

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.01.2015

CORAM:

THE HONOURABLE MR.JUSTICE V.DHANAPALAN
AND
THE HONOURABLE MR.JUSTICE G.CHOCKALINGAM

C.M.A.No.320 of 2012
& M.P.No.1 of 2012

M/s.Bajaj Allianz General Insurance Co. Ltd.,
No.25/26, Prince Towers, IV Floor,
College Road, Nungambakkam,
Chennai-600 006. ... Appellant/2nd respondent

Vs.

1. K.J.Lalitha
2. K.J.Lavanya
3. K.J.Lakshmmamma ... Respondents 1 to 3/Claimants
4. C.M.Ramanatha Reddy
(4th respondent ex-parte in
lower Court) ... 4th Respondent/1st Respondent

Civil Miscellaneous Appeal filed under Section 173
of the Motor Vehicles Act against the Award and decree, dated
20.06.2011 made in M.C.O.P.No.1776 of 2007 on the file of the Motor
Accidents Claims Tribunal (Chief Judge, Court of Small Causes),
Chennai.

For appellant : Mr.N.Vijayaraghavan
For respondents 1to3: Mr.K.R.Ponnusamy for
: M/s.Anand and Suryas
for RR-1 to 3
R4 : Exparte

JUDGMENT

(The Judgment of the Court was delivered by V.DHANAPALAN,J)

The Civil Miscellaneous Appeal is preferred by the
Insurance Company against the Award, dated 20.06.2011 made in
M.C.O.P.No.1776 of 2007 on the file of the Motor Accidents Claims
Tribunal (Chief Judge, Court of Small Causes), Chennai.

2. The respondent 1 to 3/claimants have filed the
claim petition before the Tribunal stating that on 07.10.2006 at
about 10 am., when the deceased was riding his two-wheeler, bearing
Registration No.TN-09-AE-7639 on Puttur to Nagalapuram By-pass Road
and Vengalathur to Pitchattur Road junction and was proceeding from

Vengalathur to Pitchattur, the fourth respondent's car, bearing Registration No.TN-02-S-0437 coming on the same junction, driven by its driver in a rash and negligent manner from Nagalapuram towards Puttur, came on the extreme right side of the road and hit the two-wheeler of the deceased, when he almost crossed the junction, due to which, the deceased was thrown away from his two-wheeler and sustained head and fatal injuries and succumbed to the same on 16.10.2006. The accident occurred due to rash and negligent driving of the driver of the fourth respondent's vehicle. The deceased was aged about 60 years and a Doctor at Vengalathur, earning Rs.1,80,000/- per annum from medical profession and also as an Agriculturist, earning Rs.5,00,000/- per annum. The claimants are the wife, daughter and mother of the deceased. Thus, they claimed a compensation of Rs.42 lakhs from the owner and insurer of the vehicle involved in the accident.

3. The appellant-Insurance Company filed counter statement before the Tribunal admitting that the fourth respondent's vehicle is covered at the material time under the insurance policy issued by them, subject to terms and conditions. The person driving the vehicle has no valid licence on the date of accident to drive the vehicle and the claimants should prove the same. It is the mandatory duty of the fourth respondent herein to furnish the particulars of the policy, date, time and place of accident, particulars of the deceased and the name of the driver and also the particulars of the driving licence. But the fourth respondent has not complied with the statutory demand. The Police failed to furnish the documents. The claimants should prove that the owner of the vehicle, i.e. the fourth respondent herein used the vehicle without breach of terms and traffic rules and there is no violation of any provisions of the Motor Vehicles Act. The appellant-Insurance Company denied the allegation that the fourth respondent's vehicle was involved in the accident and also denied the manner in which the alleged accident occurred on that day and it was driven in a rash and negligent manner. The claimants have to prove the age, occupation and income of the deceased, legal heirs and dependants of the deceased, death due to the injuries and the Police have registered a case against the driver of the vehicle. The agricultural income would not come down to the family. The compensation claimed is excessive and they prayed for dismissal of the claim petition.

4. Before the Tribunal, the first claimant-wife of the deceased was examined as P.W.1, besides P.Ws.2 to 6 and on their side, Exs.P-1 to P-18 were marked. On the side of the appellant-Insurance Company, no witness was examined and no document was marked.

