

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.2550 of 2013
and M.P.No. 1 of 2013
and C.M.P.No.2254 of 2018

M/s.Bajaj Allianz General Insurance Co.Ltd.,
No.11, People Park, 3rd floor
Government Arts College Road
Coimbatore ..Appellant/2nd respondent

Vs.

1.Lakshmi
2.Karthi (Minor)
3.Naveenkumar (Minor)
4.Ramathaal
Minors 2 and 3 represented
by Mother/1st respondent ..Respondents 1 to 4
/Petitioners 1 to 4.
5.G.Shanmugam ..Respondents No.5
/1st respondent

Prayer:- Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 30.11.2010 passed in M.C.O.P.No.313 of 2007 on the file of Motor Accidents Claims Tribunal, Additional Subordinate Court, Tiruppur.

For appellant : : Mr.N.Vijayaraghavan
for Respondents : : Mr.MA.P.Thangavel for R1 to R4.
R5-Exparte.

J U D G M E N T

The Civil Miscellaneous Appeal is filed challenging the judgment and decree dated 30.11.2010 passed in M.C.O.P.No.313 of 2007 on the file of Motor Accidents Claims Tribunal, Additional Subordinate Court, Tiruppur.

2. For the sake of convenience, the parties are referred to as per their litigative status before the Tribunal. It is a fatal case. The case of the Petitioners is that on 19.02.2007,

at about 21.30 hours, while the deceased Arumugam was proceeding in the two wheeler bearing Reg.No.TN-39-AK-8469 towards Palladam, while going near Kodangipalayam Pirivu, due to high speed, in which the two wheeler was driven by the 1st respondent, the vehicle capsized and as the deceased fell down, he suffered grievous injuries and subsequently died in the hospital. The accident occurred due to negligence of the 1st respondent only. The said vehicle belongs to the 1st respondent and the same was insured with the 2nd respondent-Insurance company. The deceased was aged 37 years and by working as Power Loom Operator, was earning Rs.5000/- per month. The petitioners who are the wife, children and mother of the deceased were dependant on his earnings. Thus, the petitioners sought for a sum of Rs.9,00,000/- as compensation from the respondents.

3. On the other hand, opposing the claim of the Petitioners, by filing counter, the 2nd respondent/Insurance company contended that the accident did not occur in the manner alleged by the Petitioners. The negligence of the 1st respondent is not the cause for the accident. The age, avocation and income of the deceased as stated by the Petitioners is denied. The 1st respondent has not communicated about the accident to the 2nd respondent. The 1st respondent did not possess valid driving licence. The Police registered the case and mentioned as "unknown vehicle" and subsequently the case was closed as undetectable. The 2nd respondent is not liable to pay any compensation. Thus, 2nd respondent sought for dismissal of the Petition.

4. Before the Tribunal, the Petitioners examined P.W.1 to P.W.4, produced documents Ex.P.1 to P.4 to prove their contention. On the side of the 2nd respondent, R.W.1 was examined and documents Ex.R.1 to Ex.R.3 was produced to contradict the claim of the Petitioners.

5. The Tribunal, after analysing the evidence on record, found negligence on the 1st respondent alone caused the accident and passed award for a sum of Rs.7,13,000/- payable by the respondents 1 and 2 jointly and severally.

6. Aggrieved over the said finding of the Tribunal, the 2nd respondent-Insurance company has come forward with the present appeal seeking to set aside the award passed by the Tribunal.

7. The learned counsel for the 2nd respondent-Insurance company/appellant herein contends that the Tribunal failed to appreciate the oral and documentary evidence properly and arrived at wrong conclusion fixing negligence on the part of the 1st respondent as the cause for the accident. The quantum of the award passed by the Tribunal is highly excessive. Thus, the 2nd

respondent-Insurance company sought for setting aside the award passed by the Tribunal and to entertain the appeal.

8. Per contra, the learned counsel for the Petitioners/claimants contends that the petitioners lost the only bread winner of the family due to negligence of the 1st respondent and as such, they are entitled for higher compensation. The award passed by the Tribunal is based on proper appreciation of evidence available on record. There is no need to interfere with the award of the Tribunal and thus sought for dismissal of the appeal.

