IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.10.2018

CORAM:

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

CMA.No.2466 of 2018

1. B.Usha @ Usharani
2. Minor B.Kumaraguru
3. V.Saraswathi
4. P.Vajravadivel ... Appellants/Petitioners

(Minor Petitioner is represented by
his next friend and mother 1st petitioner)

-vs-

1. Alath Rakesh Menon

2. Bajaj Allianz General Ins. Co. Ltd.,
M.R.V. Complex, 3rd Floor,
5, Second Line Beach Road,
Chennai 600 001. ... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree dated 20.06.2017 made in MCOP No.62 of 2014 on the file of the Motor Accidents Claims Tribunal, Sub Judge, at Aathur.

For Appellants : Mr. Ramya V. Rao
M/s.A.N.Viswanatha Rao

For Respondent : Mr.S.Arunkumar for R2

J U D G M E N T

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

The claimants, who are the wife, minor son and parents of one Baskaran, who died in a motor accident that occurred on 20.04.2014 are the appellants. The claimants sought for a compensation of Rs.32,00,000/- for the death of the said

Baskaran. They had contended that while the said Baskaran was riding his bicycle from V.Kutturoad to go to Rayappanur on the Salem to Kallakurichi Main Raod, the Hyundai Verna Car bearing Registration No.TN.11.Z.2727, belonging to the 1st respondent and insured with the 2nd respondent Insurance Company was driven in a rash and negligent manner by its driver and hit against the cyclist. Due to the impact, the deceased Baskaran was thrown off the bicycle and he died on the spot, due to severe head injuries caused. Claiming that the said Bhaskaran, was an Electrician, holding a Diploma in Electrical and Electronic Engineering and was earning not less than of Rs.30,000/- per month, by doing electrical contract work, the claimants sought for compensation as above.

2. The Claim Petition was resisted by the Insurance Company contending that the accident did not occur due to the rash and negligent driving of the car. The Insurance Company claimed that the deceased Baskaran, attempted to cross the road without looking for any oncoming vehicle and it is because of such sudden crossing of the road the accident occurred. The Insurance Company also disputed the qualification and the income as claimed in the claim petition.

3. The Tribunal, on a consideration of evidence on record concluded that the deceased Baskaran had also contributed to the accident and apportioned the negligence at 50% each. In coming to the said conclusion, the Tribunal relied upon the evidence of P.W.2, an eye witness, and Ex.P3, the Rough Sketch that was produced.

4. On the quantum, the Tribunal found that the claimants have not produced any evidence to prove their claim that the deceased Baskaran was earning about Rs.30,000/- per month. Hence, the Tribunal took the monthly income of the deceased at Rs.6,500/- notionally. After deducting ¼ towards his personal expenses and applying a multiplier of 14, the Tribunal arrived at the loss of dependency at Rs.8,19,000/-. The Tribunal also awarded a sum of Rs.25,000/- towards funeral expenses, Rs.1,00,000/- towards loss of love and affection to the minor son and parents and Rs.1,00,000/- towards loss of consortium to the 1st claimant and Rs.3,000/- towards damage to clothing and other articles. Thus, the Tribunal assessed the total compensation at Rs.10,47,000/- and after deducting 50% of the same towards contributory negligence, the Tribunal awarded Rs.5,23,500/-. The Tribunal also apportioned the compensation among the claimants.

5. Aggrieved, the claimants have come forward with this appeal, seeking enhancement.

6. We have heard Mrs.Ramya V.Rao, learned counsel appearing for M/s.A.N.Viswanatha Rao, for the appellant and Mr.S.Arunkumar, learned counsel appearing for the Insurance Company.

7. Mrs.Ramya V. Rao, learned counsel appearing for the appellants/ claimants would vehemently contend that the Tribunal erred in fixing the negligence at 50% on the part of the deceased who was a bicycle rider. She would also contend that the adoption of Rs.6,500/- per month, as income for a Technically qualified Electrician is below par. It is her further contention that the Tribunal has not taken into account the future prospects.

8. Per contra, Mr.Arunkumar, learned counsel appearing for the Insurance Company would contend that the fact that the accident had occurred in the intersection is admitted. It is also seen from the documentary evidence that the accident occurred when the deceased attempted to cross the road, without looking for any oncoming vehicles. Mr.Arunkumar, would also justify the assumption of the monthly income at Rs.6,500/-, pointing out that the claimants had not produced any evidence in proof of the income of the deceased.

