IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 11.04.2018

Coram

The Honourable Mr. Justice S.BASKARAN

Civil Miscellaneous Appeal No.549 of 2018

Bajaj Allianz General Insurance Company Ltd.,
No.25/26, Prince Tower, 4th Floor,
College Road,
Nungambakkam, Chennai-600 006. ... Appellant/3rd respondent

..vs..

1.Glory Lidiya @ Jothilakshmi
2.S.Sasikala
3.S.Sharmila
4.S.Sakthikala ... Respondents 1 to 4/ Petitioners 1 to 4
5.Mrs.Gnanasoundari ... 5th respondent/1st respondent
6.B.Rajaram ... 6th respondent/2nd respondent

PRAYER: This Civil Miscellaneous Appeal has been filed under Section 173(1) of Motor Vehicles Act, 1988, against the Fair and Decreetal order dated 14.12.2012 made in MCOP.No.3713 of 2008 on the file of the Motor Accident Claims Tribunal/The Chief Judge, Small Causes Court, Chennai.

For Appellant : Mr.Srinivasan Ramalingam

For Respondents : Mr.P.Natarajan for R1 to R4

JUDGMENT

Being aggrieved over the finding of the Tribunal, dated 14.12.2012 made in MCOP.No.3713 of 2008 on the file of the Motor Accident Claims Tribunal/The Chief Judge, Small Causes Court, Chennai, the present appeal has been filed by the 3rd respondent Insurance Company to set aide the award passed by the Tribunal.

2. For the sake of convenience, the parties will be hereinafter referred to in this judgment as arrayed before the Tribunal.

3. The case of the petitioners is that on 14.11.2006 at about 23.30 hours, the deceased was travelling as a pillion rider in the first respondent vehicle bearing Registration No.TN-21-R-6487 from Madurantagam to Thiruporur in the East Coast Road, while going near Mannamai village, the first respondent owned motor cycle came at high speed dashed against the two wheeler in which the deceased was travelling as a pillion rider causing him fatal injuries and subsequently he died on the spot. The accident occurred only due to the negligence of the first respondent's vehicle driver. The petitioners who are the wife, mother and sisters of the deceased were dependent on the income earned by the deceased Sathish Babu. The deceased was aged about 23 years and by working as photographer was earning a sum of Rs.7,000/- per month. Hence, they seek a sum of Rs.15,00,000/- as compensation from the respondents who are the owner and insurer of the offending vehicle.

4. On the other hand, opposing the claim petition, the third respondent Insurance company filed counter contending that the accident does not occur in the manner alleged by the petitioners. The vehicle bearing registration No.TN-21-R-6487 was covered under the policy issued by the third respondent Insurance company. The rider of the said two wheeler was not having valid driving licence at the time of accident. The age, avocation and income of the deceased alleged in the petition is not true. The two wheeler bearing registration No.TN-21-R-6487 was hit by unknown vehicle and the driver of the unknown vehicle alone is responsible for the accident. The police also registered the case against the driver of the unknown vehicle only. As such the owner and insurer of the two wheeler bearing Registration No.TN-21-R-6487 are not liable to pay any compensation to the petitioners. The claim of the petitioners is exorbitant. Hence, the third respondent-Insurance company sought for dismissal of the petition.

5. Before the Tribunal, the petitioners examined P.W.1 and P.W.2 and produced documents Ex.P1 to Ex.P14 to substantiate their claim. On the side of the respondents, R.W.1 was examined and Ex.R1 was produced to contradict the claim of the petitioners.

6. The Tribunal, on the basis of available evidence on record, found the negligence of the first respondent's vehicle driver alone resulted in the accident, passed award for a sum of Rs.10,07,808/- as compensation payable by the respondents to the petitioners. Being aggrieved over the said findings of the Tribunal, the third respondent-Insurance Company filed this present appeal to set aside the award passed by the Tribunal.

7. I have heard the learned counsel appearing for the appellants and the learned counsel appearing for the second respondent and perused the materials available on record.

