

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.03.2016

CORAM

THE HONOURABLE MR.JUSTICE R.SUDHAKAR
and
THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

C.M.A.No.553 of 2016
and

C.M.P.No.4591 of 2016

M/s. Bajaj Allianz General
Insurance Company Limited
D.No.11, People's Park, 3rd floor
Government Arts College Road
Coimbatore. ... Appellant/ 2nd Respondent

Vs.

1.Minor D. Pawnjith
Rep. By guardian and
grandfather K.N. Ayyasamy ... 1st Respondent/ Petitioner

2.K.A. Divakar ... 2nd Respondent/1st Respondent

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the common Judgment and Decree dated 17.08.2015 made in M.C.O.P. No. 152 of 2013 (connected with MCOP Nos. 666 of 2012, 150 and 151 of 2013) on the file of the Motor Accidents Claims Tribunal, (IV Additional District and Sessions Judge), Coimbatore.

For Appellant : Mr. Srinivasan Ramalingam
For Respondents/ : Mr.C. Veeraraghavan
Caveators for R1

JUDGMENT

(Judgment of the Court was delivered by R.SUDHAKAR,J.)

This Civil Miscellaneous Appeal has been preferred by the Insurance Company, challenging the common Judgment and Decree dated 17.08.2015 made in M.C.O.P. Nos. 666 of 2012 and 150, 151 and 152 of 2013, on the file of the Motor Accidents Claims Tribunal, (IV Additional District and Sessions Judge), Coimbatore, whereby, the Tribunal has awarded a compensation of Rs.8,75,342/-, together with interest at 12% p.a. from the date of the petition till such deposit is made.

2. This is a case of injury. On 07.08.2011, at about 9 a.m., the car bearing Registration No.TN 37 AR 7434, driven by one Smt.Meenakshi, on the portico of her house, instead of moving to the front, mistakenly reversed, whereby she lost control and the car fell into a 200 ft. deep well, nearby. In that accident, the co-passengers, Mr.Sivarajan and Mrs. Vasanthi died, Minor D. Adish Indraajith and Minor D. Pawnjith sustained grievous injuries. The minor D. Pawnjith, aged 5 years, represented by his guardian grand father Mr. K.N. Ayyasamy, who was a co-occupant of the car, has filed the claim petition for a compensation of Rs.10,00,000/.

3. In support of the claim, the wife of the deceased Sivarajan was examined as P.W.1, Mr. K.M. Ayyasamy, guardian of the injured minor claimant was examined as P.W.2, said to be an eye witness, one Mr. S.Jayaprakash was examined as P.W.3 and the Dr. Gajendran, as PW.4. Exs.P-1 to Ex.P.48 were marked, the details of which are as follows:-

Ex.No.	Details
P1	Certified copy of F.I.R
P2	Certified copy of charge sheet
P3	Certified copy of rough sketch
P4	Certified copy of MVI report
P5	Certified copy of Referred Charge sheet
P6	Certified copy of Post Mortem certificate
P7	Original death certificate of Sivarajan
P8	Original Legal Heir Certificate of Sivarajan
P9	Original Driving Licence of Sivarajan
P10	Xerox copy of Learner's licence of Meenakshi
P11	Xerox copy of family card of Sivarajan
P12	Xerox copy of Transfer certificate of Jayamalini
P13	Xerox copy of Birth certificate of Kishore
P14	Salary certificate of Sivarajan
P15	Xerox copy of Death certificate of Vasanthamani
P16	Letter of alteration of name in postmortem certificate
P17	Original death certificate of Vasanthi
P18	Original legal heir certificate of Vasanthi

Ex.No.	Details
P19	Xerox copy of passport copy of Vasanthi
P20	Xerox copy of Certificate of registration
P21	Income tax return copy
P22	Income tax return copy
P23	Income tax return copy
P24	Income tax return copy
P25	Income tax return copy
P26	Discharge summary of Baby Indrajith
P27	Inpatient receipt of Indrajith
P28	Medical Bills
P29	Discharge summary of Baby Pawanjith
P30	CT Scan of Brain
P31	CT Scan of Abdomen
P32	Ultra sound scan
P33	Inpatient receipt of Pawnjith
P34	Medical Bills
P35	Original Death Certificate of Meenakshi
P36	Day book of Subramania Gowder Jewellery
P37	Day book of Subramania Gowder Jewellery
P38	Day book of Subramania Gowder Jewellery
P39	Day book of Subramania Gowder Jewellery
P40	Day book of Subramania Gowder Jewellery
P41	Statement of Account in the name of Subramaniam Ayyasamy
P42	Statement of Account in the name of Vasanthi
P43	Notice of Commissioner
P44	Letter from Commercial Tax office
P45	Disability Certificate of Indrajith
P46	X-ray of Indrajith
P47	Disability Certificate of Pawnjith
P48	X-ray of Pawnjith

On behalf of the Insurance Company no witness was examined and no document was marked on their side before the Tribunal.

4. The Tribunal, based on the oral evidence of the witnesses, the F.I.R. and also taking note of the fact that the deceased Meenakshi, who drove the car was possessing Learner's license to drive the car but accompanied with a professional driver, deceased Sivarajan, who was holding a valid license, came to the conclusion that the driver of the car was responsible for the accident and consequently liability was fixed on the Insurance Company. On this issue, learned counsel for the appellant has no serious objection with regard to the finding of the Tribunal as no material has been placed to come to a different conclusion from that of the conclusion arrived at by the Tribunal.

