IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CMA.No.3518 of 2017
& CMP No.22525 of 2017

M/s. Bajaj Allianz General Insurance
Company Limited,
Door No.11, (Office No.6-A)
Peoples Park, 3rd floor,
Government Arts College Road,
Coimbatore 641 006.
... Appellant/2nd Respondent

-vs-

1. Easwari
2. Komarasamy Gounder
3. Rajeshwari
4. Poovesh (Minor)
5. Kabish (Minor)

(Respondents 4 & 5 are Minors Rept.
By Mother and NF 3rd Respondent)

6.Mr.Gunasekaran
... Respondents 1to3 /Petitioner
...6th Respondent/1st Respondent

Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and decree dated 06.06.2017 made in MCOP.No.434 of 2012 on the file of the Motor Accidents Claims Tribunal, Subordinate Court, Sathyamangalam.

For Appellant : Mr.N.Vijayaraghavan
for M/s.M.B.Gopalan Associates

For Respondents: Mr. R.Nalliyappan, for RR 1 to 5
No Appearance for R6

J U D G M E N T

[Judgment of the Court delivered by R.SUBRAMANIAN,J.]

Challenge in this appeal is to the award of the Tribunal granting a sum of Rs.18,27,600/- for the death of one Murugesan, who is the son of respondents 1 and 2, husband of the 3rd respondent and the father of respondents 4 and 5, in a motor accident that occurred on 19.09.2012 at about 6.45 p.m., within the limits of Bhavanisagar Police Station.

2. According to the claimants, the deceased Murugesan was travelling in Mahindra Thar Jeep, which is a new Vehicle, as an occupant. The Jeep was driven by one Gunasekaran. When the Jeep was nearing Bhavanisagar, the said Gunasekaran, lost control of the vehicle, due to over speeding and the vehicle reached the extreme right side of the road, hit the platform and turned turtle. As a result of the accident the said Murugesan suffered series head injuries and died on the way to the Hospital. One Balusamy, who is the brother-in-law of Murugesan, after arranging to admit Murugesan in the hospital gave a complaint to the Bhavanisagar Police and a First Information Report was registered in Crime No.297 of 2012. The deceased Murugesan was earning a sum of Rs.12,000/- per month by doing milk vending and flower business. The claimants stating that they have suffered loss of dependency, happiness and loss of love and affection sought for a compensation of Rs.21,00,000/-.

3. The Claim Petition was resisted by the Insurance Company contending that the driver of the vehicle namely, Gunasekaran had no driving license. It also contended that the accident did not happen in the manner stated by the claimants/respondents 1 to 5. The Insurance Company would also deny the age, occupation and income of the deceased.

4. The Insurance Company filed an additional counter statement stating that the 1st respondent did not drive the vehicle at the time of the accident and it was Murugesan who drove the vehicle. Therefore, the Insurance Company is not liable to pay compensation. The Insurance Company has taken plea that the driver was under the influence of alcohol at the time of the accident.

5. The Tribunal which heard the Original Petition, rejected the contention of the Insurance Company regarding negligence and liability finding that as per Ex.R1 Policy, the Insurance cover is available for the driver, owner and seven passengers. The Tribunal further concluded that it was Gunasekaran who was the driver at the time of the accident and the accident occurred due to the rash and negligent driving of the said Gunasekaran.

6. On quantum, the Tribunal fixed the monthly income of the deceased at Rs.6,500/- added 50% towards future prospects and concluded that the monthly income for the purposes of calculation for the loss of dependency is Rs.9,750/-. Applying a multiplier of 16 and deducting 1/5th towards personal expenses, the Tribunal arrived at the loss of dependency at Rs.14,97,600/-. The Tribunal awarded a sum of Rs.1,00,000/- towards loss of love and affection to the children, Rs.1,00,000/- towards loss of consortium to the wife and Rs.1,00,000/- towards loss of love and affection to the parents. The Tribunal also awarded a sum of Rs.5,000/- towards transport charges and Rs.25,000/- towards funeral expenses. Thus, the total compensation was arrived at Rs.18,27,600/-.

7. Aggrieved by the award, the Insurance Company has come up on appeal claiming the award as excessive.

8. We have heard Mr.M.B.Raghavan, learned counsel appearing for M/s.M.B.Gopalan Associates for the appellant Insurance Company and Mr.R.Nalliappan, learned counsel appearing for the respondents 1 to 5. The 6th respondent G.Gunasekaran, though served he does not appear either in person or through counsel.