9. We have considered the rival submissions.

10. P.W.2, who is an eye witness to the accident, had deposed that the deceased was riding a bicycle on the left extremity of the road. But the Tribunal has disbelieved his evidence only based on the Rough Sketch, which is marked as Ex.P3. It is common knowledge that the position of the vehicles in a Rough Sketch may not have been the same as they were, when the accident occurred. The Tribunal has also observed that the Kallakurichi Salem Main Road, being a four-lane road, the cyclist must have been more careful, as vehicles ply at a very high speed on such roads. Even assuming the reasoning of the Tribunal to be correct, we are afraid that the quantum of the contributory negligence that is fixed on the bicycle rider is on the higher side. It is admitted that the accident occurred at intersection and the road is a four-lane road. If only the driver of the car had maintained an average speed and had been more cautious, he would very easily have avoided the accident, as stretch of the road is very wide.

11. We are, therefore, of the considered opinion that the negligence that can be attributed to the bicycle rider can at best be 25%. We, therefore, fix the contributory negligence on the part of the deceased at 25% instead of 50% as fixed by the Tribunal. The fact that the deceased was a Diploma Holder in Electrical and Electronic Engineering is proved by Ex.P7 Certificate. This would also show that he is a technically qualified skilled worker. Therefore, the Tribunal was not right in taking his income at Rs.6,500/- per month. We are of the opinion that he would have earned at least Rs.400/- per day, i.e. Rs.12,000/- per month. The Tribunal has not added any amount towards future prospects. The deceased being a self-employed person, aged about 44 years, the future prospects that could be added is 25%. Thus worked out the total loss of income would be Rs.25,20,000/-(Rs.12,000/- + 3,000/- x 12 x 14). Admittedly, the deceased has left behind four dependants. Therefore 1/4th of his income has to be deducted towards personal expenses. Therefore, the pecuniary loss would be as follows:

Rs.12,000/- + 3,000/- x 12 x 14 x ¾ = Rs.18,90,000/-

12. The Tribunal has awarded a sum of Rs. 1,00,000/- towards loss of consortium. We find that the said award is against the judgment of the larger Bench of the Hon'ble supreme Court in National Insurance Company Ltd., Vs. Pranay Sethi reported in 2018 (1) LW 331. Hence, the same is reduced to Rs.40,000/-. The Tribunal has awarded another sum of Rs.1,00,000/- towards loss of love and affection to the minor son and parents. We find the same is also on the higher side. We therefore award a sum of Rs.75,000/- at 25,000/- each towards loss of love and affection to the parents and the minor son. The Tribunal has awarded a sum of Rs.25,000/- towards funeral expenses. The same is reduced to Rs.15,000/-. The Tribunal has not awarded any amount towards loss of estate. Hence we award a sum of Rs.15,000/- towards loss of estate. Thus, the total compensation works out to Rs.20,35,000/-.

13. We have already held that the deceased himself had contributed to an extent of 25% to the accident. Hence, 25% of the said amount has to be deducted, which leaves the balance of Rs.15,26,250/-

14. In view of the above, the appeal is partly allowed. The award of the Tribunal is modified, granting a sum of Rs.15,26,250/- as compensation to the claimants. The award will carry interest at 7.5% per annum from the date of petition till date of payment. There shall be no order as to costs.

15. The award is apportioned as follows:

1. The 1st claimant, wife of the deceased, will be entitled to Rs.6,00,000/- with proportionate interest and entire costs.
2. The 2nd claimant, the minor son, will be entitled to Rs.5,00,000/- with proportionate interest.
3. The 3rd claimant, mother of the deceased will be entitled to Rs.2,26,250/- with proportionate interest.
4. The 4th claimant, father of the deceased, will be entitled to Rs.2,00,000/- with proportionate interest.

16. The Insurance Company is directed to deposit the enhanced award amount, less the amount, if any already deposited, within a period of six weeks from the date of receipt of a copy of the judgment. On such deposit, the major claimants, namely, the appellants 1, 3 & 4 will be entitled to withdraw their respective shares of the compensation. The Tribunal is directed to deposit the share of the minor, namely the 2nd appellant, in an interest earning fixed deposit in any one of the Nationalised Banks till he attains majority and the mother namely the 1st appellant is permitted to withdraw quarterly interest from the fixed deposit for the maintenance of the minor son.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

jv
To

1. The Subordiate Judge, Motor Accidents Claims Tribunal, Aathur.

2. The Section Officer, V.R.Section, High Court, Madras.

+1 cc to Mr.S.ArunKumar, Advocate Sr.No.73195
+2 cc to M/s.Ramya V.Rao, Advocate Sr.No.73654

CMA.No.2466 of 2018

CSL/14.12.2018