

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.12.2019

CORAM

The Hon'ble Mr.Justice M.M.Sundresh
and
The Hon'ble Mr.Justice Krishnan Ramasamy

C.M.A.No.3434 of 2019
and

C.M.P.No.20147 of 2019

Bharti Axa General Insurance Company Ltd.,
No.162, Annasalai, Metro Plaza,
Chennai - 600 002. ... Appellant /2nd Respondent

Vs.

1.Devi @ Dhanalakshmi
2.Vanarani
3.Santhoshram (Minor)
4.R.Rajesh
(4th respondent remained ex parte) ... Respondents/Petitioners

PRAYER:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988, against the judgment and decree dated 20.06.2018 made in M.C.O.P.No.4620 of 2012 on the file of The Motor Accidents Claims Tribunal cum 3rd Small Causes Judge, Chennai.

For Appellant : Mr.K.Poomalai

For Respondents : Mr.S.Ravikumar

J U D G M E N T

Judgement of the Court was delivered by Krishnan Ramasamy, J.

The appellant/Insurance Company has preferred the present CMA challenging the judgment and decree dated 20.06.2018 made in MCOP.No.4620/2012. Both on the question of liability as well as quantum of compensation awarded by the Tribunal.

2. The appellant is the Insurance Company who insured the vehicle of fourth respondent who is the owner of the offending two wheeler bearing Registration No.TN 02 AT 0753.

3. When the deceased was riding his motorcycle bearing Registration No.TN 01 Y 2202 at EVR Salai near Indian New Hope Hospital, Chennai on 07.08.2012 at about 00.30 hours, a motorcycle bearing Registration No.TN 02 AT 0753 was riding in a rash and negligent manner at a high speed and dashed against the deceased motorcycle thereby, the deceased was thrown out and sustained multiple injuries. He was admitted in the KMC Hospital and died. Post-mortem was conducted at the KMC Hospital. Therefore, according to the claimants, the accident had occurred due to the rash and negligent riding of the rider of the two wheeler bearing Registration No.TN 02 AT 0753. On the other hand, the respondents/claimants strongly denied the fixation of liability as well as quantum of compensation awarded by the tribunal. After hearing both the parties, the Court below fixed the entire negligence on the part of the rider of the two wheeler bearing Registration No.TN 02 AT 0753. Further the Court ordered pay and recovery from the owner of the vehicle due to the reason that the rider of the two wheeler did not possess valid licence. The rider was none other than the fourth respondent who is the owner of the vehicle. Therefore, since there was violation of policy condition, the tribunal ordered pay and recovery.

4. After hearing both the parties, the tribunal fixed the entire liability on the rider of the two wheeler and directed the appellant/Insurance Company to pay the compensation amount of a sum of Rs.47,60,000/- and thereafter, recover the same from the owner/4th respondent herein. Against the said order, the appellant/Insurance Company has preferred this appeal.

5. According to the appellant, the Court below fixed the entire negligence on the part of the rider of the two wheeler bearing Registration No.TN 02 AT 0753. The Tribunal came to the finding that since the rider of the two wheeler did not possess any valid licence and as the same amounts to violation of policy condition, therefore, the entire liability has been fixed against the owner of the vehicle. Since the policy has been issued by the appellant, the Court below directed the Insurance Company to pay the entire award amount and recover the same from the fourth respondent-owner of the vehicle. Therefore, he would contend that though the entire liability has been fixed on the rider of the fourth respondent, the Court below ought not to have awarded the pay and recovery. Hence, the learned counsel for the appellant contend that the order of the tribunal is liable to be set aside.

6. On the other hand, the learned counsel appearing for the claimants would contend that on behalf of the claimants P.W.1 to P.W.3 have been examined who are all eyewitness to the accident who have been deposed stating that the accident occurred due to the rash and negligent driving of the rider of the two wheeler bearing Registration No.TN 02 AT 0753. Further in support of his contention, he would contend that Ex.P1 copy of the FIR, Ex.P2 charge sheet, Ex.P3 postmortem certificate and Ex.P4 death certificate would clearly state that the accident occurred due to the rash and negligent riding of the fourth respondent and therefore, there is no fault in fixing the liability by the Tribunal.

7. Upon hearing the submissions of the learned counsel for the appellant/Insurance Company and the claimants and upon the perusal of the depositions of P.W.1 to P.W.3 and Exs.P1 to P4, it is clearly proved that the accident occurred due to the rash and negligent driving of the rider of the two wheeler bearing Registration No. TN 02 AT 0753. However, the tribunal found that the rider of the said two wheeler did not possess a valid licence. Therefore, the tribunal ordered pay and recovery against the fourth respondent herein. On behalf of the appellant/Insurance Company, fourth respondent have not adduced any evidence either documentary or oral. In the absence of any evidence on the part of appellant/Insurance Company and based on the deposition of P.W.1 to P.W.3 and Exs.P1 to P4, the tribunal fixed the liability and rightly ordered the pay and recovery. Hence, this Court do not find any infirmity in the order passed by the Court below in fixing the liability as well as pay and recovery as ordered by the tribunal. Accordingly, the liability as well as pay and recovery as ordered by the tribunal stand confirmed.

