IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.08.2020

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.Nos.2712 of 2011 & 2521 of 2013
and
M.P.No.1 of 2011

(Through Video Conferencing)

C.M.A.No.2712 of 2011

M/s. Bajaj Allianz General Insurance Co. Ltd.,
No.25/26, College Road,
Nungambakkam, Chennai - 6. ... Appellant/2nd Respondent

Vs.

1.D.Saradha

2.D.Ravi

3.D.Santhi

4.D.Palani

5.D.Manikandan

6.V.M.Ibrahim Badhusha

7.Ellammal .Respondents/Petitioner1 to 5/
Respondents 1 &3

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the award and decree dated 02.02.2011 made in M.C.O.P.No.372 of 2006 on the file of the Motor Accidents Claims Tribunal, Additional District Judge, (FTC-I), Poonamallee.

For appellant : Mr.S.Arun kumar

For 1st to 5th respondents: Mr.J.Mahalingam

C.M.A.No.2521 of 2013

1.D.Saradha

2.D.Ravi

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3.D.Santhi

4.D.Palani

5.D.Manikandan ... Appellants/Petitioner

Vs.

1.V.M.Ibrahim Badhusha

2.Bajaj Allianz General Ins. Co. Ltd.,
No.25/26, College Road,
Nungambakkam, Chennai - 6.

3.Ellammal ... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 02.02.2011 made in M.C.O.P.No.372 of 2006, on the file of the Motor Accidents Claims Tribunal, Addl. Dist. & Sessions Judge, Fast Track Court - I, Poonamallee.

For appellants : Mr.J.Mahalingam
For 2nd respondent : Mr.S.Arun kumar

C O M M O N J U D G M E N T

By this common order, both the Civil Miscellaneous Appeals are being disposed. While C.M.A.No.2712 of 2011 has been filed by the Insurance Company, C.M.A.No.2521 of 2013 has been filed by the claimants.

2. Since both the parties are in appeal, the ranks in the proceedings before the Tribunal are referred.

3. By the impugned Judgment and Decree dated 02.02.2011, the Motor Accident Claims Tribunal, Additional District Judge (FTC-1) Poonamallee has awarded a sum of Rs.5,75,000/- as compensation together with interest at 7.5% from the date of the claim petition in M.C.O.P.No.372 of 2006.

4. The Insurance Company is aggrieved by the impugned Judgment and Decree of the Tribunal on the ground that the rider of the insured motor vehicle was not responsible for the accident and that the complaint was lodged by a responsible police officer and the accident register recorded by the doctor clearly stated that the accident was caused by an unknown vehicle.

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5. It is submitted that P.W.2 the alleged eye witness was set up the claimants and the owner of the insured vehicle has colluded with the claimants so as to fasten the liability on the Insurance Company.

6. On the other hand, the claimants who are the wife and children of the deceased have filed C.M.A.No.2521 of 2013 for enhancement of compensation. It is their submission that the Tribunal ought to have considered the income of the deceased as Rs.7,500/- instead of Rs.5,000/- per month at Rs.200 per day x 25 days.

7. I have perused the impugned Judgment and Decree, the claim petition and evidence on record.

8. The case of the claimants before the Tribunal was that the deceased was aged about 53 years and was earning a sum of Rs.250/- per day. It is stated that on 11.12.2005 at about 18:30 hours, the deceased was crossing Anna Salai Road from east to west and at the pedestrian crossing near Eldams road junction, insured motorcycle bearing registration No.TN.10-K-7335, belonging to the 1st respondent, namely V.M.Ibrahim Badhusha, was driven in a rash and negligent manner by its rider and thereby endangered the safety of the pedestrian and knocked on the deceased down. The deceased suffered grievous injuries due to the said accident on this head and later died. Thus, a claim petition was filed.

9. On behalf of the Insurance Company it was contended that the accident register clearly mentions that accident was due to an unknown vehicle and that the deceased was under the influence of alcohol at the time of accident and that even at the time of alteration of Charge Sheet on 16.12.2005 vide Exhibit C1, there was no mention about the involvement of the insured motorcycle of 1st respondent in the claim petition.

10. It is further submitted that even in the Ex.P1 FIR lodged by a Police Constable, there was no name of the person who caused accident. It is submitted that a bogus claim petition was filed with a view to fasten the liability on the Insurance Company.

11. The claimants have produced PW.2 before the Tribunal who deposed evidence as an eyewitness to the accident. The Exhibit C1 Charge Sheet filed after the Exhibit P1 FIR was generated also indicates the involvement of the insured motorcycle.

12. Though the Insurance Company has questioned the involvement of the insured vehicle in the accident, it was open for the Insurance Company to summon the owner of the insured vehicle and to have effectively cross-examined him to bring out

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the truth. Mere belief of the Insurance Company of the alleged collusion cannot be the basis to disbelieve the evidence adduced before the Tribunal.

13. Thus, in absence of any contrary evidence, the evidence of PW.2 has to be believed. I am therefore inclined to uphold findings given by the Tribunal that the insured vehicle was involved in the accident.

14. Exhibit P2 postmortem report also reveals that the death was due to the accident. The Tribunal has considered the income of the deceased as Rs.200/- per day as against Rs.250/- per day claimed in the claim petition. In my view, the Tribunal has come to a just conclusion as far as the income of the deceased is concerned in absence of any direct evidence. Therefore, I do not find any reasons to disturb the same.

