IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.01.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.2200 of 2015
and C.M.P.No.973 of 2016
and M.P.1 of 2015

Bajaj Allianz General Insurance
Company Limited
No.25/26, Prince Towers
4th floor
College Road, Chennai-6 ...Appellant/2nd respondent

vs

1.Ganesan
2.K.Devi
3.S.Selvi
4.G.Suresh ..Respondents 1 to 4
/Petitioners 1 to 4/Claimant

5.S.Elangovan ..5th respondent / 1st respondent

Civil Miscellaneous Appeal filed against the judgment and decree dated 27.01.2015 made in M.C.O.P.No.713 of 2013 on the file of Motor Accident Claims Tribunal, II Court of Small Causes, Chennai.

For appellant	:	: Mr.D.Bhaskaran
For Respondents	:	:
for R1 to R4	:	: Ms.M.Malar

J U D G M E N T

This Civil Miscellaneous Appeal is filed by the 2nd respondent before the Tribunal/Insurance Company, challenging the judgment and decree dated 27.01.2015 made in M.C.O.P.No.713 of 2013 on the file of Motor Accident Claims Tribunal, II Court of Small Causes, Chennai.

2. For the sake of convenience, the parties are referred to as per their litigative status before the Tribunal. It is a fatal case. The case of the petitioners is that on 22.09.2012 at about 8.00 p.m., when the deceased was walking from North to South at Sholinganallur Anna Street, the first respondent's

motor cycle bearing Reg.No.TN-59-AE-8307 came from West to East in rash and negligent manner, dashed the deceased from behind, thereby, the deceased sustained fatal injuries and died on 26.09.2012. Stating that the rider of the first respondent's motor cycle alone is responsible for the accident, the legal heirs and dependants of the deceased claim a total compensation of Rs.15,00,000/- from the respondents.

3. On the other hand, opposing the claim of the Petitioners, by filing counter, the 2nd respondent/Insurance Company stated that the manner of the accident has to be proved by the Petitioners. According to the 2nd respondent, the accident occurred only due to the fault of the deceased. It is further averred that the amount of compensation claimed is highly excessive and the petition is liable to be dismissed.

4. Before the Tribunal, the Petitioners examined P.W.1 and P.W.2 and produced documents Ex.P.1 to Ex.P.5. On the side of the respondents, neither any witness was examined nor any document was produced. The Tribunal, on the basis of overall evidence available before it, found that the accident occurred due to the rash and negligent driving by the rider of the first respondent vehicle. It also held that as insurer of the 1st respondent vehicle, the 2nd respondent is liable to pay the compensation. The Tribunal, in all, awarded Rs.9,24,000/- as compensation to the petitioners under various heads as shown below:-

Monthly income of the deceased for calculating pecuniary loss;	- Rs. 7,000/-
After deducting ¼ for personal expenses, take home salary	- Rs. 5,250/-
Pecuniary loss is calculated as Rs.5,250/- x 12 x 13	- Rs. 8,19,000/-
Funeral expenses	- Rs. 25,000/-
Loss of consortium	- Rs. 50,000/-
Loss of love and affection for petitioners 2 to 4	- Rs. 30,000/-
Total	Rs.9,24,000/-

Aggrieved over the quantum of award, the Insurance Company has come forward with this appeal.

5. The learned counsel for the appellant/Insurance Company contended that the award passed by the Tribunal is excessive. The fact that the petitioners who are married daughters, major son and husband of the deceased cannot be considered as dependants, has not been appreciated by the Tribunal. The

multiplier adopted by the Tribunal is not correct. The income of the deceased was wrongly fixed by the Tribunal. Hence, the appellant/Insurance Company seeks to entertain the appeal and consequently to modify and reduce the compensation awarded by the Tribunal.

6. Per contra, the learned counsel appearing for the Petitioners/claimants submits that the Tribunal on proper appreciation of materials available before it passed the award and the same requires no interference.

7. Since the appellant/Insurance Company has not raised any ground as regards liability and negligence issue, the finding of the Tribunal in that regard is confirmed. The appellant questioned the quantum to the extent of Rs.4,00,000/- in this appeal. The petitioners claimed that the deceased was aged 48 years and she earned Rs.8000/- per month, by doing house keeping work. The husband of the deceased who deposed as P.W.1 produced Ex.P.2-Death Certificate, Ex.P.3-Post mortem Certificate in proof of age of the deceased. The Tribunal, by taking into consideration all the evidence available before it, fixed the age of the deceased as 48 and the income including future prospects is fixed at Rs.7,500/- per month. Since, there is no proof for the income earned by the deceased, the income fixed by the Tribunal, appears to be just and proper. However, considering the fact that the petitioners 2 and 3 are major, it will be appropriate to deduct 1/3rd of the income of deceased towards personal expenses. Accordingly, loss of dependency is calculated as under:-
7500 x 12 x 13 = 11,70,000/-
11,70,000/- - 1/3rd deduction(Rs.3,90,000/-) =7,80,000/-
Further, in view of the Apex Court Ruling reported in 2017(2) TN MAC 609 (SC) [National Insurance Co.Ltd., Vs. Pranay Sethi and others], this court is also inclined to award the following sums under conventional heads, by setting aside the award granted by the Tribunal, under other heads.

Loss of Estate	=	Rs.15,000/-
Funeral Expenses	=	Rs.15,000/-
Loss of Consortium	=	Rs.40,000/-
Add:Pecuniary loss to dependants	=	Rs.7,80,000/-
Total	=	Rs.8,50,000/-

8.1. In the result, the total compensation of Rs.9,24,000/- awarded by the Tribunal in M.C.O.P.No.713 of 2013 dated 27.01.2015 on the file of MACT/II Small Causes Court, Chennai, is reduced to Rs.8,50,000/- and the appeal is allowed partly. No costs.

8.2. As it is submitted that the appellant-Insurance Company has already deposited Rs.8,00,000/- with interest and costs thereon, in the Trial Court, as seen from the order of this court dated 30.09.2015, the appellant-Insurance Company is directed to deposit the balance amount as ordered by this court along with proportionate accrued interest and costs. It transpires from the order of this court dated 23.02.2016 that the petitioners/claimants were permitted to withdraw Rs.5,24,000/- with accrued interest therefor. Therefore, the Respondents 1 to 4-Claimants are entitled to withdraw the modified compensation along with proportionate accrued interest, less the amount if any already withdrawn, by filing necessary application before the Tribunal. The apportionment of the award is as under:-

The 1st Petitioner/husband is entitled to 40% of the award amount and the Petitioners 2, 3 and 4 are entitled to 20% each. Consequently, connected M.Ps. are closed.

Sd/-
Assistant Registrar(CS VII)

//True copy//

Sub Assistant Registrar

nvsri

To

1.The Presiding Officer,
Motor Accidents Claims Tribunal,
II Court of Small Causes, Chennai.

2.The Section Officer,
V.R.Section, High Court, Madras.

+1cc to Mr.D.Bhaskaran, Advocate SR.No.4171
+1cc to Mr.M.Malar, Advocate SR.No.4250

C.M.A.No.2200 of 2015

VGII(CO)
GN(26/03/2018)