8. Quantum - The appellant/Insurance Company would contend that the tribunal awarded a sum of Rs.47,60,000/- as compensation to the claimants in the manner stated below:-

1. Loss of Dependency	Rs.44,80,000/-
2. Loss of Consortium	Rs.40,000/-
3. Loss of Love and Affection	Rs.2,25,000/-
4. Funeral Expenses	Rs. 15,000/-

Total	Rs.47,60,000/-

9. The learned counsel for the appellant would contend that the Tribunal has taken the income of the deceased as stated in Ex.P9, income tax return for the financial years 2007-2008, 2008-2009, 2009-2010 and 2010-2011. The learned counsel

fairly contended that the tribunal while fixing the income of the deceased as Rs.25,000/-, it has failed to deduct any amount towards the income tax. He would further contend that even if Rs.25,000/- is taken as income of the deceased, yearly salary would be Rs.3 lakhs and after adding 40% future prospects which would be a sum of Rs.1,20,000/-, the total salary per annum would be Rs.3,00,000/- + 1,20,000/- = Rs.4,20,000/-. The accident had occurred in the year 2012. He would contend that the standard deduction for the year ended 31st March 2013 would be Rs.1,90,000/- from the total income of Rs.4,20,000/-. Hence the appellant would contend that a sum of Rs.23,000/- would have to be deducted towards income tax but the same has not been deducted.

10. The learned counsel appearing for the respondents/claimants fairly accepted the submission of the appellant stating that the tribunal has not deducted any amount towards income tax. With regard to the application of the multiplier and deduction towards personal expenses, both the counsel has not disputed the same. Therefore, the loss of income per annum is determined as follows:-

$$\text{Rs.3,00,000} + \text{Rs.1,20,000} = \text{Rs.4,20,000/-}$$

$$\text{Rs.4,20,000} - \text{Rs.23,000 (income tax)} = \text{Rs.3,97,000}$$

11. Therefore, as held by the Hon'ble Supreme Court when there are three claimants 1/3rd amount is to be deducted towards the personal expenses of the deceased. By deducting the 1/3rd, the loss of income would be Rs.3,97,000/- - Rs.1,32,333/- = Rs.2,64,667/-. Loss of income per annum after all deduction for the claimants would be Rs.2,64,667/-.

12. As per Ex.P3 post-mortem report, the age of the deceased was mentioned as 34 years. As held by the Hon'ble Supreme Court in Sarla Verma & Others .Vs. Delhi Transport Corporation & another, reported in 2009 (2) TNMAC 1 (SC), the tribunal correctly applied the multiplier of 16, by applying the multiplier 16, the loss of dependency would be Rs.2,64,667/- x 16 = Rs.42,34,672/-.

13. The tribunal awarded a sum of Rs.40,000/- for loss of consortium and Rs.15,000/- for Funeral Expenses. This Court do not find any error in the fixation of the consortium to the deceased wife and funeral expenses, as awarded by the tribunal. Therefore, the same is stand confirmed.

14. The tribunal awarded a sum of Rs.2,25,000/- towards loss of love and affection. In the present case, there are three claimants, already the tribunal awarded Rs.40,000/-

towards loss of consortium to the wife of the deceased i.e., 1st claimant, the 2nd claimant is the mother of the deceased, the 3rd claimant is the minor son of the deceased. As held by the Hon'ble Supreme Court in Magma General Insurance Company Vs. Nanu Ram alias CHUHRU RAM and others, reported in [(2018) II SCC 892] wherein, it is held that, where the parents have lost their son or daughter, the parents are entitled to be awarded compensation under the head of Filial Consortium a sum of Rs.40,000/-. Therefore, in the present case, the mother of the deceased is entitled for the loss of Filial Consortium a sum of Rs.40,000/-. In the similar manner, the minor son has lost his father's love, affection and care. Therefore, the son is entitled for the parental consortium a sum of Rs.40,000/-. Therefore, this Court is inclined to award a sum of Rs.40,000/- to the second claimant in the form of filial consortium for loss of his son and a sum of Rs.40,000/- is awarded in the form of parental consortium to the minor son for the loss of his father. No amount was awarded by the tribunal towards loss of estate. As held by the Hon'ble Apex Court, the claimants are entitled to a sum of Rs.15,000/- towards loss of estate. Therefore, this Court is inclined to award a sum of Rs.15,000/- towards the loss of estate. Therefore, the award amount of Rs.47,60,000/- as ordered by the tribunal stand revised in the manner stated below:-

