IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 14/11/2024

C O R A M

THE HONOURABLE Mr.JUSTICE **M.DHANDAPANI**

C.M.A.No.918 of 2020
a n d
Cross Objection No.45 of 2020
&
C.M.P.No.5738 of 2020 and 262 of 2022

C.M.A.No.918 of 2020

Bajaj Allianz General Insurance Company Ltd
Door No.11 (Office No.6 A)
People's Park, III Floor
Government Arts College Road
Coimbatore. ... Appellant

Vs

1. Saradha
2. Govindammal
3. Elumalai
4. Prabhu
5. K.Arunagiriraj ... Respondents

PRAYER : Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 10/4/2019 made in M.C.O.P.No.352 of 2013 on the file of the Motor Accidents Claims Tribunal (IV Additional District Court), Erode District, Bhavani.

1. Saradha
2. Govindammal
3. Elumalai
4. Prabhu ... Cross Appellants

Vs

1. Bajaj Allianz General Insurance Company Ltd
   Door No.11 (Office No.6 A)
   People's Park, III Floor
   Government Arts College Road
   Coimbatore.

2. K. Arunagiriraj ... Respondents

PRAYER : Cross Appeal filed under Order 41 Rule 22 of the Code of Civil Procedure to set aside the order dated 10/4/2019 made in M.C.O.P.No.352 of 2013 on the file of the Motor Accidents Claims Tribunal (IV Additional District Court), Erode District, Bhavani.

For appellant ... Mr.J.Michael Visuvasam
(in C.M.A.No.918 of 2020)

For respondents ... Mr.C.Kulanthaivel
(in C.M.A.No.918 of 2020) for R.R.1 to 4

No appearance for R.5.

For appellant ... Mr.C.Kulanthaivel
(in Cross Objection No.45 of 2020)

For respondents ... Mr.J.Michael Visuvasam
(in Cross Objection No.45 of 2020) for R.1

COMMON JUDGMENT

While the appeal in C.M.A.No.918 of 2020 has been filed by the Insurance Company, questioning the negligence and challenging the quantum of compensation awarded by the Tribunal as excessive, Cross Objection has been filed by the claimants challenging the inadequate compensation awarded by the Tribunal.

2. The facts of the case in brief are as follows:-

On 30/3/2013, the deceased aged 50 years, while travelling as a pillion rider, met with an accident in which the Tempo Traveller bearing Registration No.TN-38-BL-9885, driven by its driver in a rash and negligent manner dashed against the deceased in which the deceased sustained grievous injuries and died. Claiming that the deceased was running a Power Loom factory and earning a sum of Rs.10,000/- p.m., for the death of the deceased, the claimants who are the legal heirs of the deceased filed claim petition before the Tribunal, claiming a sum of Rs.15,00,000/-.

3. The Insurance Company has filed the appeal questioning the negligence and liability fastened on it as also the quantum of compensation awarded while the Cross Objection has been filed by the claimants claiming that the compensation awarded is insufficient.

4. Heard Mr.J.Michael Visuvasam, leanred counsel for the Insurance Company and Mr.C.Kulanthaivel, learned counsel for the respondents 1 to 4. There is no representation on behalf of the fifth respondent.

5. The learned counsel appearing for the appellant Insurance Company submits that even as per the deposition of P.W.1, fourth claimant, viz., son of the deceased was an eye witness to the accident, however, without examining the fourth claimant, P.W.1 has given evidence though she is not an eye witness to the occurrence. Therefore, her evidence cannot form the basis of fixing the liability on the part of the insurer to pay compensation. It is the further submission of the learned counsel that quantum of fixation under various heads are also on the higher side and he prays that this Court may interfere and set aside the said award.

6. Per contra, the learned counsel appearing for the Cross Objector/claimants submitted that though the deceased was running a Power Loom factory, earning a sum of Rs.15,000/- p.m., however, without sufficient reason or cause has fixed the monthly income at Rs.10,000/- and has quantified the compensation which requires to be enhanced.

7. Further it is submitted that no proper compensation has been awarded towards Love and Affection, loss of earning, transport and funeral expenses and therefore, he prays that compensation may be awarded under the said heads.

8. This Court gave its anxious consideration to the arguments advanced by the learned counsel appearing on either side and also perused the oral and documentary evidence and the judgment passed by the Tribunal.

9. The pivotal contention advanced on behalf of the appellant is that the liability cannot be fastened on the insurer as no eye witnesses have been examined and the evidence of P.W.1 who is the wife of the deceased is an

interested testimony which cannot form the basis of fixing the liability on the tempo driver.

