IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **04.07.2022**

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.M.A. No.1838 of 2018
and
Cros. Obj. No.62 of 2018
and
C.M.P.No.14232 of 2018

C.M.A. No.1838 of 2018:

Reliance General Insurance Company Ltd.,
Sri Meenakshi Plaza, 1st Floor,
Plot No.HIG-55,
80 Feet Road, Anna Nagar,
Madurai - 625 020. ... Appellant

Vs.

1.C.Saraswathy
2.Minor V.C.Harshni
3.Minor V.C.Balaji
(Petitioners 2 and 3 rep. by their Mother
Next friend & Natural Guardian
Tmt.C.Saraswathy)
4.D.S.Senthilvel ... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the award and decree dated 25.07.2013 made in M.C.O.P.No.1641 of 2009 on the file of the Motor Accidents Claims Tribunal, VI Court of Small Causes, Chennai.

For Appellant : Mr.S.Arun Kumar

For Respondents : Mr.G.Balaji Prasad
for R1 to R3

Mr.T.Padmanabhan
for R4 - No Appearance

Cros. Obj. No.62 of 2018:

1.C.Saraswathy
2.Minor V.C.Harshni
3.Minor V.C.Balaji
(Petitioners 2 and 3 rep. by their Mother
Next friend & Natural Guardian
Tmt.C.Saraswathy) ... Cross Objectors

Vs.

1.Reliance General Insurance Company Ltd.,
Sri Meenakshi Plaza, 1st Floor,
Plot No.HIG-55,
80 Feet Road, Anna Nagar,
Madurai - 625 020.

2.D.S.Senthilvel ... Respondents

PRAYER: Cross Objection filed under Order 41 Rule 22 of Code of Civil Procedure, 1908 in C.M.A.No.1838 of 2018 against the award dated 25.07.2013 in M.C.O.P.No.1641 of 2009 on the file of the Motor Accident Claims Tribunal, VI Judge, Court of Small Causes, Chennai.

For Appellants : Mr.G.Balaji Prasad

For Respondents : Mr.S.Arun Kumar
for R1

COMMON JUDGMENT

The Civil Miscellaneous Appeal and the Cross Objection arise out of the award passed in M.C.O.P.No.1641 of 2009 on the file of the Motor Accidents Claims Tribunal, VI Court of Small Causes, Chennai.

2. The facts in brief are as follows:

The parties are referred to as claimants and respondents respectively. The claimants, who are the wife and children of one D.Chandra Sekhar @ D.Chandra Sekharan have filed the above M.C.O.P seeking compensation for death of the said D.Chandra Sekhar @ D.Chandra Sekharan in a road accident on 28.01.2009. It is their case that the said D.Chandra Sekhar @ D.Chandra Sekharan, who was running construction business, aged about 45 years and earning monthly income of Rs.1,75,000/-, had on 28.01.2009 travelled in his vehicle bearing registration No.TN-10-Q-2617 along with three others to Trichy. As they were proceeding on the

National Highway at around 17:15 hours, a heavy goods vehicle bearing registration No.TN-58-P-2320 driven by its driver in a rash and negligent manner and coming from the opposite direction had dashed against the vehicle in which the deceased D.Chandra Sekhar @ D.Chandra Sekharan was travelling, resulting in the death of D.Chandra Sekhar @ D.Chandra Sekharan and caused grievous injuries to the rest of the occupants. The first respondent in the claim petition, who is the owner of the heavy goods vehicle did not enter appearance and ultimately was set exparte.

3. The Insurance Company had taken a defence that the vehicle in which the deceased was travelling had also contributed to the accident and therefore the entire liability being fastened on the driver of the heavy goods vehicle, was wrong. The Insurance Company / second respondent in the claim petition had put the claimants to strict proof of the age, income and as regards the vehicular documentation of the offending vehicle.

4. The Tribunal below, on considering the evidence available on record, fastened the liability exclusively upon the driver of the first respondent's vehicle. Ultimately, a compensation of a sum of Rs.92,93,400/-

was arrived at. The Tribunal had taken into account the annual income at Rs.1,95,18,000/-, after deducting 7% towards profit. The monthly income was fixed at Rs.13,66,260/- and 30% was deducted from the said amount to arrive at the income which forms the basis for calculation. Future prospects of 30% was added to the same and after deducting 1/3 towards personal expenses, the remaining amount was taken into consideration for calculating the loss of dependency.

