THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.04.2018

CORAM :

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

C.M.A. No. 3406 of 2017
and CMP.No.21609 of 2017

M/s. Bajaj Allianz General Insurance Company Limited,
rep.by its Branch Manager,
No.11, 3rd Floor, People's Park Road,
Government Arts College Road,
Coimbatore-641 018. ..Appellant

Vs.

1.Umamaheswari
2.Vardhini Sree (Minor)
3.Kesavaraj (Minor)
4.Palanisamy
5.Arasammal
(Respondents 2 & 3 Minors Rept.
By Mother & NF 1st respondent)

6.R.Jeyasree ..Respondents

Prayer: Civil Miscellaneous Appeal is filed against the decree and judgment dated 28.04.2017 made in MCOP. No. 1986 of 2014 on the file of Motor Accident Claims Tribunal, II Additional District & Sessions Court, Tiruppur.

For Appellant : Mr.M.B.Raghavan
For Respondents 1 to 5 : Mr.Ma.P.Thangavel

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

Aggrieved over the award passed by the Motor Accident Claims Tribunal, II Additional District & Sessions Court, Tiruppur in MCOP. No. 1986 of 2014 dated 28.04.2017, the Insurance Company/appellant herein, who is the second respondent in the above said MCOP has filed this Appeal to set aside the award and for other reliefs.

2. In the claims tribunal, the respondents 1 to 5 herein have filed the claim petition under Section 166 of Motor Vehicles Act and Rules 3 of Motor Accident Claims Tribunal Rules, claiming compensation of Rs.40,00,000/- for the death of one Nandakumar who died in a road accident. Admittedly, the first respondent is the wife of the deceased, the 2nd and 3rd respondents are children of the deceased and 4th and 5th respondents are parents of the deceased. After elaborate enquiry, the claims tribunal awarded a sum of RS,35,27,000/- restricted to Rs.35,00,000/- as total compensation to the respondents 1 to 5 herein.

3. The case of the respondents 1 to 5 herein in the Claims Tribunal is that on 24.11.2014 at about 6 hrs when the deceased Nandhakumar was driving a motor cycle bearing registration no. TN 40 J 2371 from east to west on the left side of Salem Bypass road, opposite to Arun Hospital, Devarayampalayam, the sixth respondent being the owner-cum- driver of the car bearing registration no. TN 66 M 3209 insured with appellant, drove the car from west to east in a rash and negligent manner without following the traffic rules and dashed against the deceased Nandhakumar, as a result of which , the said Nandhakumar sustained injuries all over the body and after giving necessary treatments in Government Hospital, Avinasi, he died at the age of 42 years. Immediately, the Sub Inspector of Police, Anupparapalayam Police Station, Tiruppur registered a case in Crime No. 1315 of 2014 for the offences under Sections 279, 304 (A) of IPC against the 6th respondent herein.

4. Thereafter being the dependants of the deceased Nandha Kumar, the respondents 1 to 5 herein have claimed compensation of Rs,40,00,000/- before the Claims Tribunal. After elaborate enquiry, the Claims Tribunal passed an award of Rs,35,27,000/- towards just compensation, against which, this appeal has been filed.

5. Today, we heard the arguments advanced by Mr.M.B.Raghavan, learned counsel appearing for the appellant and Mr.Ma.P.Thangavel, learned counsel appearing for the respondents 1to 5.

6. Mr.M.B. Raghavan, learned counsel appearing for the appellant made a submission that this appeal has been filed only in order to challenge the quantum fixed by the Claims Tribunal and not against the findings of the Tribunal with regard to the negligence of the 6th respondent. So, as per the said submissions, it is not necessary to go into the factum of negligence due to which the alleged accident had happened.

