IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.06.2018

CORAM

THE HONOURABLE MR. JUSTICE N. KIRUBAKARAN
AND
THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

C.M.A. No. 354 of 2018
&
C.M.P. No. 3428 of 2018

M/s. Bajaj Allianz General Insurance
Company Limited,
rep. by its Manager,
No.25/26, Prince Towers, 4th Floor,
College Road, Nungambakkam,
Coimbatore - 600 006. ..Appellant/2nd Respondent

Vs.

1. Amudha
2. Nadhiya
3. Vijay (Minor)
4. Anbu (Minor) ..RR1 to 4/Petitioners

(Respondents 3 & 4 minors rep.
by mother & NF 1st respondent)

5. The Manager,
Value Insource India
Private Limited,
No.29/13, 1st Floor,
Raja Street, Mandaveli,
Chennai - 600 028. ..R5/1st Respondent

(R3 & R4 are declared as major as per order of this court dated 14.06.2018 made in C.M.A. 354/2018.)

Prayer: Civil Miscellaneous Appeal as against the judgment and decree dated 10.07.2017 passed in M.C.O.P. No. 17 of 2013 by the Motor Accidents Claims Tribunal (Special Sub Court), Tirupattur.

For Appellant :: Mr.Mohan Babu for
M/s. N. Vijayaraghavan

For Respondents:: Mr.V. Kumaravelan for R1 to R4

J U D G M E N T

(Judgment of the Court was delivered by N.KIRUBAKARAN,J.)

This Civil Miscellaneous Appeal has been filed as against the award of Rs.15,79,527/- and fixing the negligence on the part of the driver of the car insured with the appellant Insurance Company with regard to the death of one Nataraj, aged about 40 years, mason and building contractor, in the accident, which occurred on 13.06.2011, when the victim was riding his two-wheeler, which was hit down by a car, driven rashly and negligently.

2. A perusal of the records would show that the claimants examined P.W.s 2 and 3 as eye-witnesses, whereas on the side of the appellant, an official from the Insurance Company was examined as R.W.1. It is pointed out by Mr. Mohan Babu, learned counsel for the appellant that Ex-P1 FIR was filed against the victim, the rider of the two-wheeler and after investigation, Ex.R4 charge sheet was filed against the deceased. Therefore, the Tribunal's finding that the driver of the car was responsible for the accident is not sustainable.

3. However, Mr. V.Kumaravel, learned counsel for the claimants would support the award passed by the Tribunal.

4. A close scrutiny of the records would reveal that the Tribunal, based on the evidence of eye-witnesses, P.W.s 2 and 3, came to the conclusion that the accident occurred because of the rash and negligent driving of the car. Though on the side of the Insurance Company, an official was examined, he was not an eye-witness. Merely because Ex-P1 FIR and Ex-R4 charge sheet were filed against the victim, it could not be concluded that the accident occurred because of the rash and negligent driving of the two-wheeler. The First Information Report and the charge sheet have been prepared by the Police fixing the liability on the deceased whereas P.W.s 2 and 3 are witnesses, who have given evidence on oath. In such circumstances, the evidentiary value of P.W.s 2 and 3 is superior and therefore, the Tribunal rightly came to the conclusion that because of the rash and negligent driving by the driver of the car, the accident had occurred. If that be so, the driver of the car would have been examined by the Insurance Company. But, no steps had been taken. When two eye witnesses have categorically stated that the accident had occurred because of the rash and negligent driving by the driver of the car, there is no occasion for this Court to set aside the finding reached by the Tribunal.

5. The deceased is said to be a mason and a building contractor, alleged to be earning Rs.15,000/- per month. The Tribunal, however, took only Rs.6500/- as the monthly income, in the absence of any proof regarding income, in the light of the judgment of the Honourable Apex Court rendered in Syed Sadiq and Others V. Divisional Manager, United India Insurance Company Limited reported in 2014 ACJ 627. However, in that case, the

accident happended in the year 2008 whereas the accident in the present case took place on 13.06.2011. Therefore, instead of fixing the monthly income as Rs.6,500/-, this Court re-determines the monthly income of the deceased as Rs.7,500/-