8. The learned counsel appearing for the appellant/third respondent-Insurance Company contends that the Tribunal erred in not appreciating the oral and documentary evidence of the third respondent in proper perspective. The Tribunal without considering the documents filed by the petitioners as Ex.P1 and Ex.P2 relied on the oral evidence of P.W.2 in fixing the negligence on the part of the rider of the first respondent two wheeler erroneously. As per Ex.P1 First Information Report, the accident occurred near Mannamai Village and not in the Mannamai village itself. However, the eye witness account of P.W.2 is not tallying with the averments in Ex.P1 First Information report and the averments in the claim petition. The entire fault for the accident lies with only the rider of the unknown vehicle and as such the respondents are not liable to pay any compensation. The amount claimed by the petitioners is exorbitant. The Tribunal erred in providing future prospects and also applied multiplier 18 wrongly instead of applying the multiplier 16. The award passed by the Tribunal is highly excessive. Hence, the third respondent Insurance Company sought to set aside the award passed by the Tribunal by entertaining the appeal.

9. Per contra, the learned counsel appearing for the respondents 1 to 4/claimants contends that the deceased was aged about 23 years and due to his sudden demise, his young wife who is the first petitioner herein as well as his mother and his unmarried sisters have suffered loss of love and affection and also bread winner of the family. The deceased was self employed person earning Rs.7,000/- per month. The Tribunal has correctly appreciated the evidence available on record and passed an award granting just and fair compensation. The same needs no interference. Thus, the respondents 1 to 4/claimants sought for dismissal of this appeal.

10. The first petitioner who deposed as P.W.1 stated that she is the wife of the deceased and stated that the accident occurred only due to the negligence of the rider of the two wheeler in which the deceased travelled as pillion rider. The eye witness to the occurrence who deposed as P.W.2 stated that on 14.11.2006 at about 23.30 hours, while he was standing near the Mannamai village bus stop, he saw two persons travelling in a two wheeler bearing Registration No.TN-21-R-6487 and as the two wheeler was going at high speed, came to wrong side of the road and dashed against the other vehicle which was coming in the opposite direction resulting in the rider as well as the pillion rider of the two wheeler falling down in the road and

pillion rider suffered head injuries and died on the spot itself. The eye witness P.W.2 clearly stated that the two wheeler came at high speed and dashed against the other vehicle. Due to the negligence on the part of the two wheeler rider only the accident occurred.

11. The respondents examined the Sub Inspector of Police, Mamallapuram as R.W.1 and he produced the final report filed by the police after completion of investigation as Ex.R1. The copy of the rough sketch of the accident spot is produced as Ex.P2. It is clear from the evidence of R.W.1, the Sub Inspector of Police and Ex.R1 final report that the police were unable to find out the other vehicle which dashed against the two wheeler bearing Registration No.TN-21-R6487, in which the deceased travelled as a pillion rider. Consequently, Ex.P1 First Information Report was closed as undetectable. It is contended by the third respondent Insurance company that no case was registered against the rider of the first respondent owned two wheeler and as the first information report registered relating to the accident itself is closed, they are not liable to pay any compensation. However, contesting the same, the learned counsel appearing for the petitioners/claimants stated that irrespective of the finding or conclusion in any proceedings before the criminal court or closing of first information report, the petitioners are entitled to seek compensation by proving the occurrence of accident as alleged in the petition. It is clear from the evidence of P.W.2 that the accident occurred due to high speed in which the two wheeler was driven. There was no contra evidence on the side of the respondents to disprove the same. It is also pointed out that Ex.P1 was registered on the basis of complaint given by one Vijayakumar, the brother of the deceased, but he has not witnessed to the accident. There is no investigation report filed by the third respondent Insurance company, but R.W.2 the Sub Inspector of Police deposed only on available records. In such circumstances, the eye witness to the accident who deposed as P.W.2 clearly stated that he was working near the place of accident and witnessed the accident is to be accepted. Nothing was extracted during cross examination of P.W.2 to discredit the evidence. Thus, the Tribunal is justified in arriving at the conclusion that the rash and negligent driving by the rider of the first respondent two wheeler alone caused the accident and the same needs no interference.

