid Rs.70/-, out of which, Rs.20/- was paid to the Cable TV Corporation and the balance amount was retained by the deceased. Hence, the monthly income fixed by the Tribunal may be enhanced. It is next argued that PW3 has stated that after the accident, Cable TV licence was not renewed by the claimants. Hence, the entire business was closed. Therefore, the claimants are entitled for higher compensation.

8. Per contra, the learned counsel appearing for the Insurance Company would argue that the Tribunal has rightly fixed the income of the deceased at Rs.15,000/- per month, but the amount awarded under the other heads are not sustainable.

9. Heard the learned counsels appearing on either side and perused the materials available on record.

10. As rightly pointed out by the learned counsel appearing for the Insurance Company, as per the decision of Supreme Court in National Insurance Company Limited vs. Pranay Sethi and others [(2017) 16 SCC 680], the wife, children and parents of the deceasd are entitled for Rs.40,000/- each under the heads Loss of Consortium and Loss of Filial Consortium, respectively. However, the Tribunal, apart from awarding Rs.40,000/- to the first claimant under the head Loss of Consortium and Rs.1,20,000/- to the claimants 2 to 4 under the head Loss of Parental Consortium, has also awarded Rs.2,00,000/- towards Loss of Love and Affection to the claimants. Hence, the sum of Rs.2,00,000/- awarded by the Tribunal towards Loss of Love and Affection is set aside.

11. Perusal of the evidence of PW3 shows that the deceased Kanagaraj was a Tamil Nadu Cable TV Operator at Bodinayakanur with 1250 subscribers. PW3 has deposed that the deceased was collecting Rs.70/- from each subscriber. After paying Rs.20/- to the Cable TV Corporation, remaining Rs.50/- was taken as income form the business. It is also stated that after the death of the deceased, Cable TV licence was not renewed. As per the evidence of PW3, the deceased was getting approximately Rs.50,000/- per month from the business. However, it is relevant to note that the deceased has to maintain the Cable TV service and persons have to be employed for maintaining the Cable TV and for collection of subscription. So, after deducing all the expenses, we are of the opinion, that it is appropriate to fix the monthly income of the deceased at Rs.22,000/-. If 25% is added towards future prospects, the actual monthly income of the deceased comes to Rs.27,500/- [22,000 + 5,500]. Thereafter, by deducting 1/4 towards the personal expenses of the deceased, the loss of income comes to Rs.20,625/- [27,500 - 6875]. Considering the age of the deceased, if multiplier 13 is applied, the Loss of Dependency comes to Rs.32,17,500/- [20,625 x 13 x 12].

12. In addition to that, the amounts awarded by the Tribunal under the conventional heads, viz., Rs.40,000/- towards Loss of Consortium; Rs.1,20,000/- towards Parental Consortium; Rs.15,000/- towards Funeral Expenses; and Rs.15,000/- towards Loss of Estate; are confirmed. In total, the claimant is entitled to Rs.34,07,500/- along with interest at the rate of 7.5% per annum from the date of claim petition till the date of realization. Thus, the total compensation payable to the claimants is re-calculated and tabulated below:

S. No.	Heads under which the amount is awarded by the Tribunal	Amount awarded by the Tribunal in Rs.	Amount awarded by this Court in Rs.
1.	Loss of Dependency	21,93,750	32,17,500
2.	Loss of Consortium	40,000	40,000
3.	Loss of Estate	15,000	15,000
4.	Funeral Expenses	15,000	15,000
5.	Loss of Love and Affection	2,00,000	-
6.	Loss of Parental Consortium	1,20,000	1,20,000
	Total	25,83,750	34,07,500

13. At this juncture, it is represented by the learned

counsel appearing for the Insurance Company that the original award amount, has already been deposited by the Insurance Company. The learned counsel appearing for the claimants submitted that since the marriage of the third claimant, viz., Akiladevi Chitra is fixed in the month of January 2022, the claimants may be permitted to withdraw the amount lying to the credit of the claim petition. In view of the urgency expressed by the learned counsel, the Tribunal shall disburse the said amount forthwith.

14. In the result CMA.No.3167 of 2021 is dismissed and CMA.No.1847 of 2021 is partly allowed. The Insurance Company is directed to deposit the above modified award amount with accrued interest and costs, less the amount already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the claimants are permitted to withdraw the balance award amount, together with proportionate interest and costs. The apportionment of shares as fixed by the Tribunal to the claimants is hereby confirmed. No costs.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

pvs

To

1. The Special Subordinate Court No.2,
   Motor Accident Claims Cases,
   Small Causes Court, Chennai.

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

+1cc to M/s.P.T.Saleem Fathima, Advocate, S.R.No.63121

C.M.A. Nos.3167 and 1847 of 2021

GMR(CO)
SB(06/12/2021)