9. Mr.M.B.Raghavan, learned counsel appearing for the Insurance Company would submit that the assumption of income at Rs.6,500/- and addition of 50% towards future prospects is on the higher side. Contending that the deceased was self-employed person and relying upon the judgment of the Larger Bench of the Hon'ble Supreme Court in National Insurance Company Limited v. Pranay Sethi and other, reported in 2018 (1) LW 331, Mr.M.B.Raghavan, learned counsel would submit that at the best the Tribunal could have added only 30% towards future prospects. He would also fault that the Tribunal for granting the conventional damages at higher rates than what has been prescribed by the Larger Bench of the Hon'ble Supreme Court.

10. Per contra, Mr.R.Nalliappan, learned counsel appearing for the respondents/claimants would contend that the compensation as a whole is reasonable. Pointing out that the accident occurred in the year 2012, the assumption of monthly income at Rs.6,500/- is, according to the counsel, on the lower side. Even assuming that grant of 50% future prospects is more, the overall compensation is just and reasonable, inasmuch as the basis, namely the monthly income is on the lower side.

11. We have considered the rival submissions. As rightly pointed out by Mr.M.B.Raghavan, learned counsel appearing for the Insurance Company, the Tribunal's fixation of 50% towards future prospects is not in consonance with the Larger Bench judgment of the Hon’ble Supreme Court in Pranay Sethi, cited supra. At the same time, we find that the assumption of income at Rs.6,500/- per month cannot be said to be a fair determination.

12. Considering the claim that the deceased Murugesan was doing milk vending as well as flower business, even at the lowest estimate he could earned about Rs.7,000/- per month and the future prospects should be taken as 40%, if so worked the loss of dependency would be

Rs.7,000/- + Rs.2,800/- = Rs.9,800/- x12 x16 -1/5
= Rs.15,05,280/-

13. The Tribunal has granted a sum of Rs.1,00,000/- towards loss of love and affection to the respondents 4 and 5, who are the minor children, the same is reduced to Rs.80,000/-, a sum of Rs. 1,00,000/- granted towards loss of consortium to the 3rd claimant wife is reduced to Rs.40,000/-. The Tribunal has granted a sum of Rs.1,00,000/- towards loss of love and affection to the parents of the deceased, the same is reduced to Rs.50,000/- at Rs.25,000/- each. The grant of Rs.5,000/- towards transportation, Rs.25,000/- towards funeral expenses is confirmed. The Tribunal has not awarded any amount towards loss of estate a sum of Rs.15,000/- is awarded on that head. Thus, worked out the total compensation will be Rs.17,20,280/-.

14. Accordingly, the modified award is as follows:

S.No.	Heads	Amount
1.	Towards loss of dependency	Rs.15,05,280/-
2.	Towards loss of love and affection to the respondents 4 and 5	Rs. 80,000/-
3.	Towards loss of consortium to the 3rd claimant wife	Rs. 40,000/-
4.	Towards loss of love and affection to the parents	Rs. 50,000/-
5.	Towards transportation	Rs. 5,000/-
6.	Towards funeral expenses	Rs. 25,000/-

S.No.	Heads	Amount
7.	Towards loss of estate	Rs. 15,000/-
	TOTAL	Rs.17,20,280/-

and the same is rounded off to Rs.17,20,000/-. The claimants would be entitled to interest at 7.5% per annum on the compensation awarded.

15. The compensation is apportioned as follows:

The 3rd claimant wife will be entitled to Rs.7,00,000/- with proportionate interest and entire costs. The claimants 4 and 5 children would be entitled to Rs.3,00,000/- each with proportionate interest, the mother 1st claimant would be entitled to Rs.2,50,000/- with proportionate interest and the father 2nd claimant will be entitled to Rs.1,70,000/- with proportionate interest.

16. The Insurance Company is directed to deposit the award amount, less the amount, if any, already deposited within a period of six (6) weeks from the date of receipt of a copy of the judgment. On such deposit, the major claimants, namely, the respondents 1 to 3 will be entitled to withdraw their respective shares of the compensation. The Tribunal is directed to deposit the share of the minors, namely the respondents 4 & 5, in an interest earning fixed deposit in any one of the Nationalised Banks till they attain majority and the mother namely the 3rd respondent will be entitled to withdraw quarterly interest from the fixed deposit for the maintenance of the minors. Consequently, the connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

The Motor Accidents Claims Tribunal,
Subordinate Court,
Sathyamangalam.

Copy to
The Section Officer,
VR Section, High Court,
Madras.

+1cc to Mr.R.Nalliyappan, Advocate, S.R.No.62275

+1cc to Mr.M.B.Gopalan Associates, Advocate, S.R.No.62766

CMA.No.3518 of 2017
& CMP No.22525 of 2017

MP(CO)
GSP(12/12/2018)