12. The petitioners claims that the deceased was self employed photographer and he was earning a sum of Rs.7,000/- per month. The deceased was stated to be 23 years old at the time of the accident. The petitioners produced Ex.P8 Secondary Course transfer certificate of the deceased wherein his date of birth is mentioned as 05.09.1983. The copy of the postmortem certificate is also produced as Ex.P3 and death certificate as

Ex.P4. On the basis of school transfer certificate, the age of the deceased is fixed at 23 years. For the said age group, the multiplier is to be applied is 18. According to the petitioners, the deceased was earning a sum of Rs.7,000/- per month. However, there is no evidence regarding his avocation and income produced by the petitioners. The rental agreement produced as Ex.P11 is not in the name of the deceased. As such the Tribunal fixed the monthly income of the deceased at Rs.4,500/-. The Tribunal considering the age of the deceased add 30% of the income towards future prospects. Thus, the future prospects will be calculated as follows. Rs.4,500/- x 30% = Rs.1,350/-. Thus, the notional monthly income of the deceased would be Rs.5,850/-. Since there are four dependents, 1/4th of the amount is deducted towards personal expenses of the deceased. Rs.5,850/- deducted 1/4th of the amount of Rs.1,462.50 = Rs.4387.50 rounded of Rs.4,388/-. As such, the notional monthly income would be Rs.4,388/-. Thus, the annual income of the deceased was fixed by the Tribunal is Rs.4,388/- x 12 = Rs.52,656/-. Pointing it out the learned counsel appearing for the third respondent Insurance Company contended that the same is on the higher side. However, considering the age and profession carried on by the deceased, it will be appropriate to fix the annual income of the deceased at Rs.50,000/- instead of Rs.52,656/- fixed by the Tribunal. Thus, the loss of income is calculated by applying multiplier 18 as follows:-

Rs.50,000/- x 18 = Rs.9,00,000/-.

13. Following the Apex Court decision reported in 2017 (2) TN MAG 609 (SC) NATIONAL INSURANCE CO. LTD., Vs. PRANAY SETHI AND OTHERS, towards loss of estate, loss of consortium and funeral expenses, this Court is inclined to modify the compensation as under:-

Loss of consortium = Rs. 40,000.00
Funeral Expenses = Rs. 15,000.00
Loss of Estate = Rs. 15,000.00

14. Accordingly, the compensation warded by the Tribunal is modified as follows:-

Sl No	Heads	Amount awarded by the Tribunal	Awarded by this Court
1.	Pecuniary Loss of income	9,47,808.00	9,00.000.00
2.	Loss of consortium	20,000.00	40,000.00
3.	Loss of love and affection	30,000.00	-
4.	Funeral Expenses	10,000.00	15,000.00

Sl No	Heads	Amount awarded by the Tribunal	Awarded by this Court
5.	Loss of Estate	-	15,000.00
	Total	10,07,808.00	9,70,000.00

Accordingly, the compensation awarded by the Tribunal is modified and the same is reduced to Rs.9,70,000/-.

15. In the result, the Civil Miscellaneous Appeal is partly allowed. No costs. The amount of Rs.10,07,808/- awarded by the Tribunal dated 14.12.2012 made in MCOP.No.3713 of 2008 on the file of the Motor Accident Claims Tribunal/The Chief Judge, Small Causes Court, Chennai, is reduced to Rs.9,70,000/-. The appellant/third respondent-Insurance Company is directed to deposit the entire award amount of Rs.9,70,000/- with interest at the rate of 7.5% p.a. from the date of filing the claim petition till the deposit of entire award amount after deducting the amount that has already been deposited by them within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the first petitioner/first claimant is entitled to 60% of the award amount and the 2nd petitioner/2nd claimant is entitled to 20% of the award amount and the petitioners 3 and 4/claimants 3 and 4 are each entitled to 10% of the award amount. The petitioners/claimants are permitted to withdraw their respective share with accrued interest by filing necessary application before the Tribunal. The appellant/third respondent Insurance company is permitted to withdraw the excess amount lying in deposit.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

rrg
To
The Chief Judge, Small Causes Court,Chennai.

Copy to:
The Section Officer, V.R. Section, High Court, Madras.(2 copies)

+1cc to Mr.P.NATARAJAN, Advocate, S.R.No.26697
+1cc to Mr.SRINIVASAN RAMALINGAM, Advocate, S.R.No. 26665

C.M.A.No.549 of 2018

MR(CO)
TR(04/06/2018)