15. The age of the sons and daughters of the deceased, i.e. 2nd, 3rd and 4th claimants, indicates that they were aged 34, 32 and 31 years at the time of the accident. Therefore, it is unlikely that they were dependents of the deceased for sustaining their life.

16. The 1st claimant is the wife of the deceased aged about 48 years and 5th claimant is the younger son of the deceased and was aged about 19 years at time of the death of the deceased. The 3rd respondent is the mother of the deceased. Therefore, they could be considered as dependents of the deceased. Therefore, 1/3rd of the income has been rightly deducted by the Tribunal. The presence of other claimants did not alter the deduction of 1/3rd of the income.

17. The Tribunal has taken the age of the deceased as 55 years based on the age given in the Exhibit P3 postmortem report, whereas, the claimants have stated that the age of the deceased was 53 years. However, they have not produced any documents to substantiate that the age of the deceased was 53 years at the time of the accident. Whether the age of the deceased was 53 or 55 at the time of death, the multiplier to be applied is 11 and therefore the loss of dependency arrived by the Tribunal also cannot be questioned.

18. Though the age of the deceased is 55 years and the age of the 1st claimant is stated to be 48 years, I am inclined to award a sum of Rs.40,000/- towards loss of consortium to her. The Tribunal has awarded a sum of Rs.60,000/- towards loss of affection to 6 claimants. I am inclined to uphold the same

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except insofar as the 5th claimant as he was aged only 19 years at the time of the death of the deceased. He will be entitled for compensation towards filial consortium.

19. Therefore, following the decision of the Hon'ble Supreme Court in Magma General Insurance Company Limited Vs. Nanuram @ Chuhru Ram and Others, (2018) 18 SCC 130 : 2018 OnLine SC 1546, I award a sum of Rs.40,000/- towards filial consortium for the 5th claimant alone. The amount awarded towards funeral expenses appears to be reasonable and in tune with the decision of the Hon'ble Supreme Court in Sarla Verma (Smt) and Others Vs. Delhi Transport Corporation and Another, (2009) 6 SCC 12. The Tribunal has however not awarded amounts towards future prospects. Therefore, shall be an addition of 10% towards future prospects as per the decision of the Supreme Court in National Insurance Company Limited Vs. Pranay Sethi and Others, (2017) 16 SCC 680. Thus, compensation to be awarded shall be re-quantified as follows:-

Heads and Calculation	Re-quantified amount of compensation
Loss of dependency:- Monthly income of the deceased – Rs.5,000/- Annual Income (5000x12) : Rs.60,000/- Add: Future Prospecturs – 10% (60,000 x 10/100) : Rs. 6,000/- : Rs.66,000/- Less: Personal Expenses – 1/3rd (66,000x 1/3) : Rs.22,000/- : Rs.44,000/- Multiplier– 11 (44,000 x 11) : Rs.4,84,000/-	Rs.4,84,000/-
Loss of consortium to 1st claimant (wife)	Rs. 40,000/-
Loss of filial consortium to 5th claimant (son) and 3rd respondent (mother) – Rs.40,000 x 2	Rs. 80,000/-
Loss of love and affection to the other claimants (Rs.10,000 x 3)	Rs. 30,000/-

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Funeral Expenses and Transport expenses	Rs. 30,000/-
Total	Rs.6,64,000/- rounded off to Rs.6,65,000/-

20. Therefore, the amount of compensation of Rs.5,75,000/- awarded by the Tribunal is enhanced to Rs.6,65,000/-. Therefore the Insurance Company, which is appellant in C.M.A.No.2712 of 2011, is directed to deposit the enhanced amount of compensation of Rs.6,65,000/- together with interest at 7.5% p.a from the date of claim petition till the date of deposit, less any amount already deposited, within a period of six weeks from the date of receipt of a copy of this Judgment.

21. Since the 2nd, 3rd and 4th claimants were not dependents of the deceased at the time of the accident, the enhanced amount of compensation of Rs.90,000/- (6,65,000 - 5,75,000) is not awarded to them.

22. Therefore, the total amount of compensation to be apportioned and withdrawn by the respective claimants and the 3rd respondent are as follows:-

Claimants/3rd respondent	Out of the amount of compensation awarded by the Tribunal (Rs.5,75,000)	Out of the enhanced amount of compensation awarded by this Court (Rs.90,000)	Out of Total amount of Compensation (Rs.6,65,000)
1st claimant	Rs.4,00,000/-	Rs.30,000/-	Rs.4,30,000/-
2nd claimant	Rs. 15,000/-	-	Rs. 15,000/-
3rd claimant	Rs. 15,000/-	-	Rs. 15,000/-
4th claimant	Rs. 15,000/-	-	Rs. 15,000/-
5th claimant	Rs. 15,000/-	Rs.30,000/-	Rs. 45,000/-
3rd respondent	Rs.1,15,000/-	Rs.30,000/-	Rs.1,45,000/-

23. Therefore, the claimants and the 3rd respondent are permitted to withdraw their respective shares as apportioned above together with proportionate interest and costs, less any amount already withdrawn, by filing suitable applications before the Tribunal.

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24. Accordingly, the C.M.A.No.2712 of 2011 filed by the Insurance Company is dismissed and the C.M.A.No.2521 of 2013 filed by claimants is partly allowed. No cost. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

kkd/jen

To:-

Motor Accidents Claims Tribunal,
Additional District & Sessions Judge,
Fast Track Court - I, Poonamallee.

Copy to : The Section Officer
V.R.Section
High Court Madras.

C.M.A.Nos.2712 of 2011
& 2521 of 2013 and
M.P.No.1 of 2011

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