

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.02.2015

CORAM

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

C.M.A.NO.1754 of 2006

and

C.M.P.No.8107 of 2006

1.P.Gunasekaran

2.United India Insurance Co. Ltd.,

Gobi.

... Appellants/Respondents

Vs.

1.Pachayyal

2.Kokila

3.Maheswaran, (Minor)

(Rep. By next friend and
mother Kokila)

... Respondents 1to3/Claimants

4.E.M.Venkateswaran

5.N.P.Rajendran

6.The Branch Manager,

New India Assurance Co. Ltd.,

12, New India Assurance Co. Ltd.,

Gobichettipalayam.

..Respondents 4to6

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the award and decree dated 24.11.2003 made in O.P.No.6 of 2001 on the file of the Motor Accidents Claims Tribunal, I Additional Sub Judge, Gobichettipalayam.

For Appellants : Ms.V.S.Sowmiya for
M/s.Rosi Naidu

For Respondents : Mr.K.Balaganesh for
Mr.Ma.P.Thangavel [R1 to R3]
Mr.J.Chandran for R6

JUDGMENT

The appeal has been preferred by the Insurance Company against the award of Rs.7,19,000/- and fastening of the liability on the appellant-Insurance Company, regarding the death of one Murugesan, who died in the accident, which occurred on 06.09.2000, while he was travelling as a pillion rider in the TVS-50 Moped, which was hit by Bajaj kawasaki, driven rash and negligently.

2. Heard Ms.V.S.Sowmiya, learned counsel appearing for the appellants, Mr.K.Balaganesh, representing Mr.Ma.Pa.Thangavel, learned counsel appearing for the respondents 1 to 3 and Mr.J.Chandran, learned counsel appearing for the 6th respondent.

3. Though the learned counsel for the appellants would submit that both the vehicles collided and both the riders of the vehicles are equally responsible for the accident and such a stand was taken in the counter statement, the Tribunal solely fixed the liability on the rider of the Bajaj Kawasaki erroneously. A perusal of the record would show that P.W.2 deposed in his evidence that the Bajaj Kawasaki was driven rash and negligently. Whereas P.W.4 deposed that TVS 50 Moped was driven rash and negligently. Taking note of filing of FIR against the rider of Bajaj Kawasaki and pleading guilty by him before the Criminal Court as per Ex.P18, criminal Court judgment, the Tribunal rightly held that the Bajaj Kawasaki rider was driven rash and negligently and fastening the liability on the same and directed the appellant Insurance Company to pay the compensation. The said finding cannot be disturbed, as it is based on an appreciation of evidence by the Tribunal.

4. With regard to the quantum, the learned counsel for the appellants would point out that Rs.3,500/- was determined as monthly income and without making any deduction towards personal expenses, a sum of Rs.7,14,000/- was awarded towards loss of income, by applying multiplier 17. Since no amount was deducted towards personal expenses, $1/3^{\text{rd}}$ is deducted from the monthly income of Rs.3,500/- and the loss of income would be $\text{Rs.}3,500 - 1/3 = 2,333/-$. As per the second schedule, the Tribunal rightly applied multiplier 17, as per the age of the deceased and the loss of income is calculated as follows:

$$3500 - 1/3 \times 12 \times 17 = 4,75,932/-.$$

5. No amount was awarded towards loss of consortium to the 2nd respondent and therefore, a sum of Rs.1,00,000/- is awarded by following the judgment of the Honorable Supreme Court in Rajesh & Others Vs. Rajbir Singh & Others reported in 2013 (3) CTC 883. The Tribunal awarded only a sum of Rs.3,000/- towards loss of love and affection. The third respondent, minor was aged about 9 years at the time of death of his father, and therefore, he is entitled to a sum of Rs.50,000/- towards loss of love and affection. Similarly, the 1st respondent, mother is entitled to a sum of Rs.25,000/-. The Tribunal awarded a sum of Rs.2,000/- towards funeral expenses, which is too low and the same is hereby enhanced to Rs.5,000/-. Since no amount was awarded towards transportation, a sum of Rs.2,500/- is awarded towards transportation. Totally, this Court awards a sum of Rs.6,58,432/- as compensation. Rounded off to Rs.6,60,000/-. The rate of interest awarded by the Tribunal at 9% p.a. remains unaltered.

6. In view of the above, this Civil Miscellaneous Appeal is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

7. The 2nd appellant/Insurance Company is directed to deposit the entire amount along with interest and costs within a period of four weeks from the date of receipt of a copy of this order, after adjusting the amount if any already deposited. On such deposit being made, the respondents 1 to 3 are permitted to withdraw their respective shares, as apportioned by the Tribunal, within one week thereafter.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

vsm

To

The Motor Accident Claims Tribunal,
I Additional Sub Judge, Gobichettipalayam.

+ 1 cc to Mr.N.Rosi Naidu, Advocate SR.7684/15
+ 1 cc to Mr.P.Thangavel, Advocate SR.6865
+ 1 cc to Mr. J. Chandran, Advocate SR.7111

Copy to: The section Officer,
VR Section, High Court, Madras.104

(CO)

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