IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 29.03.2019

Judgment Delivered on : 18.07.2019

CORAM:

THE HONOURABLE MR. JUSTICE RMT. TEEKAA RAMAN

C.M.A.No.1959 of 2009
and
M.P.No.1 of 2009

Bajaj Allianz General Insurance Company Limited,
Rep.by its the Manager,
222, Sivananda Colony,
Dr.Radhakrishnan Road,
Coimbatore District. ...Appellant/2nd Respondent

Vs.

1.Mosas
2.Poovathy
3.Sujithkumar ... Respondents/Petitioners/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 18.11.2008 in M.C.O.P.No. 436 of 2006, on the file of the Motor Accidents Claims Tribunal, Additional District Court, (FTC-4),Tirupur at Coimbatore.

For Appellant : Mr.S.Arunkumar

For R1&R2 : Mr.S.S.Swaminathan
For R3 : Not ready in notice

JUDGMENT

This Civil Miscellaneous Appeal is filed by the Bajaj Allianz General Insurance Company Limited, challenging the order and decree passed in M.C.O.P.No. 436 of 2006, on the file of the Motor Accidents Claims Tribunal, Additional District Court, (FTC-4), Coimbatore at Tirupur at Coimbatore. They have filed the present appeal questioning the liability as well as the quantum of compensation awarded by the Tribunal.

2. The brief case of the respondents 1 and 2/claimants, is as follows:

(i) The first respondent/claimant was aged about 21 years on the date of the accident. He was working as Turner and was earning a sum of Rs.4,500/- per month.

(ii) The first respondent is the father and the second respondent is the mother of the deceased Parthipha Pandian who died in a motor vehicle accident which took place on 03.12.2005 at about 23.00 hours in the Trichy Coimbatore NH road in front of L & T bye-pass road, Chinthamani Pudhur. On 03.12.2005 at about 23.00 hours, when the deceased Parthipha Pandian was going, he stopped his vehicle TN 37 AM 5884 in the East to West Trichy Coimbatore road, Chinthamani Pudhur L & T signal, for signal. By that time, a vehicle bearing Registration number TN 38 AD 3013 driven by the Bike owner-cum driver was coming from East to West so rashly and negligently and without adhering the traffic regulations and dashed against the deceased Parthipha Pandian.

3. Before the Tribunal, the claimant has examined P.Ws.1 to 3 and P.W.4 Doctor-Senthilkumar were examined and Exhibits P1 to P10 were marked. On behalf of the appellant-Insurance Company, staff from the Insurance Company was examined as R.W.1 and Motor Vehicle Inspector was examined as Court witness on summons, as R.W.2 and Exhibit R1 to R4 were marked.

4. On a consideration of both oral and documentary evidence, the Tribunal has held that the accident has taken place due to the rash and negligent driving of the offending vehicle and accordingly, a sum of Rs.5,49,090/- awarded by the Tribunal and hence, the appeal is filed by the Insurance Company.

5. The learned counsel for the appellant/Insurance Company would submit that they have raised a specific plea before the Tribunal that on the date of the accident, the driver of the offending vehicle, namely the driver of the first respondent before the Tribunal, i.e. third respondent herein does not possess valid effective driving license and hence, there is a violation of the policy condition. He further contended that the Insurance Company is not liable to pay the compensation. He also contended that the deceased being a bachelor, there should not have been deduction at 50% towards personal expenses of the deceased and the proper multiplier was also not adopted.

6. Heard the learned counsel for the respondents also.

7. On a perusal of the evidence adduced before the Tribunal, namely P.Ws.1 to 3 coupled with Exhibit P1 and Exhibit P5, the Tribunal has rightly come to the conclusion that the accident

has taken place due to the rash and negligent driving of the driver of the offending vehicle and the same is hereby confirmed.

8. On the point of quantum, it has to seen as to whether at the time of the accident, the driver of the offending vehicle had possessed the valid driving license. The Insurance Company examined R.W.1 and marked the legal notice issued to the owner of the vehicle which was returned as per Exhibits R1 and R3.

9. It appears that on court witness summons, the Motor Vehicle Inspector was examined as R.W.2, who deposed that at the time of the inspection of the vehicle, the driving license was not produced and he marked Exhibit R4 Motor Vehicle Inspection Report in respect of the two wheeler.

10. It remains to be stated that the legal notice issued by the Insurance Company to the owner of the vehicle was not served and the same was returned and there is no positive evidence to show that at the time of the accident, the driver of the offending vehicle did not possess valid driving license being adduced before the Tribunal in the manner known to law and thus, this Court finds that the Tribunal has rightly come to the conclusion that in the absence of any positive evidence indicating non-possession of the valid driving license by the offending vehicle, the Insurance Company has not substantiated its plea and accordingly, negatived the said plea and the same does not warrant any interference. Accordingly, both the owner of the vehicle and the Insurance Company are jointly and severally liable to pay the compensation.