10. In this regard it is true that no eye witnesses have been examined by the claimants. First Information Report has been lodged before the Law Enforcing Agency by the fourth claimant wherein it is stated that he had witnessed the accident. The fourth claimant is the son of the deceased and even as per the submission of the learned counsel for the appellant when P.W.1 is the wife of the deceased is an interesting witness and her testimony should not be considered for the purpose of fixing the liability and compensation equally the fourth claimant who is the son of the deceased would also fall within the very same category and therefore, non-examination of the fourth claimant would not in any manner prejudice the case of the claimants.

11. On the other hand, when the appellant Insurance Company contends that no eye witnesses have been examined to fasten the liability on the tempo driver, the appellant Insurance Company has not taken any steps to examine any eye witness on its side though the accident had taken place

in a broad day light in a busy locality. No explanation has been submitted by the appellant/Insurance Company for non examination of any eye witness. When the insurer turns the case against the claimant with regard to non examination of eye witness equally a duty is also cast upon the insurer to examine eye witnes to sustain its case. In the absence of any material placed by the insurer, the finding arrived at by the Tribunal fixing the liability on the Tempo traveller and thereby making the insurer liabile to indemnify the owner of the vehile cannot be found fault with. Therefore, this Court is not inclined to interfere with the finding of liability rendered by the Tribunal.

12. Coming to the question of compensation awarded by the Tribunal though the claimants claim that the deceased was earning a sum of Rs.15,000/- p.m., however, in the absence of any documentary evidence to substantiate the same, the Tribunal has fixed the income of the deceased at Rs.10,000/- which cannot be said to be erroneous. However, the Tribunal has erroneously deducted 1/3 towards personal expenses of the deceased whereas it ought to have been only 1/4. Further, no future prospects have been granted and in the light of the decision of the Constitutional Bench of

the Hon'ble Supreme Court in the case of ***NATIONAL INSURANCE COMPANY LIMITED Vs. PRANAY SETHI AND OTHERS {2017 (2) TNMAC 609 (SC),*** claimants are entitled for 10% of the futue prospects to the income of the deceased. Accordingly this Court quantifies the loss of income to the family of the deceased at Rs.8,91,000/- (11,000/- x 1/4 x 9 x 12) {11,000 x ¼ = 2,750/- (11,000 – 2750) 8,250 x 9 x 12)

13. A perusal of the order passed by the Tribunal reveals that a sum of Rs.20,000/- per children granting a sum of Rs.60,000/- has been granted under the head loss of love and affection which is on the higher side and it is not the consonance of decision of Pranay Sethi's case. Accordingly, this Court enhances the compensation of Rs.40,000/- per legal heir which comes to Rs.1,20,000/- under the head loss of love and affection. The Tribunal has granted Rs.40,000/- under the head loss of consortium which is confirmed. A sum of Rs.15,000/- has been awarded under the head funeral expenses and Rs.15,000/- under the head loss of estate which are just and reasonable and the same does not require any interference. A sum of Rs.10,000/- has been awarded under the head transport expenses which also does not require any interference. Accordingly, a sum of Rs.10,91,000/- as compensation

which is payable by the appellant Insurance Company to the claimants along with interest at the rate of 7.5% p.a., from the date of claim petition till the date of deposit.

14. In the result, **C.M.A.No.918 of 2020 filed by the Insurance Company is dismissed and the Cross Objection No.45 of 2020 filed by the claimants is allowed.** Of the compensation awarded, first claimant, viz., wife of the deceased would be entitled to a sum of Rs.6,00,050/- (55%) and the other claimants viz., children of the deceased are entitled to a sum of Rs.1,63,650/- x 3) (15%) = Rs.4,90,950/-

15. The Transport Corporation is directed to deposit the modified award amount along with interest at 7.5% p.a., from the date of claim petition to till the date of deposit, less the amount, if any, already deposited, to the credit of the claim petition within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the Tribunal is directed to transfer the amount as per the permissible apportionment to the bank account of the claimants through RTGS within a period of two weeks, thereafter.

M.DHANDAPANI,J

mvs.

No costs. Consequently, connected Miscellaneous Petitions are closed.

14/11/2024

mvs.

Index : Yes / No
Neutral Citation: Yes/No

To

1. The Motor Accidents Claims Tribunal
(IV Additional District Court), Erode District, Bhavani.

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