IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.09.2019

CORAM

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.1737 of 2017
and
C.M.P.No.9375 of 2017

M/s. Bajaj Allianz General,
Insurance Company Limited,
'Prince Towers ', V floor,
No.25/26, College Road,
Nungambakkam,
Chennai - 600 006. ... Appellant/II Respondent

vs.

1.Sasikala ... Respondent 1/Petitioners

2.Ranjit Kumar (Minor)

3.Ranjitha (Minor)

(Minor respondents 2 & 3 represented by their mother and next friend sasikala)

4.Ilayaperumal

5.Kamalam

6.K.Chandra Kumar ...Respondents 2 to 6/Respondents 2 to 6

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 18th October, 2016, passed in MCOP.No.21 of 2010 by the Chief Judge, Motor Accident Claims Tribunal, at Chennai.

For Appellant : Mr.J.Michael Visuvasam

For Respondents 1 & 5 : Ms.Ramya V Rao

JUDGMENT

[Judgment of the Court was made by ABDUL QUDDHOSE, J.]

This appeal has been filed by the insurance company challenging by the award dated 18.10.2016 passed by the Chief Judge, Motor Accident Claims Tribunal, Chennai in MCOP.No.21 of 2010.

Brief facts leading to the filing of this appeal:

2. A person by name Arumugam died on 01.08.2009 as a result of an accident caused by a Tipper lorry bearing registration No.TN22-BC-0068 owned by the sixth respondent and insured with the Appellant. The accident happened when the deceased was riding TVS XL Super Motor Cycle bearing registration No.TN20-AS-6940 at Kovur-Kundrathur Service Road, Chennai proceeding from South to North direction. At that time, the Tipper lorry bearing registration No.TN22-BC-0068 (insured vehicle) proceeding on the same direction, i.e., on the right side of the motor cycle suddenly turned left and hit the right side of the motor cycle and as a result of the said accident, the deceased who was the rider of the motor cycle sustained grievous injuries all over the body and he died in the hospital.

3. The dependents of the deceased who are his wife, children and his parents preferred a claim before the Chief Judge, Motor Accident Claims Tribunal, Chennai against the sixth respondent as well as the Appellant insurance company seeking a compensation of Rs.10,00,000/- for the death of Arumugam.

4. By an award dated 18.10.2016 passed by the Motor Accident Claims Tribunal in MCOP.No.21 of 2010, the Motor Accident Claims Tribunal directed the Appellant insurance company to pay a sum of Rs.17,32,000/- together with interest at the rate of 7.5% per annum from the date of claim till the date of realisation. The Tribunal also determined that out of the total compensation of Rs.17,32,000/-, the first claimant was entitled to a sum of Rs.6,32,000/-, the second and third claimants each were entitled to a sum of Rs.3,50,000/- and the fourth and fifth claimants each were entitled to a sum of Rs.2,00,000/-.

5. Aggrieved by the award dated 18.10.2016 passed in MCOP.No.21 of 2010, this appeal has been filed by the insurance company.

6. Heard Mr.J.Michael Visuvasam, learned counsel for the Appellant and Ms.Ramya V.Rao learned counsel appearing for the respondents 1 to 5.

Discussion:

7. The Appellant insurance company has challenged the adverse finding of negligence on the driver of the insured

Tipper lorry and they have also challenged the quantum of compensation assessed by the Tribunal. It is their case that the FIR (Ex.R1) was filed against the deceased Arumugam and without any documentary evidence, the Tribunal has assessed the notional monthly income of the deceased at Rs.7,000/-

8. This court has perused and examined the impugned award as well as the evidence and materials available on record.

9. Before the Tribunal, the Claimants have produced four documents which were marked as Ex.P1 to Ex.P4 and three witnesses were examined viz., PW1 - the wife of the deceased, PW2 & PW3 - Eye-witnesses to the accident. On the other hand, the sixth respondent as well as the Appellant insurance company have produced eight documents which were marked as Ex.R1 to Ex.R8 and two witnesses were examined viz., RW1 - an official of the Appellant insurance company & RW2 - the driver of the Tipper lorry.

10. It is the case of the Appellant insurance company that the insured Tipper lorry was parked in the road and only due to the rash and negligent driving of the two wheeler by the deceased, the two wheeler dashed against the Tipper lorry from behind. According to the Appellant insurance company, there is no negligence on the part of the driver of the insured Tipper lorry and the evidence of RW1 and RW2 also supports the said contention. Further it is their case that since the FIR was registered only against the deceased, the Appellant insurance company who is the insurer of the Tipper lorry cannot be held liable to pay the compensation amount to the claimants.

11. FIR was registered by the police only on the complaint given by the driver of the Tipper lorry who is not an independent person. It is common practice adopted by offenders in order to escape liability and preempt a complaint being lodged against him, the offender will give complaint against a person who is not an offender. In the case on hand, the accident victim could not have given complaint immediately, at the scene of the accident as he was seriously injured and was being taken to the hospital. The eye-witnesses to the accident viz., PW2 & PW3 have deposed that only due to the rash and negligent driving by the driver of the Tipper lorry, the accident had happened.

