THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.04.2018

CORAM :

THE HONOURABLE MR. JUSTICE N.KIRUBAKARAN
THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

C.M.A. No. 2761 of 2017
and CMP.Nos.21589 &15630 of 2017

Bajaj Allianz General Insurance Co. Ltd.,
No.25/26, Prince Tower, College Road,
Nungambakkam, Chenai-600 034.

..Appellant/2nd Respondent

Vs.

1.Thanga Mariammal
2.Minor. Ruthrakumar
3.Minor. Thenmozhi
(Respondents 2 & 3 minors rep. By
their mother and NF Thanga Mariammal)

4.P.Subbulakshmi
5.Periyasamy

6.Jaste Poona Chandra Rao

..Respondents/Petitioners 1 to 5 &
1st Respondent

Prayer: Civil Miscellaneous Appeal is filed to set aside the decree and judgment dated 14.02.2017 made in MCOP. No. 4215 of 2012 on the file of Motor Accident Claims Tribunal (Special Sub Court No.I, Small Causes Court), Chennai and dismiss the case entirely or alternatively slice down the quantum of award to a substantial extent as per merits.

For Appellant : Mr.Srinivasan Ramalingam
For Respondents 1 to 5 : Mr. K.Suryanarayanan

JUDGMENT
(Judgement of this Court made by R.Pongiappan.J.)

Aggrieved over the award passed by the Motor Accident Claims Tribunal, Special Sub Court No.I, Small Causes Court, Chennai in MCOP. No. 4215 of 2012 dated 14.02.2017, the Insurance Company/appellant herein, who is the second respondent in the above said MCOP has filed this Appeal to set aside the award passed by the Claims Tribunal as erroneous.

The case of the claimants / respondents 1 to 5 is as follows;

2. On 08.07.2012 at about 16.00 hrs, when the deceased Balamurugan was going on his motor cycle bearing registration no. TN-03-C-2679 at Kolathur 200 Feet Road near Maruthi Popular Service Station, Chennai proceeding from South to North, a car owned by the 6th respondent insured with the appellant bearing registration no. AP-27-AF-9369 came in the same direction in a rash and negligent manner with great high speed and hit against the motor cycle, due to which, the deceased sustained multiple vital injuries and treated in a Government General Hospital as inpatient. Inspite of giving necessary treatment, he died in the same hospital.

3. Subsequently, being the dependants of the deceased Balamurugan, the respondents 1 to 5 have filed the claim petition under Section 166 of Motor Vehicles Act and Rule 3 of Motor Accident Claims Tribunal Rules, claiming compensation of Rs.30,00,000/- for the death of one Balamurugan. Admittedly, the first respondent is the wife of the deceased, the respondents 2 & 3 are minor children and the 4th & 5th respondents are parents of the deceased. The claims tribunal after elaborate enquiry had passed an award, directing the appellant to pay Rs.22,80,000/- (Rupees Twenty Two Lakhs and Eighty Thousand Only) on behalf of the 6th respondent.

4. Today, we heard the arguments advanced by Mr.Srinivasan Ramalingam, learned counsel appearing for the appellant and Mr. K.Suryanarayanan, learned counsel appearing for the respondents 1 to 5.

5. In the Claims Tribunal, the first respondent was examined as PW1 and she gave evidence as to the accident and negligence committed by the driver of the car. In order to support the said evidence, 12 documents were marked as exhibits P1 to P12. The contents in the First Information Report and the Charge Sheet , which were marked as exhibits P1 & P2 respectively, clearly corroborates the evidence given by the PW1 with regard to the negligence of the driver. In this aspect, the learned counsel for the appellant does not dispute the findings arrived by the claims tribunal. Thereby, as per the submissions made by the learned counsel for the appellant, it is not necessary to go into the findings of the claims tribunal with regard to the negligence committed by the driver of the car.

6. With regard to the quantum, it is submitted by the learned counsel for the appellant that in the claims tribunal

Rs.10,000/- was fixed as monthly income of the deceased. Further the presiding officer of the claims tribunal calculated the future prospects against the principles laid in the judgment of the Hon''ble Apex Court in the case of National Insurance Company Limited Vs.Pranay Sethi reported in 2017 -13 SCALE 12.

7. Now considering the said submissions, it is true that in the claims tribunal, based on the evidence given by the PW1, determined the monthly income of the deceased as Rs.10,000/- . But, on going through the evidence given by the PW1, prior to the death, the deceased was running a provision stores in the name of Balamurugan Stores and earned Rs.15,000/- per month. For impeaching the said evidence, the appellant herein had not put forth any documents before the claims tribunal. On going through the exhibit P12 i.e., the membership subscription issued by the President of Villivakkam Anaithu Viyabarigal Nala Sangam, wherein it has been stated that the deceased was running a provision store in the name of Balamurugan Stores. Further, as per the said certificate, the deceased is a member in the said association from the year 1997. So, the factum of business run by the deceased was clearly proved by the respondents herein in the claims tribunal.

8. In the said circumstances, the counsel appearing for the respondents 1 to 5 argued that the monthly income of the deceased determined by the claims tribunal is not as per the prevailing situation.

9. In this connection, it is necessary to refer the judgment of Syed Siddiq Ali and Others Vs. Divisional Manager, United India Insurance Co.Ltd 2014 (1)TN MAC page 459(SC), wherein the Hon'ble Apex Court has fixed Rs.6,500.- per month for the vegetable vendor in the year 2008 itself. In this case, the alleged accident had happened in the year 2012, so it is appropriate to fix the income of the deceased as Rs.12,000/- at the time of accident. Accordingly, the findings arrived by the claims tribunal with regard to the monthly income of the deceased is modified to the extent of Rs.12,000/- for calculating the compensation.

