

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.02.2020

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.3347 of 2014

and

M.P.No.1 of 2014

Bajaj Allianz General Insurance Co. Ltd.,
G.E.Plaza, Airport Road,
Yerawada, Pune - 411 006,
(Raydon Auto, Avanasi Road,
Coimbatore). ... Appellant/2nd Respondent

Vs.

1. Raja
2. Govindammal ... Respondents 1 & 2/Petitioners
3. K.Mohammed Ismail ... 3rd Respondent/1st Respondent
4. R.Muni Sankar ... 4th Respondent/3rd Respondent
5. IFFCO TOKIO General
Insurance Co. Ltd.,
Represented by its Branch Manager,
Ponmani Towers, 73,
Avarampalayam Road,
New Sidhapudur,
Coimbatore - 44. ... 5th Respondent/4th Respondent

Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act 1988, against the award and decree dated 30.04.2013 made in M.C.O.P.No.1116 of 2013 on the file of the Motor Accidents Claims Tribunal, Special Sub Judge, Krishnagiri.

For Appellant : Mr.M.L.Ganesh

For R1 & R2 : M/s.Mukund R.Pandiyan

For R5 : Mr.Michal Visuvasam

R3 & R4 : Set Exparte before Tribunal

Judgment

This Civil Miscellaneous Appeal has been filed against the award and decree dated 30.04.2013 made in M.C.O.P.No.1116 of 2013 on the file of the Motor Accidents Claims Tribunal, Special Sub Judge, Krishnagiri.

2. The case of the appellant is that on 26.02.2006 at about 3.10 p.m., one R.Bharanichandran aged about 25 years was proceeding in his TVS Victor Motor Bike bearing Registration No.TN-38-T-4849 from North to South on the left side of Pappanaickampalayam - Kattur Road near Chakkra Tea Stall. At that time, one S.Kathirvel riding a Bajaj CD 100 Motor Bike bearing Registration No.TN-38-AD-9905 rashly and negligently dashed against the Bharanichandran's Motor Bike. As a result, the Bharanichandran sustained grievous head injuries and immediately he was admitted for treatment in Kovai Ramakrishna Hospital. In spite of the treatment, he died in the hospital. Hence, the first and second respondents who are the legal heirs of the deceased filed a petition before the Motor Accidents Claims Tribunal, Special Sub Judge, Krishnagiri, claiming Rs.25,00,000/- as compensation against the third respondent and the appellant as they are the owner and insurer of the bike Registration No.TN-38-AD-9905.

3. Denying the allegations, the appellant insurance company filed a counter affidavit before the Tribunal stating that the accident was occurred only due to the rash and negligent driving of the rider of the TVS Victor Motor Bike and not due to the rider of the Bajaj CD 100 Motor Bike. Further, it has been stated that the rider of the TVS Victor Motor Bike had no valid driving licence and the Bajaj CD 100 Motor Bike was not insured with them at the time of accident. Moreover, it has been stated that the claimants are bound to prove the age and income of the deceased, and the amount of compensation claimed is highly excessive.

4. During the trial, on the side of the appellant and the third respondent, one Thiru.Meganathan and one Thiru.Mohan were examined as RW1 and RW2, and Exs.R1 and R2 were marked. On the side of the respondents 1 & 2/claimants, the second respondent was examined herself as PW1, one Thiru.Jayakumar was examined as PW2 and Exs.P1 to P6 were marked.

5. The Tribunal after considering the pleadings, oral and documentary evidence, allowed the petition in favour of the respondents 1 & 2/claimants and awarded Rs.15,57,000/- as compensation as follows :

S.No.	Description	Amount
1.	Loss of dependency (9000 x 12 x 14)	15,12,000
2.	Loss of Estate	5,000
3.	Funeral Expenses	5,000
4.	Loss of Love & Affection	25,000
5.	Pain & Sufferings and Mental Agony	10,000
	Total	15,57,000

6. Aggrieved by the award, the appellant has filed this appeal before this Court stating that the Tribunal has erred in fixing the above compensation.

7. Heard the learned counsel for the appellant and the learned counsel for the respondents 1, 2 and 5, and perused the materials available on record.

8. On perusal of the award dated 30.04.2013 passed by the Motor Accidents Claims Tribunal, Special Sub Judge, Krishnagiri, it is observed that the respondents 1 & 2/claimants in order to prove that the rider of the third respondent's bike was the cause for the alleged accident marked Ex.P1 the FIR copy which was filed against the rider of the third respondent's bike and filed proof affidavit before the Court below, and also they examined one Jayakumar as PW2 who is the eye witness in this case. The PW2 has stated in his proof affidavit that on 26.02.2006 at about 03.30 p.m., while the deceased was proceeding in his TVS Victor Motor bike bearing Registration No.TN-38-T-4849 from North to South on the left side of Pappanaickampalayam - Kattur Road near Chakkra Tea Stall, the rider of the Bajaj CD 100 Motor Bike bearing Registration No.TN-38-AD-9905 drove the bike in a rash and negligent manner and hit against the TVS Victor. The appellant also examined one witness, namely, Meganathan, as RW1, but he has not deposed anything in respect of the occurrence took place on 26.02.2006, and therefore, the Tribunal based on Ex.P1 has come to the conclusion that the accident had occurred only due to the rash and negligent driving of the rider of the third respondent's bike. Further, on perusal of Ex.R1 the Policy copy, the Tribunal has found that the third respondent's bike was insured under the appellant insurance company on the time of accident, and therefore, has held that the appellant and third respondent are liable to compensate the respondents 1 & 2/claimants.

9. As far as the quantum of compensation is concerned, it is observed that the deceased had completed M.Sc., Chemistry and Diploma in Computer before the accident, and only considering the same, the Tribunal has fixed his income at Rs.18,000/ per month. Further, the deceased was a bachelor at the time of accident, and therefore, the Tribunal has deducted 50% of the income i.e. Rs.9,000/- for personal expenses of the deceased. As per the case [Sarla Verma and others vs Delhi Transport Corporation and another] reported in 2009 ACJ 1298, if the deceased was a bachelor at the time of accident, the mother alone will be considered as a dependent. The Tribunal only considering the same has adopted the appropriate multiplier 14 and awarded Rs.15,12,000/- (9000 x 12 x 14) as compensation towards Loss of dependency. The sum awarded under the other heads i.e. Rs.5,000/- each for Funeral Expenses and Loss of Estate, Rs.25,000/- for Loss of Love and Affection and Rs.10,000/- for Pain & Sufferings and Mental Agony, was also reasonably awarded by the Tribunal and the claimants are entitled to receive the same.

10. In view of the observations made by this Court, this Court does not find any error in the award passed by the Tribunal and therefore not inclined to interfere with the same.

11. Accordingly, this Civil Miscellaneous Appeal is dismissed and the appellant and the third respondent are directed to deposit the said amount of Rs.15,57,000/- jointly or severally with interest at the rate of 6% per annum from the date of petition till the date of realization, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the respondents 1 & 2/claimants are permitted to withdraw the same by filing a formal petition before the concerned Court, less the amount if any, already withdrawn. No costs. Consequently, the connected miscellaneous petition is closed.

सत्यमेव जयते

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

The Special Sub Judge,
Motor Accidents Claims Tribunal,
Krishnagiri.

Copy to

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

+1cc to Mr. S.Arunkumar, Advocate Sr.16370
+1cc to Mr.J.Michael Viswasam, Advocate Sr.16615
+1cc to Mr.Mukund R.Pandiyan, Advocate Sr.15950

C.M.A.No.3347 of 2014
and
M.P.No.1 of 2014

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