IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.02.2022

CORAM:

THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

C.M.A.NO.976 OF 2018
AND
C.M.P.NOS.7930 & 14718 OF 2018

The ICICI Lombard General
Insurance Company Limited
Office situated at
Koramangala
Bangalore.

.. Appellant/2nd Respondent

Versus

1.Rukmani
2.Rajappa

.. Respondents 1 and 2/Petitioners

3.K.Jayaprakash

.. 3rd Respondent/1st Respondent

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 21.12.2016 made in M.C.O.P.No.202 of 2014 on the file of the Motor Accident Claims Tribunal, Additional District Court, Krishnagiri.

For Appellant : M/s.R.Sree Vidhya

For R 1 & 2 : Mr.C.Prabakaran

JUDGMENT

Human life's are precious and there is no yardstick available to measure the loss of one's life in terms of money. All those who have born, have to die one day and it is a natural phenomenon. But, if the death is caused due to negligence of the others, the tort-feasor is liable for payment of compensation to off-set the loss of live. The money so ordered to be paid may not bring back or restore the lost life, but it would add solace to the heirs of the deceased to some extent. At the same time, for determining the compensation payable to the legal heirs of the deceased in motor accident cases, the Constitutional Courts have adopted various methodology and there are certain restraints to be exercised in awarding compensation to the victims of motor accidents. The compensation to be awarded must not be a 'windfall' or 'bounty' to the claimants, but it must be confined within the realm of 'just and reasonable' theory. Applying this concept of law, this Court proceeds to dispose of this appeal filed by the Insurance Company.

2. In the present case, the claimants have lost their four year old male child. Undoubtedly, the loss, mental trauma and emotional hardship faced by them cannot be just compensated in terms of money. However, for the sake of disposal of this appeal, this Court is considering the background facts and as to whether the compensation awarded by the Tribunal falls within the realm of "just and reasonable theory".

3. On the fateful day, the deceased Suresh, aged four years, was taken by his uncle to see his relatives in his motor cycle. After visiting his relatives the said Srinivasan stopped the vehicle in front of a Bakery purportedly to buy some eatables, leaving the minor in the two-wheeler. The deceased Suresh was seated in front of the two wheeler driven by his uncle Srinivasan. At that time, the tempo traveller bearing Registration No.KA-01-D-1655 belonged to the 1st respondent was driven by its driver in a rash and negligent manner, while taking reverse, and hit the two wheeler. In the impact, the four year old Suresh suffered grievous injuries in his ear and head. He was immediately rushed to the nearby hospital, but unfortunately, he succumbed to the injuries even before he reached the hospital. In connection with this incident the case in Crime No.166 of 2014 was registered against the driver of the tempo traveller on the file of the Thali Police Station.

4. It is stated that the deceased was studying in the 1st standard at the time of his death. It is claimed by the claimants that the deceased is a brilliant boy, fair looking and a very intelligent child. It is also stated that the mother of the deceased, after his birth had underwent birth control surgery and there is no scope for her to beget another child. It is with these background facts, the claimants have filed the claim petition claiming a sum of Rs.20,00,000/- as compensation for the death of the minor Suresh.

5. Before the Tribunal, the 1st respondent/owner of the tempo traveller remained ex-parte. The claim petition was contested by the 2nd respondent/Insurance Company.

6. It is the defense of the 2nd respondent that the manner in which the accident said to have taken place is incorrect. The fact remains that the deceased minor boy got down from his uncle's motorcycle to buy cake, but, suddenly he darted across the road, during which he was hit by the tempo traveller. Therefore, it is pleaded that the deceased himself had contributed to the accident and the driver of the 1st respondent / tempo traveller cannot be found fault with. The Insurance Company also submitted that the claim of Rs.20,00,000/- made by the claimants for the death of the deceased is exorbitant, onerous and exaggerated. The Insurance Company therefore prayed for dismissal of the claim petition.

7. Before the Tribunal, the mother of the deceased namely Rukumani, who is the 1st claimant, examined herself as P.W.1 and the Uncle of the deceased Srinivasan examined himself as P.W.2. Exs.P1 to P5 were marked as documentary evidence. The Insurance Company has not examined any witness or marked any document.

8. The Tribunal upon analysing the oral and documentary evidence concluded that the death of the deceased was as a result of the negligent driving of the tempo traveller.