5. Based on the oral and documentary evidence, the Tribunal granted the following amounts as compensation with interest at 12% per annum:-

Sl. No	Head	Amount granted by the Tribunal
1	Medical Expenses	Rs. 4,05,342/-
2	Pain and Sufferings	Rs. 2,00,000/-
3	Loss of Love and affection	Rs. 2,00,000/-
4	35% Disability	Rs. 70,000/-
	Total	Rs. 8,75,342/-

6. Learned counsel for the appellant/ Insurance Company stated that in this case the quantum of compensation has to be reduced mainly on the ground that the compensation under the heading "Pain and Sufferings" is exorbitant. Further, the Tribunal has erred in granting an extremely high amount towards compensation under the heading "loss of love and affection", which is not applicable in a case of injury. The disability fixed by the Doctor PW-4, ought not to have been accepted by the Tribunal, since he has not treated the injured claimant and has not assessed the components of stability, mobility etc., and that he has not produced any worksheet or reports. On the above said grounds, the learned counsel for the appellant/ Insurance Company pleaded to reduce the quantum of compensation.

7. On the other hand, the learned counsel for the 1st respondent/claimant submitted that the age of the claimant was only 5 years, at the time of accident and sustained blunt injury abdomen with ilea perforation and faecal peritonitises, fracture shaft of right femur, fracture on both bones in the right leg, Epiphyseal injury left formus and raw area in the right thigh and right leg. The minor injured was treated in K.G. Hospital, as an inpatient from 07.08.2011 to 26.08.2011 and he underwent

surgeries and stagnated blood inside his stomach was drained out and skin crafting was also done. Hence, the Doctor had assessed 35% Partial Permanent disability and exhibits P.26 to Ex.35 and Ex.P.47 & P48 have been marked, in support of his claim. Learned counsel further submitted that inspite of the fact that the injured/ claimant was a small child, no amount has been granted by the Tribunal, for Extra Nourishment, Transport, Future Medical Expenses and for Attender charges. Considering the age, the surgeries underwent by the minor injured, the Tribunal has granted a fair and reasonable compensation and hence the learned counsel for the 1st respondent/claimant sought for dismissal of the above Civil Miscellaneous Appeal.

8. This Court considered the submissions made on the learned counsel on either side and perused the materials available on record.

9. Considering the age of the claimant, nature of injuries, period of hospitalisation and the percentage of partial permanent disability, the appellant/ Insurance Company's plea appears to be tenable. We find, excess amount has been granted for "loss of love and affection", which does not arise in a case of injury and hence the same cannot be granted. The amount granted towards "Pain and Suffering" seems to be on the higher side and hence it is reduced to Rs.1,50,000/-. In view of the fact that the injured is a small child of tender age, Rs.3000/- per percentage, shall be adopted and hence for 35% partial permanent disability, the sum of Rs.1,05,000/- is granted. As the Tribunal has not granted any compensation towards the other heads, we are inclined to modify the compensation granted by the Tribunal, as follows :-

Sl. No	Head	Amount granted by the Tribunal	Amount granted by this Court
1	Medical Expenses	Rs. 4,05,342/-	Rs. 4,05,342/-
2	Pain and Sufferings	Rs. 2,00,000/-	Rs. 1,50,000/-
3	Loss of Love and affection	Rs. 2,00,000/-	--
4	35% Disability	Rs. 70,000/-	Rs. 1,05,000/-
5	Attender charges	--	Rs. 30,000/-
6	Extra Nourishment	--	Rs. 30,000/-
7	Transport and Future Medical expenses	--	Rs. 30,000/-
8	Loss of Amenities	--	Rs. 20,000/-
	Total	Rs. 8,75,342/-	Rs. 7,70,342/-

Considering the prevailing rate of bank interest, this court feels that the rate of interest of 9% could be reduced to 7.5% per annum.

10. Accordingly, the Civil Miscellaneous Appeal is allowed, as follows:-

(i) The award of the Tribunal is reduced to Rs.7,70,342/- from Rs.8,75,342/-.

(ii) The interest granted by the Tribunal at 12 % is reduced to 7.5% per annum.

(iii) The appellant/Insurance Company is directed to deposit the entire award amount, with the modified interest and costs, less the amount already deposited, to the credit of M.C.O.P.No. 152 of 2013 on the file of the Motor Accidents Claims Tribunal, IV Additional District and Sessions Judge, Coimbatore, within a period of eight weeks from the date of receipt of a copy of this order.

(v) The amount so deposited, shall continue to be in the deposit of the minor/1st respondent, and renewed from time to time, till he attains majority and the guardian/grandfather is permitted to withdraw the interest accruing on such deposit, once in three months, to meet the necessities of the minor.

(vi) There will be no order as to costs in this appeal. Connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

avr

To

The IV Additional District and Sessions Judge,
(The Motor Accidents Claims Tribunal)
Coimbatore.

+1cc to Mr.C. Veeraraghavan, Advocate, S.R.No.17802

+1cc to Mr.Srinivasan Ramalingam, Advocate, S.R.No.17741

C.M.A.No.553 of 2016 and

C.M.P.No.4591 of 2016

MSM(CO)

CA(29/04/2016)