5. Challenging the said award, the Insurance Company had preferred Appeal in C.M.A.No.1838 of 2018 and the claimants had preferred a Cross Objection in Cros. Obj. No.62 of 2018 in C.M.A.No.1838 of 2018.

6. The Insurance Company had questioned the income fixed by the Tribunal below, whereas, the claimants were aggrieved by the lower amounts granted under the head of loss of consortium, loss of love and affection and no compensation being granted under the head of loss of estate.

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

8. A perusal of the order and the exhibits would indicate that the average profit for five years preceding the death of the deceased, based on the Income Tax return and particularly profit in the year 2009-10 was only a sum of Rs.12,72,574/-. The accident had occurred in the month of January, 2009. Therefore, the profit as shown for the assessment year can be taken into account, to this 25% has to be added towards future prospects and 30% has to be deducted towards Income Tax. From and out of this, 1/3rd has to be deducted towards personal expenses of the deceased. Working so, the total contribution towards annual income of the deceased would be a sum of Rs.7,42,335/-, which is calculated as follows:

Heads	***Amount in Rs.***
Annual Income	12,72,574
Add: 25% towards future prospects	3,18,143
	15,90,717
Less: 30% for Income Tax	4,77,215
	11,13,502
Less: 1/3 towards self expenses of the deceased	3,71,167
Total	**7,42,335**

9. The deceased was aged about 45 years and the multiplier to be adopted is 14. Therefore, the loss of dependency would be a sum of Rs.1,03,92,690/- (Rs.7,42,335/- x 14). Under the head of funeral expenses, the Tribunal has awarded a sum of Rs.25,000/- which has to be reduced to a sum of Rs.15,000/-. No amounts have been granted under the head of loss of estate, therefore a sum of Rs.15,000/- is awarded under this head. Thereafter, the first claimant has been granted a sum of Rs.1,00,000/- towards loss of consortium, which has to be reduced to a sum of Rs.40,000/- The two minor children of the deceased viz., the claimants 2 and 3, have been granted only a sum of Rs.50,000/- under the head of loss of love and affection, which shall be enhanced to a sum of Rs.80,000/- (Rs.40,000/- each). The amount granted under the head of transportation expenses is not payable and is therefore rejected. Therefore, the total compensation that is payable is Rs.1,05,42,690/-, which is calculated as follows:

Heads	***Awarded by the Tribunal (Amount in Rs.)***	***Awarded by this Court (Amount in Rs.)***
Loss of Dependency		7,42,335
Multiplier (Deceased aged 45 years)		14
Pecuniary loss	91,08,400	1,03,92,690
Funeral Expenses	25,000	15,000
Loss of Estate	NIL	15,000
Loss of Consortium	1,00,000	40,000
Loss of love and affection (Rs.40,000/- x 2)	50,000	80,000
Transport expenses	10,000	NIL
Total	**92,93,400**	**1,05,42,690**

10. In the result, the appeal in C.M.A.No.1838 of 2018 is dismissed and the Cross Objection in Cros. Obj. No.62 of 2018 is partly allowed and the impugned Award of the Tribunal is modified, enhancing the compensation amount from Rs.92,93,400/- to Rs.1,05,42,690/-. The Insurance Company is directed to deposit the said amount to the credit of M.C.O.P.No.1641 of 2009 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less, the amount, if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made, the claimants are permitted to withdraw the award

amount, along with proportionate interest and costs as awarded by the Tribunal, less, the amount, if any already withdrawn. The claimants are directed to pay the necessary Court fee for the enhanced compensation amount, if required. The Tribunal below shall not disburse the enhanced amount till such time the certified copy showing proof of payment of Court fee is produced by the claimants. In other respects, the Award of the Tribunal is hereby confirmed. There shall be no order as to costs the present Appeal and Cross Objection. Consequently, the connected Civil Miscellaneous Petition is closed.

04.07.2022

Index : Yes/No
Speaking Order : Yes / No
ab

To

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

2.The Section Officer,
VR Section, Madras High Court,
Chennai.

P.T. ASHA, J,

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C.M.A. No.1838 of 2018
and
Cros. Obj. No.62 of 2018

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