9. With respect to quantum, the Tribunal awarded a lump-sum of Rs.5,00,000/- towards pecuniary damage and future prospects. A further sum of Rs.4,00,000/- was awarded towards loss of love and affection and for funeral expenses a sum of Rs.25,000/- was awarded. In all, a total sum of Rs.9,25,000/- was awarded by the Tribunal.

10. Assailing the award passed by the Tribunal, the present appeal is filed by the Insurance Company. The Insurance Company did not question the liability imposed on them, rather, the learned counsel for the appellant only submitted that the Hon'ble Supreme Court has time and again held that for the death of children aged below 12 years, only a sum of Rs.5,25,000/- has to be awarded as a lump-sum compensation. It is also stated that the sum Rs.4,00,000/- awarded by the Tribunal towards loss of love and affection for the parents is liable to be set aside as being exorbitant. Therefore, the learned counsel for the Insurance Company submitted that the amount of Rs.9,25,000/- awarded by the Tribunal required to be scaled down.

11. On the above contention, this Court heard the learned counsel for the claimants/respondents 1 and 2, who justified the award passed by the Tribunal as reasonable taking note of the loss of the only child of the claimants. The learned counsel for the respondents 1 and 2 therefore prayed for dismissal of the appeal.

12. Heard the learned counsel for the appellant as well as the learned counsel for the respondents 1 and 2 and perused the materials available on record.

13. The Insurance Company is not questioning the liability fastened on them by the Tribunal. What is questioned here is the quantum of compensation awarded by the Tribunal. In fact, the appeal has been valued at Rs.5,25,000/- by the appellant/Insurance Company.

14. As mentioned above, any amount of compensation, if paid to the claimants for the death of their tender child, will not comprehend the loss suffered by them. At the same time, as mentioned above, the amount to be awarded by this Court should not be a bounty or rainfall to the claimants, at the cost of the Insurance Company. Therefore, a balance has to be struck down to award compensation which would be fair and reasonable befitting the loss suffered by the claimants.

15. The deceased is a non-earning member, being four years old. He was studying 1st standard at the time of his death. The Tribunal awarded a lump-sum compensation of Rs.5,00,000/-. However, this Court is of the view that awarding a sum of Rs.6,00,000/- as lump-sum compensation would meet the ends of justice. At the same time, the award of Rs.4,00,000/- towards loss of love and affection, instead of filial compensation, cannot be countenanced. As per the oft quoted decision of the Hon'ble Supreme Court in Pranay Sethi's case, only a sum of Rs.40,000/- is required to be awarded. Accordingly, a sum of Rs.4,00,000/- awarded by the Tribunal is scaled down to Rs.80,000/- at the rate of Rs.40,000/- to each of the claimants.

16. The Tribunal awarded a sum of Rs.25,000/- towards funeral expenses which is on the higher side. Having regard to the totality of the facts and circumstances of the case, a sum of Rs.15,000/- is hereby awarded.

17. The Tribunal, in a case of this nature, ought to have awarded some amount towards loss of estate and transportation, which it failed to award. Having regard to the same a sum of Rs.15,000/- each is awarded towards loss of estate and transportation.

18. In the result, the award passed by the Tribunal stands modified and a total sum of Rs.7,25,000/- is hereby awarded as mentioned below.

Pecuniary damage and future prospectus		Rs. 6,00,000/-
Filial compensation		Rs. 80,000/-
Funeral expenses		Rs. 15,000/-
Loss of estate		Rs. 15,000/-
Transportation		Rs. 15,000/-
Total	=	Rs. 7,25,000/-

19. The appellant / Insurance Company is directed to deposit the compensation amount now determined by this Court in this appeal to the credit of M.C.O.P.No.202 of 2014 on the file of the Motor Accident Claims Tribunal, Additional District Court, Krishnagiri, within a period of eight weeks from the date of copy of this judgment. The amount already deposited, if any, shall be adjusted by the Insurance Company. On such deposit, the claimants/respondents 1 and 2 are permitted to withdraw the entire compensation amount in equal proportion with accrued interest and cost. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

gbi

To

1. The Additional District Judge,
   Motor Accident Claims Tribunal,
   Krishnagiri.

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

+1cc to M/s.R.Sree Vidhya, Advocate, S.R.No.6906

C.M.A.No.976 of 2018

RR(CO)
RLP(13/06/2022)