Sl.No	Heads	Tribunal Award	High Court	MODIFIED/CONFIRMED
1	Loss of Dependency	Rs.44,80,000/-	Rs.42,34,672/-	Modified
2	Loss of Consortium	Rs.40,000/-	Rs.40,000/-	Confirmed
3	Loss of Love and Affection	Rs.2,25,000/-	Nil	Set aside
4	Funeral Expenses	Rs.15,000/-	Rs.15,000/-	Confirmed
5	Loss of Filial Consortium (mother of the deceased)	Nil	Rs.40,000/-	Awarded
6	Loss of Parental Consortium (Minor Son)	Nil	Rs.40,000/-	Awarded
7	Loss of Estate	Nil	Rs.15,000/-	Awarded
	Total	Rs.47,60,000/-	Rs.43,84,672/-	

15. Hence, award amount of a sum of Rs.47,60,000/- as ordered by the tribunal stand reduced to Rs.43,84,672/-.

16. This Court directs the appellant/Insurance Company to deposit the entire award amount along with interest at the rate of 7.5% per annum from the date of accident till the date of deposit within a period of 12 weeks from the date of receipt of a copy of this order, after deducting the amount if any already deposited by them. We also direct the tribunal to transfer the entire award amount to the major claimants to their respective bank account by way of RTGS within a period of three weeks from the date of deposit. In case if the award amount is already deposited, the same shall be transferred to the major claimants within a period of three weeks from the date of receipt of a copy of this order. With respect to the claim amount, as far as minor claimant is concerned, the same shall be deposited, interest bearing fixed deposit in any one of the nationalized bank until he attains majority, with liberty to the first claimant to withdraw the interest amount every six months. The apportionment award amount are as follows:-

(i) The wife of the deceased, who is the first respondent herein shall receive a sum of Rs.23,00,000/-;

(ii) The mother of the deceased, who is the second respondent herein shall receive a sum of Rs.5,84,672/-;

(iii) The son (minor) of the deceased, who is the third respondent herein shall receive a sum of Rs.15,00,000/-.

17. In the result, the Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

AT

To

The Motor Accident Claims Tribunal,
3rd Small Causes Judge, Chennai.

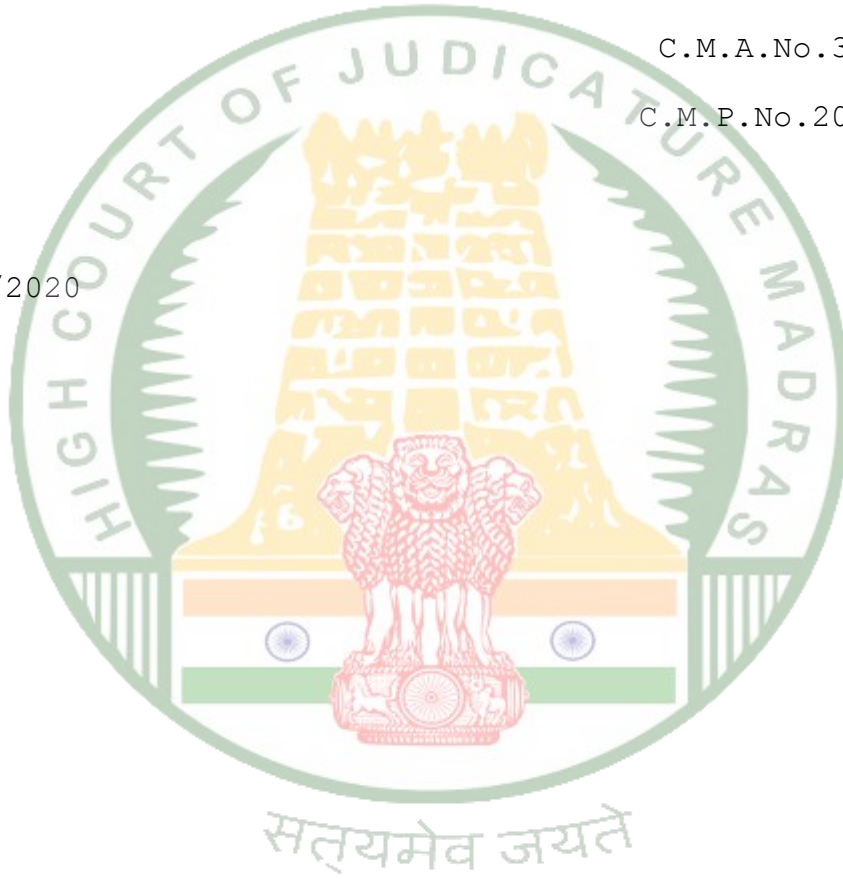
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The Section Officer,
VR Section, High Court, Madras.

+1cc to Mr.Ravikumar, Advocate Sr.102720
+1cc to M/s.Poomalai, Advocate Sr.102585

C.M.A.No.3434 of 2019
and
C.M.P.No.20147 of 2019

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