5. The Tribunal, on a consideration of the above oral and documentary evidence, came to the conclusion that the accident occurred only due to the rash and negligent driving of the fourth respondent's driver and held that the appellant-Insurance

Company is liable to pay the compensation to the claimants, on behalf of the fourth respondent, as insurer of the vehicle in question and thereby, awarded a compensation of Rs.14,87,000/-, with interest at 7.5% per annum from the date of the claim petition till the date of payment, under the following heads:

Sl. No.	Head under which the amount was awarded by the Tribunal	Award amount in Rs.
1	Loss of earnings	9,80,000
2	Loss of consortium to the first claimant-wife	10,000
3	Loss of love and affections to the claimants 2 and 3 (daughter and mother of the deceased)	10,000
4	Funeral expenses	10,000
5	Medical expenses and transport expenses	4,77,000
	Total amount awarded by the Tribunal	14,87,000

6. Learned counsel appearing for the appellant-Insurance Company submitted that he is not challenging the negligence and liability determined by the Tribunal and mainly focussed his arguments with regard to the quantum of compensation. He submitted that the monthly income of the deceased, fixed by the Tribunal is on the higher side and the agricultural income should not have been taken into account while determining the loss of earnings of the deceased.

7. Learned counsel for the respondents 1 to 3/claimants submitted that the Tribunal has awarded the compensation based on oral and documentary evidence and the same is just and proper and hence, it may not be interfered with.

8. Heard the learned counsel appearing on either side and perused the material documents available on record.

9. As there is no challenge to the aspect of negligence and liability, we are not dealing with the same and the award of the Tribunal on this aspect is hereby confirmed.

10. With regard to the loss of earnings determined by the Tribunal, as rightly submitted by the learned counsel for the appellant-Insurance Company, the annual income of the deceased should have been fixed only at Rs.1,20,000/- by taking into account his profession as a Doctor and the agricultural income of the deceased arrived at Rs.90,000/- by the Tribunal should not have been considered, as there is no valid proof for the said agricultural income of the deceased. Thus, the deceased being a Doctor, the loss

of earnings is now arrived at Rs.8,40,000/- (1,20,000 x 7) by adopting multiplier "7" as rightly adopted by the Tribunal.

11. Coming to the aspect of loss of consortium to the first claimant-wife, it is seen that the Tribunal has awarded a sum of Rs.10,000/- for the same, which is very meagre and the same is hereby enhanced to Rs.1,00,000/-. With regard to the loss of love and affection to the claimants 2 and 3 (daughter and mother of the deceased) on account of the death of the deceased, it is seen that the Tribunal has totally awarded Rs.10,000/- to them and on that account and the same is a paltry sum, considering their relationship with the deceased and hence, it is appropriate to award Rs.50,000/- totally to the claimants 2 and 3 towards loss of love and affection, which is accordingly awarded. The Tribunal has awarded a sum of Rs.10,000/- towards the funeral expenses, which is hereby enhanced to Rs.20,000/-, taking into consideration the facts and circumstances of the case. The medical and transport expenses awarded by the Tribunal at Rs.4,77,000/- is hereby confirmed.

12. Thus, the total compensation works out to Rs.14,87,000 /-. In effect, there is no change in the total amount of compensation awarded by the Tribunal. The interest at 7.5% p.a. awarded by the Tribunal is hereby confirmed.

13. The amounts awarded by the Tribunal and this Court, as noted above, are shown below:

Sl. No.	Heads under which the amounts were/are awarded	Amounts awarded by the Tribunal (in Rs.)	Amounts awarded by this Court in this Appeal (in Rs.)
1	Loss of earnings	9,80,000	8,40,000
2	Loss of consortium to the first claimant-wife	10,000	1,00,000
3	Loss of love and affection to the claimants 2 and 3 (daughter and mother of the deceased)	10,000	50,000
4	Funeral expenses	10,000	20,000
5	Medical expenses and transport expenses	4,77,000	4,77,000
	Total amount	14,87,000	14,87,000

14. In the result, though there is modification of the award amount under some of the heads, the total award of the Tribunal remains unchanged. Accordingly, the appeal is disposed of in the above terms. The award of the Tribunal at Rs.14,87,000/- is hereby confirmed, with 7.5% interest per annum from the date of claim petition till the date of payment by the appellant-Insurance Company to the claimants (respondents 1 to 3 herein). Out of the abovesaid award amount, the first respondent-claimant-wife shall get Rs.7,87,000/- with proportionate interest, the second respondent-claimant-daughter shall get Rs.5,00,000/- with proportionate interest and the third respondent-claimant-mother shall get Rs.2,00,000/- with proportionate interest. The amount(s), if any lying in Bank Deposit / Court Deposit shall be disbursed to the respondents 1 to 3/claimants directly by the Tribunal, without insisting on any formal application from them. The amount, if any already withdrawn by the respondents 1 to 3/claimants during the pendency of this appeal, shall be adjusted from the total award amount. The remaining amount of compensation shall be paid by the Tribunal to the respondents 1 to 3/claimants, expeditiously, without insisting on any formal application from them. No costs. The Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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Copy to

1. The Motor Accidents Claims Tribunal
(Chief Judge, Small Causes Court), Chennai.
 2. Record Keeper, V.R. Section, High Court, Madras.
- + 1 cc to Mr.M. S. Gopalan, Advocate SR.4980

CMA NO.320 of 2012

SV(CO)
EU 05.03.2015