11. On the point of quantum of compensation also, both the parties are heard.

12. Admittedly, the injured who subsequently died, was a Bachelor and therefore, the Tribunal ought to have given 1/2 deduction instead of 1/3 deduction towards personal expenses.

13. Based upon the evidence of P.W.3, who is a co-employee of the deceased and also based on Exhibits P7 to P10, the Tribunal has come to the conclusion that the deceased could have earned Rs.4,200/- per mensem and the same is hereby confirmed.

14. As per the Constitutional Division Bench judgment of the Supreme Court in the case of National Insurance Company Limited Vs. Pranay Sethi and others reported in 2017 (2) TN MAC 601, 40% has to be included for future prospectus and further, as per the said decision, the age of the parents should not be the

criteria and only the age of the victim/deceased should be taken into account while calculating the compensation. Accordingly, the age of the deceased is fixed as 21 years.

15. Further, based on the decision of the Supreme Court reported in 2009 (2) TN MAC 1 SC [Sarala Verma and Others Vs. Delhi Transport Corporation and another], the multiplier of '21' is adopted. Accordingly, the following calculation is made towards 'loss of earning':

Rs.4200/-+Rs.1680/- (40% of Rs.4200/-) x12x1/2x21=Rs.7,40,880/-

16. Furthermore, the claimants are the parents of the deceased. Accordingly, for loss of love and affection to both the parents, Rs.75,000/- each is granted, totalling Rs.1,50,000/-. Further, under the head "loss of estate", a sum of Rs.15,000/- is awarded. For funeral expenses, Rs.15,000/- is awarded. The amount awarded under the other heads are confirmed.

17. As per the oral evidence of P.W.4 - Doctor coupled with Exhibit P4-Medical Certificate and Exhibit P3-Medical Bills, the injured was initially admitted at Kovai Ramakrishna Hospital and taken treatment as in-patient from 04.12.2005 to 19.12.2005. Thereafter, again he was re-admitted on 03.02.2006 to 25.02.2006 and died on 26.02.2006 in Kovail C.M.C Hospital and the medical bills is to the tune of Rs.1,01,290/- as per Exhibit P3 and hence, he is entitled to the said amount and the same is hereby confirmed.

18.Thus, in toto, the compensation awarded is hereby tabulated:

Sl. No.	Particulars	Amount granted by the Tribunal	Amount granted by this Court
1.	Loss of earning	Rs.4,36,800/-	Rs. 7,40,880/-
2.	Funeral expenses	Rs. 2,000/-	Rs. 15,000/-
3.	For loss of Love and affection to parents	Rs. 5,000/- -	Rs. 1,50,000/- (Rs.75,000/- to each claimant)
4.	For loss of Estate	-	Rs. 15,000/-

Sl. No.	Particulars	Amount granted by the Tribunal	Amount granted by this Court
5.	Damages to clothes	Rs. 200 /-	Rs. 200/-
6.	Transportation	Rs. 3,800/-	Rs. 3,800/-
7.	Medical expenses (under Ex.P3)	Rs.1,01,290/-	Rs.1,01,290
	Total	Rs.5,49,090/-	Rs.10,26,170/-

19. Thus, the compensation awarded by the Tribunal is enhanced from Rs.5,49,090/- to Rs.10,26,170/-, which shall carry interest at the rate of 7.5% per annum from the date of claim petition till the date of payment.

20. In the result,

(i) The Civil Miscellaneous Appeal is disposed of to the extent indicated above. No costs.

(ii) The appellant-Insurance Company Limited is directed to deposit the entire compensation as calculated above together with interest at the rate of 7.5% per annum and costs, from the date of claim petition till the date of payment, within a period of eight weeks from the date of receipt of a copy of this order, less the amount if any deposited already.

(iii) On such deposit being made, the respondents 1 and 2/claimants are permitted to withdraw their share of compensation amount.

(iv) Since this Court has enhanced the award amount of the Tribunal, the claimants shall pay necessary Court fee, if any on the enhanced compensation amount.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

The Motor Accidents Claims Tribunal,
Additional District Court, (FTC-4),
Tirupur at Coimbatore.

Copy to

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

+1cc to Mr.S.Arunkumar, Advocate Sr.61497
+1cc to Mr.S.S.Swaminathan, Advocate Sr.61352

C.M.A.No.1959 of 2009 and
M.P.No.1 of 2009

gj[co]
srg 20/11/2020