IN THE HIGH COURT OF JUDICATUE AT MADRAS

DATED 17.12.2015

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A. No.2811 of 2015
&
M.P.No.1 of 2015

Bajaj Allianz Insurance Company Ltd.,
No.25, 26 College Road, Nungambakkam,
Chennai-34. .. Appellant/2nd Respondent

versus

1.Indirani
2.M.Tamilselvi
3.S.Panneerselvam .. Respondents/Petitioners & 1st Respondent

Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 15.03.2013 made in M.C.O.P. No.829 of 2010 on the file of the Motor Accidents Claims Tribunal, (II Additional District Judge), Poonamallee.

For appellant : Mr.S.Arun Kumar

For respondents: Mr.K.Varadha Kamaraj
for R1 and R2

JUDGMENT

The Civil Miscellaneous Appeal, filed by the appellant/Insurance Company, is directed against the correctness of the impugned award dated 15.03.2013 made in M.C.O.P. No.829 of 2010 on the file of the Motor Accidents Claims Tribunal, (II Additional District Judge), Poonamallee, awarding a sum of Rs.11,05,000/- for the loss of life of the deceased, who died in the accident at the age of 53 years. Aggrieved by the impugned award, Insurance Company has preferred this appeal.

2.According to claimants, on 14.08.2010 at about 7.00 p.m., while the deceased was riding a motor cycle bearing Registration No.TN-05-S-1218 from Ambattur Estate to Kolathur, a lorry bearing Registration No.TN-01-L-7692 came in a rash and negligent manner on the same direction, dashed against the deceased and caused fatal injuries. The accident took place due to rash and negligent driving of the lorry driver alone. The claimants are wife and daughter of the deceased. They claimed a sum of Rs.5,00,000/- as compensation. The appellant/Insurance Company resisted the claim.

3.After considering the oral and documentary evidence, the Tribunal held that the accident had occurred only due to the rash and negligent driving of the lorry driver and awarded a sum of Rs.11,05,000/- as compensation payable to the claimants with interest at the rate of 7.5%. Aggrieved by that award, the appellant-Insurance Company has filed the present appeal.

4.Heard Mr.S.Arun Kumar, learned counsel for the appellant and Mr.K.Varadha Kamaraj, learned counsel for the claimants and perused the documents on record. On the side of the claimants, P.Ws.1 and 2 were examined and documents Exs.P1 to P5 were marked. On the side of the appellant/Insurance Company, no witness was examined and no document was marked.

5.Learned counsel appearing for the appellant/Insurance Company would submit that the Tribunal on the basis of the age of the wife of the deceased i.e. 45 years, has wrongly adopted '15' as multiplier instead of fixing the same at '11' and as a result of which, the total compensation of Rs.11,05,000/- has been wrongly inflated. The above approach adopted by the Tribunal is illegal, un-sustainable and untenable either as per the ratio laid down by the Hon'ble Apex Court in the case of Sarala Varma and others vs Delhi Transport Corporation and another reported in 2009 (2) TN MAC Volume 2 at page 1 or as per the II Schedule of the Motor Vehicles Act and hence that portion of the finding has to be set aside.

6.Opposing the argument, learned counsel appearing for the claimants would submit that when the claimants were able to satisfy that the deceased was doing construction work as Master Masion, the Tribunal, accepting the avocation of the deceased, has fixed Rs.6,000/- as notional monthly income, by deducting 1/3rd of his earning towards personal expenses and has adopted the multiplier at '15'. Adding further, he would submit that even as per the ratio laid down in the case of Sarala Varma, proper multiplier '11' would be adopted, the notional monthly income Rs.9,000/- cannot be questioned. In that event by applying multiplier '11' and by deducting 1/3rd of his earnings as personal expenses of the deceased, a sum of Rs.7,92,000/- has to be fixed under the head 'loss of future income'. With regard to the heads 'loss of consortium' and 'loss of love and affection' the Tribunal has fixed a sum of Rs.10,000/- and Rs.5,000/- respectively. When the deceased was aged about 52 years leaving behind his wife and minor daughter at the age of 45 years and 27 years, the Tribunal has awarded a meagre amount under the aforementioned heads, which needs reasonable enhancement.

7.Considering the facts and circumstances of the case and accepting the contentions of both parties, this Court is inclined to adopt the multiplier at '11' as per the ratio laid down by the Hon'ble Apex Court in the case of Sarala Varma for the reason that the claimants themselves have mentioned in the claim petition that the age of the deceased was '53' years. Accordingly, the correct multiplier would be '11'. As there was no proof forthcoming as to the employment and income, this Court finding that as a Masion could easily earn a sum of Rs.300/- per day, fix the correct notional income of the deceased at Rs.9,000/-. After deducting 1/3rd of his earnings as personal expenses and by adopting multiplier at '11', a sum of Rs.7,92,000/- is fixed under the head 'loss of income'. (6000 x 12 x 11 = Rs.7,92,000/-)

8.While the submission made by the learned counsel for the claimants that the Tribunal awarded a sum of Rs.10,000/- towards loss of consortium and a sum of Rs.5,000/- towards loss of love and affection, which need enhancement, this Court is inclined to enhance the same under the aforementioned heads, for, such compensation awarded by the Tribunal are very meagre one; especially when the deceased died, leaving behind his wife/first claimant at the age of 45 years and his daughter/2nd claimant at the age of 27 years. Accordingly, this Court hereby awards a sum of Rs.50,000/- under each head. With regard to funeral expenses, this Court is inclined to confirm the same, as awarded by the Tribunal.

The modified compensation as per the above discussion are as follows:

Loss of income	Rs.	7,92,000/-
Loss of consortium	Rs.	50,000/-
Loss of love and affection	Rs.	50,000/-
Funeral expenses	Rs.	25,000/-
Total	Rs.	9,17,000/-

Therefore, the claimants are entitled to the modified compensation amount of Rs.9,17,000/- with interest at 7.5%, as apportioned by the Tribunal, from the date of the petition.

The appellant-Insurance Company is directed to deposit the modified amount Rs.9,17,000/- with interest at 7.5% per annum, within a period of four weeks from the date of receipt of a copy of this order. On such deposit, the claimants are entitled to withdraw the modified amount, less the amount if already withdrawn, on making proper application.

9.With the above modifications, the Civil Miscellaneous Appeal is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

1. Motor Accidents Claims Tribunal,
   (II Additional District Judge), Poonamallee.

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

+1cc to M/S.S.Arunkumar, Advocate, S.R.No.68604
+1cc to M/S.K.Varadhakamaraj, Advocate, S.R.No.68043

C.M.A. No.2811 of 2015

rsk(CO)
srg(04/05/2016)