12. A sketch was also marked as Ex.R2 which will clearly reveal that the road in which the lorry as well as the two wheeler were proceeding is 50 feet road and the lorry is found to be in the middle of the road. Therefore, the statement of RW2 who is the driver of the Tipper lorry that the Tipper lorry was parked, when the two wheeler which was driven by the deceased came from behind and dashed against the lorry cannot be believed. FIR was not registered based on the complaint given by a neutral person, but it has been given by the driver of the Tipper lorry himself who caused the accident.

13. The Tribunal has considered the oral and documentary evidence available on record and has come to the right conclusion that the accident had happened only due to the rash and negligent driving by the driver of the Tipper lorry (insured vehicle). We do not find any infirmity in the said finding.

14. The claimants in their claim petition, claimed that the deceased was a mason and earning an income of Rs.300/- per day. But before the Tribunal, no document was filed by the claimants to prove the salary of the deceased. As a mason and a daily wage earner, no employer will furnish pay slips. No contra evidence has also been produced by the Appellant insurance company to disprove the avocation and salary of the deceased. The accident happened in the year 2009 and the Tribunal has assessed the notional monthly income of the deceased as Rs.7,000/-. We are of the considered view that considering the year of the accident, the notional monthly income of the deceased assessed by the Tribunal is a correct assessment.

15. The Tribunal has erroneously fixed the loss of future prospects at 50%. We are of the considered view that as per the Constitution Bench Judgment of the Hon'ble Supreme Court in the case of National Insurance Company Limited vs. Pranay Sethi and Others reported in 2017 (16) SCC 680, the loss of future prospects has to be fixed at 40% only as the deceased was a self-employed (Mason) person and was not having a permanent employment.

16. The Tribunal has rightly deducted 1/4th towards personal expenses as the number of dependents are 5 and rightly applied 16 multiplier as the deceased was aged 35 years at the time of the accident.

17. The Tribunal has awarded a sum of Rs.1,00,000/- as compensation towards loss of consortium to the wife of the deceased. We are of the considered view that as per the Pranay Sethi Judgment referred to supra, the wife of the deceased who is the first respondent herein is only entitled to a sum of Rs.40,000/- as compensation towards loss of consortium.

18. The Tribunal has awarded a sum of Rs.95,000/- towards loss of love and affection to all the claimants which in our considered view is meagre. But the first respondent who is the wife of the deceased is not entitled to loss of love and affection as she has been adequately compensated under the head "Loss of consortium". We are of the considered view that the minor respondents 2 and 3 are entitled to Rs.50,000/- each and the parents of the deceased who are the respondents 4 and 5 are entitled to Rs.25,000/- each.

19. The Tribunal has awarded an excess amount of Rs.25,000/- as compensation towards funeral expenses and has not awarded any compensation towards loss of estate for which the

claimants are entitled to as per Pranay Sethi Judgment referred to supra. Therefore we are awarding a sum of Rs.15,000/- towards funeral expenses and another sum of Rs.15,000/- towards loss of estate in accordance with Pranay Sethi judgment.

20. For the foregoing reasons, the amount awarded by the Tribunal is modified in the following manner:

Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)
Loss of income	15,12,000/- (7000 + 50% = 10,500 -1/4 = 7875 x 12 x 16)	14,11,200/- (7000 + 40 % = 9,800 -1/4 = 7,350 x 12 x 16)
Loss of consortium	1,00,000/-	40,000/-
Loss of love of affection	95,000/-	1,50,000/-
Funeral expenses	25,000/-	15,000/-
Loss of estate	Nil	15,000/-
Total	17,32,000/-	16,31,200/-

21. In view of the above, the compensation awarded by the Tribunal is modified by reducing the award amount from Rs.17,32,000/- to Rs.16,31,200/- and out of the total award, the first respondent being the wife of the deceased is entitled to a sum of Rs.5,81,200/-, the second and third respondents each being the children of the deceased are entitled to Rs.3,25,000/- and the fourth and fifth respondents each being the parents of the deceased are entitled to Rs.2,00,000/-

Conclusion:

22. In the result, the appeal is partly allowed and the rate of interest assessed by the Tribunal at 7.5% is confirmed. The Appellant insurance Company is directed to deposit the entire award amount as per the order of this Court along with interest at the rate of 7.5% per annum and costs after deducting the amount, if any already deposited, to the credit of MCOP.No.21 of 2010 within a period of four weeks from the date of receipt of a copy of this Judgment.

23. If the Award amount assessed by the Tribunal under the impugned award has already been deposited by the Appellant before the Tribunal, the Tribunal shall after adjustments, refund the excess amount if any, through RTGS to the Appellant

Insurance company, on filing of appropriate application by the Appellant insurance company.

24. The Tribunal is directed to transfer the share of the first, fourth and fifth respondents as per the order of this Court through RTGS within a period of four weeks thereafter. Since the second and third respondents are minors, their respective share of award amount shall be deposited in an interest bearing fixed deposit in any Nationalized bank till they attain majority. However, the accrued interest under the fixed deposit shall be permitted to be withdrawn by the first respondent once in 6 months. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

//True Copy//

Sub Assistant Registrar

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To

The Chief Judge,
Motor Accident Claims Tribunal, at Chennai.

Copy To

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

+1cc to Mr.A.N.Viswanatha Rao, Advocate, S.R.No. 80992
+1cc to Mr.J.Micheal, Advocate, S.R.No. 80656

C.M.A.No.1737 of 2017

BS(CO)
GN(01/09/2020)