6. Though the Tribunal added 30% towards "Future Prospects", in the light of recent pronouncement of the Constitution Bench of the Honourable Apex Court in National Insurance Company Limited V. Pranay Sethi and others reported in 2017 ACJ 2700, 25% alone has to be added towards "Future Prospects", considering the age and employment of the deceased. Therefore, adding 25% towards "Future Prospects", the "Total Monthly Income" of the deceased comes to,

| | | |
|---|---|---|
| Monthly Income | :: | Rs.7500/- |
| Add: 25% towards "Future Prospects" | :: | Rs.7500/- (+) 25%(Rs.7500/-) |
| | :: | Rs.7500/- (+) 1875/- |
| | :: | Rs.9,375/- |

The size of the family of the deceased is four and therefor, one-fourth deduction has to be made towards "Personal Expenses". Accordingly, deducting one-fourth, "the monthly contribution of the deceased to his family" comes to Rs. 7,031/- (Rs.9,375/- (-) ¼(Rs.9,375/-). The annual contribution would be Rs. 84,372/- (Rs.7,031 x 12). The age of the deceased was 40 years at the time of the accident and the appropriate multiplier to be adopted is 15, as rightly done by the Tribunal. Therefore, applying the said multiplier, the "Loss of Income" is calculated as hereunder:

| | | |
|---|---|---|
| Loss of Income | :: | Rs.84,372 x 15 |
| | :: | Rs.12,65,580/- |

7. A sum of Rs.1 lakh was awarded towards "Loss of Consortium" to the 1st respondent/wife and the same is reduced to Rs.40,000/- following the recent decision of the Honourable Apex Court in Pranay Sethi's case (2017 ACJ 2700). The amount of Rs.3 lakhs awarded towards "Loss of Love and Affection" to respondents 2 to 4 is on the higher side and the same is reduced to Rs.1,20,000/-. Likewise, Rs.25,000/- awarded towards "Funeral Expenses" is reduced to Rs.15,000/-. No amount was awarded towards " Loss of Estate". Hence, a sum of Rs.15,000/- is awarded under the said head. The sum of Rs.1,677/- towards "Medical Expenses" and Rs.12,100/- awarded towards "Transportation Expenses" stand confirmed. The total compensation is quantified at Rs.14,69,357/-(ie., Rs.12,65,580 + Rs.40,000/- +Rs.1,20,000/- + Rs.15,000/- + Rs.15,000/- + Rs.1,677/- + Rs.12,100/-) .

8. It is the specific case of the appellant Insurance Company that the deceased was under the influence of alcohol at

the time of accident. A persual of Ex-R6, Wound Certificate of the deceased would show that the victim was under the influence of alcohol. Though the same is not proved as per Section 185 of Motor Vehicles Act, 1988, the attending Doctors have recorded the fact that the deceased was drunk. Therefore, it would be appropriate to fix at least 10% contributory negligence on the deceased. In that event, the total compensation payable to the claimants comes to Rs. 13,22,421/- (Rs.14,69,357/- (-) 10% (Rs.14,69,357/-)). The rate of interest awarded by the Tribunal remains intact @ 7.5% per annum.

9. The appellant Insurance Company is directed to deposit the entire award amount, as per the modified award passed by this Court, before the Tribunal, with interest and costs, after deducting the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this order. Since the minor claimants would have attained majority by now, this Court, suo motu, declares their majority and on such deposit being made, the Tribunal is directed to transfer the respective shares of the claimants, as per the ratio fixed by the Tribunal, to their respective bank accounts, through RTGS, within a period of one week thereon. In case, the entire award amount, as per the award of the Tribunal, had already been deposited by the appellant Insurance Company, the excess amount shall be refunded to the appellant.

10. In the result, the Civil Miscellaneous Appeal is partly allowed and the award of the Tribunal, to the tune of Rs. 15,79,527/- is reduced to Rs.13,22,421/- with interest @ 7.5% per annum. No costs. Connected C.M.P. is closed.

s/d-
Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

nv
To

The MACT (Special Sub Court), Tirupattur.

+1 CC to Mr.M.B. Gopalan Associates sr 38025.
+1 CC to Mr.V. Kumaravelan, Advocate sr 37409.

C.M.A. No. 354 of 2018

KS(CO)
SP(24/01/2019)