

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 12.02.2019
CORAM:
THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN
C.M.A.No.277 of 2011

1.R.Jayalakshmi
2.Mohana Priya (Minor)
3.Bhuvaneshwari (Minor)
4.R.Pattammal
5.R.Rekha (Minor) ...Appellants/Petitioners
(Minors 2,3 and 5 rep. by
their mother & NF the 1st petitioner)

Vs.

1.S.Shanmugham
2.Bajai Allianz General Insurance
Company Limited,
No.25/26, Prince Towers,
4th Floor, College Road,
Nungambakkam,
Chennai 6. ... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 18.08.2010 in M.C.O.P.No.4638 of 2006 on the file of the Chief Judge, Small Causes Court, (Motor Accidents Claims Tribunal) at Chennai.

For Appellants : Mr.K.Ayyadurai
For Respondents : Ms.R.Rathna Thara for R2
R1 - Ex-parte

JUDGMENT

The appellants are the claimants in M.C.O.P.No.4638 of 2006, on the file of the Chief Judge, Small Causes Court (Motor Accidents Claims Tribunal), Chennai. They have filed the above claim petition under Section 166 of the Motor Vehicles Act, 1988 and Rule 3 of MACT Rules seeking compensation of Rs.25,00,000/- for the death of one A.Ramamurthy in a road accident that took place on 08.09.2006. The claimants are the wife, children and mother of the deceased.

2. The brief case of the appellants/claimants is as follows:
(i) The deceased was aged 38 years on the date of the

accident and was working as sales incharge at M/s. Dorcas Market Makers Limited, Chennai 102, earning a sum of Rs.12,100/- per month plus allowances.

(ii) On 08.09.2006, at about 17.30 hours, the deceased was riding TVS super XL moped bearing Registration No. TN 10 D 4489 from Guindy to Medavakkam along main road, in south to north direction. While he was proceeding near Nagathammal Koil, Adambakkam, Chennai-88, a motorcycle bearing Registration No. TN 09 AK 3755, belonging to the first respondent, which was driven in a rash speed and negligent manner came from the opposite direction and dashed against the Moped, as a result of which, the deceased fell down and sustained severe head injuries and died in the hospital during treatment. According to the appellants/claimants, the rash and negligent driving of the driver of the motorcycle bearing Registration No. TN 09 AK 3755 was the cause of the accident, and that, since, the said motorcycle was insured with the second respondent, both the first and second respondents, are jointly and severally liable to pay compensation of Rs.25,00,000/- to them.

3. The owner of the said motorcycle remained absent before the Tribunal and therefore, he was set ex-parte. The Bajaj Allianz General Insurance Company Limited contested the claim petition. The learned Tribunal, after analysing the evidence on record, awarded a compensation of Rs.10,40,000/- together with interest at the rate of 7.5% per annum to the appellants/claimants. Not satisfied with the quantum of compensation awarded by the Tribunal, the claimants have filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

4. A perusal of records shows that Ex.P1 is the FIR and Ex.P2 is sketch. Based on the evidence, the learned Tribunal found that the rider of the motorcycle bearing Registration No. TN 09 AK 3755 is solely responsible for the accident. PW2 is eye witness who deposed that the accident is only due to the negligent driving of the motor cyclist. There is no contra evidence. Ex.P13 is the Salary Certificate. PW3, the Assistant manager in the said company was also examined regarding the salary of the deceased. Ex.P8 is HDFC bank Statement.

5. Heard both sides.

6. The Tribunal based on the available evidences, in particular, based on Ex.P13, fixed the income of the deceased at Rs.6,680/- per month. The Tribunal deducted 1/4th towards the personal expenses of the deceased and applied multiplier of 14. The deceased was aged 38 years on the date of the accident, and therefore, the multiplier 14 adopted by the Tribunal is correct. However, the Tribunal has not granted future prospects.

According to the decision in National Insurance Co. vs Pranay Sethi and others reported in 2017 (2) TNMAC 601, 25% should be added towards future prospects of the deceased.

Calculation:

Notional income = Rs.6,680/-

25% Future Prospects = Rs.1,670/-

Total = Rs.6,680/- + Rs.1,670/- = Rs.8,350/-

Loss of pecuniary benefits

= Rs.8,350/- x 14 x 12 x 1/4 deduction

= Rs.10,52,100/-

7. A sum of Rs.10,000/- awarded under the head 'loss of consortium' is enhanced to Rs.40,000/-. A sum of Rs.7,190/- awarded under the head 'funeral expenses and transportation' is enhanced to Rs.25,000/-. Since, the deceased has taken treatment as inpatient for 21 days, a sum of Rs.20,000/- is awarded under the head 'pain and sufferings during treatment'. All the other heads awarded by the Tribunal are not disturbed.

8. Accordingly, the award of the Tribunal in M.C.O.P.No. 4638 of 2006 is modified as follows:

Sl. No.	Particulars	Amount granted by the Tribunal	Amount granted by this Court
1	Loss of pecuniary benefits	Rs.8,41,680/-	Rs.10,52,100/-
2.	Loss of love and affection	Rs.10,000/-	Rs.10,000/-
3.	Funeral expenses and transportation	Rs.7,190 /-	Rs.25,000 /-
4.	Loss of consortium	Rs.10,000/-	Rs.40,000/-
5.	Medical expenses	Rs.1,71,130/-	Rs.1,71,130/-
	Total	Rs. 10,40,000/-	Rs.12,98,230/-

Thus, the compensation awarded by the Tribunal is enhanced from Rs.10,40,000/- to Rs.12,98,230/-.

9. In the result,

(i) The Civil Miscellaneous Appeal is allowed in part. No costs.

(ii) The quantum of compensation awarded by the Tribunal is enhanced from Rs.10,40,000/- to Rs.12,98,230/- which shall carry interest at the rate of 7.5% per annum.

(iii) The appellants/claimants are directed to pay the court fee for the enhanced compensation, if any, and the Registry is directed to draft the decree only after the payment of Court fee.

(iv) The second respondent - the Bajaj Allianz General Insurance Company Limited is directed to deposit the entire compensation of Rs.12,98,230/- (if not already deposited)

together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and proportionate costs to the credit of M.C.O.P.No.4638 of 2006, dated 18.08.2010, on the file of the Chief Judge, Small Causes Court (Motor Accidents Claims Tribunal), Chennai within a period of eight weeks from the date of receipt of a copy of this order.

(v) On such deposit being made by the Bajaj Allianz General Insurance Company Limited, the first and the fourth appellants/claimants are permitted to withdraw the entire award amount along with proportionate interest as apportioned by the Tribunal.

(vi) It is represented that the second and the third claimants have become major. Therefore, they are also permitted to withdraw the entire award amount along with proportionate interest as apportioned by the Tribunal.

(vii) The entire share amount of the fifth appellant/claimant (minor) is ordered to be deposited in any one of the nationalized bank until she attain majority and the first appellant/claimant is permitted to withdraw the interest directly from the bank, once in three months in order to maintain the minor.

Sd/-

Assistant Registrar(Insp.Cell)

//True Copy//

Sub Assistant Registrar

mbi

To

The Motor Accidents Claims Tribunal,
The Chief Small Causes Court, Chennai.

+1 cc to M/s.N.M.Muthurajan, Advocate, Sr.No. 12619

+1 cc to M/s.R.Rathna Thara, Advocate, Sr.No. 13568

C.M.A.No.277 of 2011

VSNIIC(CO)
CSL/10.06.2019

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