7. Having regard to the quantum, the learned counsel appearing for the appellant made a submission that the monthly income fixed by the Claims Tribunal is excessive. In this regard, on going through the documents and evidence relied by the Claims Tribunal, it appears that during the time of enquiry, the employer of the deceased was examined as PW3. Further, the salary certificate of the deceased was marked as Exhibit P7 and the copy of the partnership deed in which the deceased was working as an employee and the registration certificate of the said firm were marked as Exhibits P8 & P9 respectively. Moreover, the attendance register and acquittance register were also marked as Ex.P10 & P11, thereby the Claims Tribunal after analysing entire particulars with regard to the employment of the deceased had determined a sum of Rs,19,500/- as monthly income of the deceased.

8. However, the documents pertaining to the employment of the deceased marked in the trial court would not reveal the particulars as to whether the deceased was working on monthly basis or daily basis. Further, those documents do not show any authenticity from the concerned Labour Department. So, we come to the conclusion that it would be appropriate to fix Rs.15,500/- per month as monthly income for the deceased Nandhakumar.

9. 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 having a permanent job and between the age of 40 to 50 years, 30% of the monthly income to be added as future prospects, in order to calculate the pecuniary loss. In this way, by adding 30% of the monthly income, the future prospects would be Rs.20,150/- (15,500 + 4650).

10. 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.

11. Now, with regard to the multiplier, the Hon'ble Apex Court in the judgment (stated supra), has held that if the person having the age of 41 to 45 years, the multiplier of 14 has to be taken into account for calculating loss of dependency. In this case also, as per Exhibit P4, post-mortem certificate,

the age of the deceased is 42.

12. Further, the tribunal has awarded Rs,1,00,000/- to the first respondent and Rs.50,000/- each to the respondents 2 to 5, totally Rs. 2,00,000/- towards loss of love and affection. Further, the trial Court added Rs,10,000/- towards the transportation expenses and Rs.25,000/- towards Funeral Expenses.

13. In this regard, now as per the Hon'ble Apex Court in the judgment of Pranaey Sethi's case (stated supra), a sum 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, we modified the conventional heads.

14. Further, in order to conclude this Appeal, we award the same amount towards the loss of love and affection to respondents 2 to 5 herein. We further observe that no amount would compensate the loss of love and affection to 2nd & 3rd respondents, since they are minors. Accordingly, we award Rs. 50,000/- each to the 2nd & 3rd respondents under the head of loss of love and affection and Rs.25,000/- each to the respondents 4 & 5 under the same head (Rs.1,50,00/- totally).

15. Accordingly, we have decided that the annual income of the deceased would be Rs.1,86,000/- (15500 x 12). Adding a component of 30% for future prospects, the income would stand at Rs.2,41,800/-. Deducting an amount of one fourth towards personal expenses, the loss of dependency per annum works out to Rs.1,81,350/-. Applying a multiplier of 14, the total loss of dependency would work out to Rs.25,38,900/-. 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 and Rs.10,000/- toward Transport Expenses.

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

i.	Loss of dependency	:	Rs.25,38,900/-
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/-
vii.	Transport Expenses	:	Rs. 10,000/-
	Total Compensation	:	Rs.27,68,900/-

17. Accordingly, the appellant/Insurance Company is directed to deposit the entire award amount, with interest and costs directly through NEFT or RTGS as directed by the Tribunal, after adjusting the amount, if any, already deposited, within a period of four weeks from the date of receipt of a copy of this order. 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 thereafter. 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 2nd & 3rd respondents, is permitted to withdraw the quarterly interest from the said deposit.

18. In the result, the Civil Miscellenous Appeal is partly allowed and the award passed by the Tribunal to the tune of Rs.35,00,000/- is reduced to Rs.27,68,900/-. The said amount shall carry the same rate of interest as awarded by the Tribunal, namley, 7.5% per annum and the apportionment shall be as ordered by the Tribunal. Consequently, the connected Miscellenous Peition is closed. No costs.

s/d-
Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

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To
The Motor Accident Claims Tribunal,
II Additional District & Sessions Court,
Tiruppur.
Copy to
The Section officer
VR Section, High Court, Madras 104.

+1 CC to Mr.M.B. Gopalan Associates sr 26892.
+1 CC to Mr.P. Thangavel, Advocate sr 26335.

C.M.A. No. 3406 of 2017
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KS(CO)
SP(11/06/2018)