

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.06.2015

CORAM

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

C.M.A. No. 902 of 2012

&

Cross-Objection No. 8 of 2014

&

M.P.No. 1 of 2012 in C.M.A. No. 902 of 2012

C.M.A. No. 902 of 2012

M/s. Bajaj Allianz General Insurance Co. Ltd.,
No. 25/26, Prince Towers,
Ground Floor, College Road,
Nungambakkam,
Chennai - 600 006.

...Appellant/2nd Respondent

Vs.

1. A. Kamaal Basha
2. K. Habibunnisha
3. K. Mahaboobsha
4. K. Hussain Sha (Minor)
5. K. Munavar Sha (Minor)
6. K. Shayed Sha (Minor)
7. K. Mohamad Sharusha (Minor)
(Respondents 4 to 7 minors
rep. By father
and NF 1st respondent)

...Respondents 1 to 7/
Petitioners 1 to 7

8. V. Thangasamy
(8th respondent ex parte in Lower Court
and hence notice may be dispensed with)

...8th Respondents/
1st Respondent

Prayer: Civil Miscellaneous Appeal filed under section 173 of Motor Vehicles Act, 1988 as against the judgment and decree dated 30.10.2010 passed in M.C.O.P. No. 832 of 2006 by the Motor Accidents Claims

Tribunal (Principal District Court), Cuddalore.

Cross-Objection No. 8 of 2014

1. A. Kamaal Basha
2. K. Habibunnisha

...Cross-Objectors/
Respondents 1 & 2

Vs.

1. V. Thangasamy
(R1 set ex parte in Lower Court)

...1st Respondent/
8th Respondent

2. Bajaj Allianz General Insurance Co. Ltd.,
No. 25/26, Prince Towers,
Ground Floor,
College Road, Nungambakkam,
Chennai - 600 006.

...2nd Respondent/
Appellant

Prayer: Cross-Objection to set aside the judgment and decree dated 30.10.2010 made in MACT O.P. No. 832 of 2006 on the file of the Court of Principal District Judge at Cuddalore.

For Appellant in C.M.A. No. 902/2012/2nd respondent in Cross-Objection No. 8/2014 : Mr.M.B. Raghavan

For Respondents 1 to 7 in C.M.A. No. 902/2012/Cross-Objectors in Cross Objection : Ms. Ramya V. Rao
8th respondent in appeal/
1st respondent in Cross-objection - Exparte

सत्यमेव जयते
J U D G M E N T

The Civil Miscellaneous Appeal has been preferred by the Insurance Company as against the award of Rs.8,23,800/- granted by the Motor Accidents Claims Tribunal (Principal District Court), Cuddalore, for the death of one Jalaluddinsha, aged about 21 years, who was studying Final Year Diploma in Electronics and Communication Engineering, in the accident, which occurred on 18.12.2005. The parents of the deceased/respondents 1 and 2 in the appeal have also

filed Cross-Objection challenging the award passed by the Tribunal.

2. Heard Mr. M.B. Raghavan, learned counsel for the Insurance Company and Ms. Ramya V. Rao, learned counsel for the claimants.

3. The only question to be decided is with regard to the quantum of compensation awarded by the Tribunal.

4. As rightly pointed out by the learned counsel for the Insurance Company, since the claim petition was filed under Section 163-A of the Motor Vehicles Act, 1988, the Tribunal should not have exceeded II Schedule to the Motor Vehicles Act, 1988 and determined the monthly income of the deceased at Rs.8000/-. The said determination of monthly income at Rs.8000/- is contrary to law and the same is set aside. As per Section 163-A of the Act, the notional income to be fixed is Rs.40,000/- per annum. Accordingly, the notional income of the deceased is fixed as Rs.40,000/- per annum.

5. As far as the multiplier adopted by the Tribunal is concerned, the Tribunal wrongly applied multiplier 15, as per the age of the mother of the deceased. As per the judgment of the Honourable Apex Court rendered in Civil Appeal No. 4497 of 2015 dated 15.05.2015 (Munna Lal Jain and another V. Vipin Kumar Sharma and others), the age of the deceased alone should be the criterion for determining the multiplier. Accordingly, as per the age of the deceased, namely, 21 years, the appropriate multiplier to be adopted, in the light of the Apex Court's judgment in Sarla Verma's case ((2009) 6 SCC 121) is 18. Applying the same, "Loss of Income" is calculated as follows:

Loss of Income :: Rs.40,000 x 18
:: Rs.7,20,000/-

The sum of Rs.88,800/- awarded towards "Medical Expenses", as per Exs-P11 and P12; Rs.2500/- awarded each towards "Transportation Charges" and "Funeral Expenses" and Rs.10,000/- awarded towards "Loss of Estate, Love and Affection" are reasonable and are confirmed. Hence, the award of Rs.8,23,800/- granted by the Tribunal is confirmed, in the manner indicated above. The rate of interest awarded by the Tribunal @ 6% per annum remains unaltered.

6. It is submitted by the learned counsel for the Insurance Company that the entire award amount has already been deposited. As the claim petition, in respect of respondents 3 to 7 in the appeal, was dismissed by the Tribunal, the parents of the deceased/Cross-Objectors alone are entitled to the award amount and

they are permitted to withdraw their respective shares, as per the direction of the Tribunal, while passing the award.

7. In the result, the Civil Miscellaneous Appeal as well as the Cross-Objection are dismissed confirming the award passed by the Tribunal. No costs. Connected M.P. is closed.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

nv

To

The Motor Accidents Claims Tribunal,
(The Principal District Judge)
Cuddalore.

1 CC to Ms. Ramya V. Rao , Advocate SR.No. 28491

1 CC to M/s.M.B.Gopalan, Advocate SR.No. 28830

C.M.A. No. 902 of 2012 &
Cross-Objection No. 8 of 2014

VD (CO)
PSI (19.06.2015)

सत्यमेव जयते

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