10. Now, in order to calculate the future prospects, it is necessary to refer the judgement of the Hon'ble Apex Court in the case of National Insurance Company Limited Vs.Pranay Sethi reported in 2017 -13 SCALE 12, in which, the Hon'ble Apex Court has held that if the deceased was a self employed an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. In this case as per the exhibit P3 - Post-mortem Certificate, the age of the deceased at the time of the accident is 39 years. So, with regard to calculating the future prospectus, 40% of the monthly income of

Rs.12,000/- is added for calculating the loss of dependency.

11. Further, in order to calculate the personal and living expenses, the Hon'ble Apex Court in the case of Sarala Verma and Others Vs. Delhi Transport Corporation and another passed in Civil Appeal No. 3483 of 2008 Dated 15.04.2009, has observed that if dependants are 4 to 6, one fourth of the total income to be deducted towards the personal and living expenses. Accordingly, we decided to deduct one fourth of the total annual income for calculating personal and living expenses.

12. Now, with regard to the multiplier, the Hon'ble Apex Court in the judgment (cited supra), has held that, if the person having the age between 36 and 40 years, the multiplier of 15 is the appropriate multiplier for calculating loss of dependency. In this case also, as per Exhibit P3, post-mortem certificate, the age of the deceased is 39.

13. Further, as per the Hon'ble Apex Court in the judgment of Praney Sethi's case (cited supra), addition of Rs.70,000/- would be required to be added on account of conventional heads of loss of estate (Rs.15,000/-), loss of consortium (Rs.40,000/-) and funeral expenses (Rs.15,000/-). Accordingly, this Court added Rs.70,000/- towards the conventional heads as above.

14. Now on going through the other particulars available in the Claims Tribunal, it is seen that at the time of the death of deceased, the deceased was having two minor children and aged parents. Losing love and affection is nothing but akin to loss of consortium. So we decided to award Rs.50,000/- each to the respondents 2 & 3 under the head of loss of love and affection and Rs.25,000/- each to the respondents 4 & 5 under the same head. So, we modify the award passed by the Claims Tribunal under the said head.

15. Accordingly, we have decided that the annual income of the deceased would be Rs.1,44,000/- (12000 x 12). Adding a component of 40% for future prospects, the income would stand at Rs. 2,01,600/-. Deducting an amount of one fourth towards personal expenses, the loss of dependency per annum works out to Rs. 1,51,200/-. Applying a multiplier of 15 the total loss of dependency would work out to Rs.22,68,000/-. Further, this Court added an additional amount of Rs.70,000/- towards conventional heads and Rs.1,50,000/- towards loss of love and affection.

Hence, total compensation payable to the claimants is as hereunder:

i.	Loss of dependency	:	Rs.22,68,000/-
ii.	Los of Estate	:	Rs. 15,000/-

iii.	Loss of Consortium	:	Rs.	40,000/-
iv.	Funeral Expenses	:	Rs.	15,000/-
v.	Loss of Love and Affection by the respondents 2 & 3 herein .	:	Rs.	1,00,000/-
vi.	Loss of Love and Affection by the respondents 4 & 5 herein .	:	Rs.	50,000/-
	Total Compensation	:	Rs.	24,88,000/-

16. The appellant/Insurance Company is directed to deposit the entire award amount along with interest and costs after deducting the amount already paid, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the Tribunal is directed to transfer the said amount to the Bank Accounts of the respondents 1 to 5/claimants through RTGS /NEFT within a period of one week. On such deposit being made, the respondents 1, 4 & 5 are permitted to withdraw their respective shares, from the total compensation payable to them, as per the modified award passed by this Court, in the ratio fixed by the Tribunal, within a period of two weeks from the date of receipt of a copy of this order. The shares in respect of the respondents 2 & 3, who are minors, shall be deposited in any one of the Nationalised Banks, in interest bearing Fixed Deposit, till they attain majority. The 1st respondent, being the mother of the respondents 2 & 3 is permitted to withdraw the quarterly interest from the said deposit.

17. The rate of interest awarded by the Tribunal at 7.5 % per annum remains unaltered. Though the Insurance Company has filed the appeal, the facts and circumstances enable this Court to enhance the compensation. Accordingly, award of the Tribunal (i.e.,) Rs.22,80,000/- is enhanced to Rs.24,88,000/- invoking Order 41 Rule 33 of CPC and Section 151 and Article 227 of Constitution of India. The provisions of the Motor Vehicles Act are beneficial in nature and what is required to be awarded is just and reasonable compensation. Therefore, even in the absence of appeal/cross-appeal by the claimant, this Court has got power and jurisdiction to enhance the compensation, which has been recognised by the Honourable Supreme court in Nagappa V. Gurdayal Singh reported in 2004 (2) TN MAC 398 (SC).

18. The respondents 1 to 5/claimants are directed to pay the additional court fee within a period of one week from the date of receipt of a copy of this order.

19. In the result, the Civil Miscellaneous Appeal is disposed of enhancing the compensation of Rs.22,80,000/- to Rs.24,88,000/- suo motu in the appeal filed by the insurance company even in the absence of appeal/cross-appeal by the claimants. Consequently connected Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar(CS II)

//True copy//

Sub Assistant Registrar

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To

The Motor Accident Claims Tribunal
Special Sub Court No.I,
Court of Small Causes, Chennai.

Copy TO

The Section Officer,
VR Section, High Court,
Madras.(2 Copies)

+1cc to Mr.Srinivasan Ramalingam, Advocate SR.No.28365
+1cc to Mr.K.Suryanarayanan, Advocate SR.No.27514

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PA(CO)
GN(31/05/2018)