

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.02.2020

C O R A M

THE HON'BLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.1891 of 2013

and

M.P.No.1 of 2013

Bajaj Allianz General Insurance Company Ltd.,
G.E., Plaza, Airport Road, Yervada, Puna.

... Appellant/2nd Respondent

Vs

1.S.Kavitha

2.Minor. Raghavaishali

(2nd respondent - Minor,
represented by next friend/Guardian,
her mother 1st respondent Kavitha)

3.Sivakumar

4.Parimala

...Respondent 1 to 4/Claimant

5.V.S.Devaraj

...5th Respondent/1st Respondent

6.S.Rajesh

...6th Respondents/3rd Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 to set aside the order made in M.C.O.P.No.15 of 2010 dated 24.08.2012 on the file of the Additional District and Sessions Court No.3, Motor Accident Claims Tribunal, Vellore at Tirupattur

For Appellants : Mr.J.Micheal Visuvasam

For R1 - R4 : Mr.Bharath Kumar

For R5 - R6 : Mr.S.Sathiyaraj

J U D G M E N T

The instant appeal has been filed by the Insurance Company, challenging the Award dated 24.08.2012 made in M.C.O.P.No.15 of 2010, passed by the Motor Accident Claims Tribunal, Additional District and Sessions Court No.3, Vellore at Tirupattur.

2. The appellant herein is the second respondent in M.C.O.P.No.15 of 2010 on the file of the Motor Accident Claims Tribunal, Additional District and Sessions Court No.3, Vellore at Tirupattur District.

3. The case of the prosecution is that on 08.01.2007 at about 07.30P.M., one Saravanan was riding his two wheeler T.V.S Suzuki Max 100 R bearing Regn.No.TN-23-P-6774 in between Alangayam to Vaniyambadi towards Vaniyambadi on the extreme left side of the road with one Baskar as pillion rider, near Melnimmiyambattu village. At that time, the third respondent was riding his TVS 50 GLX bearing Regn.No.TN-23-AY-9036 belonging to the first respondent during his course of employment under the first respondent, in a very rash and negligent manner with uncontrollable speed towards Vaniyambadi and dashed against the said Saravanan's two wheeler, due to which, the said Saravanan sustained grievous injury on his forehead, right hand and bleeding from ear and nose and he has become unconscious and the TVS Suzuki Max 100 was completely damaged. As soon as the accident, the said Saravanan was taken to Government Hospital Vaniyambadi for treatment, where it was declared that he was brought dead.

4. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to the rash and negligent driving by the rider of the bike belonging to the sixth respondent and directed the appellant to pay a sum of Rs.10,66,288/- as compensation to the claimants.

5. Not being satisfied with the amount awarded by the Tribunal, the appellant has come out with the present appeal to set aside the compensation.

6. The learned counsel for the appellant would submit that the decree and judgement of the lower Court are against law, facts, evidences on record and probabilities of the case. Further, the Tribunal went wrong in holding the appellant liable and went wrong in directing the appellant to pay a huge compensation of Rs.10,66,228/-. The learned Tribunal went wrong in finding that the accident was due to the rash and negligent driving of the motor cycle bearing Regn.No.TN-23-AY-9036 and failed to appreciate that the accident was only due to the gross negligence of the deceased who drove his motor cycle TN-23-B-6774. The Tribunal ought to have found that the accident was only due to the rash and negligent driving of the motor cycle bearing Regn.No.TN-23-B-6774, driven by the deceased. The Tribunal, having found that the rider of the motorcycle bearing Regn No.TN-23-AY-9036, did not have a valid and effective driving licence to drive the said motor cycle, went wrong in directing the appellant to pay the compensation assessed and to recover the same from the owner of the vehicle. The learned Tribunal, having clearly found that the appellant was not liable, went wrong in not exonerating the appellant fully. The Court below went wrong in fixing the income of the deceased at

Rs.6,609/- and his contribution to the family at $\frac{3}{4}$ namely at Rs.4,957/- per month, and his age at 33 and the multiplier at 17. The Court below went wrong in awarding Rs.40,000/- for loss of love and affection, Rs.10,000/- for funeral expenses and Rs.5,000/- for transport charges. Hence, the learned counsel for the appellant prays to allow this appeal.

7. The learned counsels appearing for the respondents would jointly submit that the claim petition filed by the claimants for the claim of compensation is devoid of merits and facts. Hence, the learned counsel submitted that this appeal is not maintainable in law and on facts and it is liable to be dismissed.

8. Heard the learned counsels for the appellant as well as for the respondents and perused the materials available on record.

9. It is seen that the deceased was working as an Assistant in Town Co-operative Bank and earning a sum of Rs.6,609/- per month. After deducting $\frac{1}{3}$ rd of the above, it comes to Rs.4,957/-. Normally, in claims case, the tendency of the claimants are to boost the income of the deceased, for obvious reasons. Hence, the evidence of P.W.1 in this regard cannot be taken as such. Therefore, the income of the deceased has to be taken only notionally for the purpose of the claim petition. As per the guideline in the second schedule of the Motor Vehicle Act, the proper multiplier for the age group of the deceased would be 16. Therefore, the overall loss of income of the deceased would come to Rs.10,66,228/- (4,957 X 12 X 16 = 10,66,228/-). After considering the facts and circumstances of the case, the Court below has awarded a sum of Rs.10,66,228/- which is just and reasonable. The Tribunal has awarded a sum of Rs.40,000/- towards "love and affection" and awarded a sum of Rs.10,000/- towards "funeral expenses" and awarded a sum of Rs.5,000/- towards "Transportation", which are all just and reasonable. Hence, this Court is not inclined to interfere with the award passed by the Tribunal and the same is hereby confirmed. The compensation awarded by the Court below are as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of earning power and disability	10,66,228/-	10,66,228/-	Confirmed

2.	Loss of love and affection	40,000/-	40,000/-	Confirmed
3.	Funeral expenses	10,000/-	10,000/-	Confirmed
4.	Transportation	5,000/-	5,000/-	Confirmed
Total		Rs.10,66,228/-	Rs.10,66,228/-	Confirmed

10. In the result, this Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

1.The Motor Accident Claims Tribunal,
Additional District and Sessions Court No.3,
Vellore at Tirupattur.

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

+lcc to Mr.R.Bharath Kumar, Advocate Sr.14819

+lcc to Mr.J.Michael Visuvasam, Advocate Sr.15182

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