9. The 1st petitioner-Lakshmi, wife of the deceased, deposed as P.W.1 and state about the accident which took place on 19.12.2007. The deceased travelled as pillion rider in the two wheeler bearing Reg.No.TN-39-K-8469 driven by the 1st respondent in Coimbatore to Trichy Main Road; while going near Kodangipalayam Pirivu, due to high speed, in which the two wheeler was driven by the 1st respondent, the vehicle capsized. However, P.W.1 is not the eyewitness to the occurrence. However, Ex.P.1-FIR is filed against 1st respondent only. Even though the 2nd respondent examined R.W.1 and produced the copy of Final report filed by the Police as Ex.R.1 and the MVI Report as Ex.R.2 to contradict the claim of the Petitioners, the Tribunal, on the ground that the Petition was filed under Section 163A of the Motor Vehicles Act, held that there is no need to prove negligence. As such, the said conclusion is just and proper. Further, in the light of oral evidence of P.W.1 and Ex.P.1-FIR, it is clear that negligence of the 1st respondent alone caused the accident. As such, the respondents who are the insurer and owner of the vehicle are liable to pay the compensation.

10. The Tribunal, after taking into account the evidence of P.W.1 and P.W.2 Sundaram, who is the owner of the Private concern, wherein the deceased was employed fixed the monthly income of the deceased at Rs.4500/-. The Petitioner has not produced any document like salary slip or payment Register to prove the monthly income of the deceased. In such circumstances, keeping in mind the fact that the deceased was employed as Power Loom Operator and also that the petition is filed under Section 163 of the Motor Vehicles Act, it will be appropriate to fix the annual income of the deceased at Rs.40,000/-. From the said income, 1/4th has to be deducted towards personal expenses. The deceased was aged 37 years, therefore, the multiplier to be applied is '15'. Thus, the loss of dependency to the family of the deceased Arumugam is computed as follows:-

Annual income of the deceased = Rs.40,000/-

Deduction = 1/4th towards personal expenses

Multiplier applied = 15

40,000 - 1/4 (10,000)

30,000 x 15 = Rs.4,50,000/-

Thus, a sum of Rs.4,50,000/- is awarded under the head "Loss of Dependency" to the family of the deceased Arumugam.

11. The learned counsel for the Petitioners/claimants contends that due to sudden demise of the deceased Arumugam, the petitioners 2 and 3 who were aged 9 and 7 years at the time of the accident, lost love and affection of their father. He relied upon the Ruling of the Kerala High Court reported in 2017 SCC Ker 23174 [1.Valsamma and others Vs. V.A.Baiju, 2.Rev.FR.Joseph Vattakalam, and 3. The National Insurance Co.Ltd., - MACA.Nos.711 and 921 of 2010] and contended that the sum of Rs.20,000/- awarded by the Tribunal under the head Loss of Love and affection to petitioners 2 and 3 is very meagre and the same may be enhanced.

12. Considering the fact that the petitioners 2 and 3 are minor children at the time of the accident and they lost guidance and love and affection of their father, under the head "Loss of love and affection", this court is inclined to award Rs.40,000/- each to Petitioners 2 and 3 (in total Rs.80,000/-). Further, by following the Apex Court Ruling reported in 2017(2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and Others], under conventional heads "Loss of consortium" Rs.40,000/-; Rs.15,000/- under the head "Funeral expenses" and Rs.15,000/- under the head "loss of estate", is awarded by this court. In view of the foregoing discussion, the modified award amount is as follows:-

Sl.No.	Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this court (Rs.)
1.	Loss of dependency	6,48,000/-	4,50,000/-
2.	Loss of consortium	20,000/-	40,000/-
3.	Loss of love and affection	40,000/-	80,000/-
4.	Funeral expenses	5,000/-	15,000/-
5.	Loss of estate	---	15,000/-
	Total	7,13,000/-	6,00,000/-

13. In the result,
(i) The Civil Miscellaneous Appeal is Allowed;
(ii) The award amount is reduced to Rs.6,00,000/- from Rs.7,13,000/-;
(iii) The award amount will carry interest at the rate of 7.5% from the date of petition till the date of realisation;
(iv) This Court, by order dated 21.08.2013 in CMA.No.2550 of 2013 and M.P.No.1 of 2013, directed the Appellant/Insurance

company to deposit the entire award amount along with proportionate interest. Therefore, the appellant /Insurance company is now permitted to withdraw the excess sum, if any, lying before the Tribunal.

v)The Petitioners 1 and 4 in MCOP.No.313 of 2007 are entitled to withdraw the award amount along with accrued interest in the following apportionment:-

1st Petitioner - 40%

Petitioners 2 and 3 - 25% each

4th Petitioner - 10%

The Tribunal shall pass necessary orders following the appropriate procedure for disbursal of the award amount.

(vi) No costs. Consequently connected CMPs are closed.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

nvsri

To

1.The Additional Subordinate Judge,
Motor Accidents Claims Tribunal, Tiruppur.

+lcc to M/s.Gopalan, Advocate in sr.no.31136

+lcc to Mr.MA.P.Thangavel, Advocate in sr.no.30456

C.M.A.No.2550 of 2013

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