IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 15-09-2015

CORAM

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

AND

THE HONOURABLE MR.JUSTICE G.CHOCKALINGAM

C.M.A.No.3360 OF 2014

M/s.Bajaj Allianz General Insurance Company Limited,
No.25/26, Prince Towers, 4th Floor,
Collge Road, Nungambakkam,
Chennai9-6. ...Appellant/2nd Repondent

-vs-

1.Saidha
2.Reshma (Minor)
3.Majneem (Minor)
4.Akbar Basha (Minor)
5.Amanullah
6.M.David Rajan ...Respondents/1 to 6
Petitioners 1 to 5 /1st respondent

Respondents 2 to 4 are minors,
represented by their mother and
next friend Saidha.

Appeal filed u/s 173 MV Act 1988 against the award, dated 16.07.2014, made in MCOP No.3605 of 2011, on the file of the Motor Accident Claims Tribunal-cum-V Court of Small Causes, Chennai.

For appellant : Mr.Srinivasan Ramalingam
For respondents 1 to 5 : Mr.F.Terrychellaraja

JUDGMENT

(Judgment of the Court was delivered by S.Manikumar,J.)

M/s.Bajaj Allianz General Insurance Company Limited, has filed to appeal, challenging the quantum of compenstion of Rs.25,10,000/-, awarded to the legal representatives of the deceased, A.Ameed.

2. As the challenge in this appeal is restricted only to quantum, we deem it fit that it is not necessary to

delve into other aspects. In the accident, which occurred on 08.08.2011, about 10.00 hours, a 32 year old man, by name A.Ameed, stated to be a Painter and Driver, and claimed to be earning Rs.12,000/- per month, at the time of accident, died. Wife, three minor children and father have filed M.C.O.P.No.3605 of 2011 on the file of Motor Accident Claims Tribunal (V Court of Small Causes), Chennai, claiming compensation of Rs.20,00,000/-.

3. Accepting the contentions regarding avocation, and in the absence of any evidence to prove the income of the deceased, and placing reliance on the decision of the Hon'ble Supreme Court in Syed Sadiq v. Divisional Engineer, United India Insurance Company Limted, reported in 2014 ACJ 627, wherein, the monthly income of the injured therein, a vegetable vendor, had been fixed as Rs.6,500/-, the Claims Tribunal has fixed the income of the deceased herein A.Ameed, as Rs.10,000/-, and by observing that, salary and wages of employees cannot be static and bound to change, because of the wage increase, promotion, pay revision, inflation and increase in cost of living, the Claims Tribunal, following the ratio laid down by the Hon'ble Apex Court in Sarala Verma and Others v. Delhi Transport Corporation and Another, reported in 2009 (6) SCC 121, added up 50% under the head 'future prospects' to the income drawn by the deceased, at the time of accident and, thus, fixed a sum of Rs.15,000/- per month, for the purpose of computing loss of contribution to the family, and having regard to the number of dependants, the Claims Tribunal deducted 1/4 towards the personal and living expenses of the deceased and fixed the annual income of the deceased as Rs.11,250/-, for the purpose of computation of loss of dependency. Age of the deceased as per Ex.P-2-Death Report and Ex.P-3-Death Certificate was 32 years and, therefore, the Tribunal decided to apply 16 multiplier and accordingly, calculated the loss of dependency accordingly. Loss of dependency arrived at by the Tribunal is Rs.21,60,000/- (Rs.11,250/- x 12 x 16). Thereafter, the Claims Tribunal has awarded Rs.1,00,000/- for consortium, and as per the decision of the Hon'ble Supreme Court in Rajesh v. Rajbir Singh, reported in CDJ 2013 SC 485; and Rs.25,000/- for funeral expenses. The Tribunal also awarded Rs.2,00,000/- for loss of love and affection to the minor children and father. It further awarded Rs.25,000/- towards loss of estate. Altogether, the Claims Tribunal has awarded Rs.25,10,000/-, with interest at the rate of 7.5% per annum, from the date of petition till deposit.

4. Admittedly, the deceased was not a salaried person. Therefore, question of promotion, pay revision employed in the case of a permanent salaried staff for assessment of loss of future prospects, would not arise in this case. At the same time, as rightly observed by the Claims

Tribunal, income cannot be static and is bound to change.

5. Though it is the case of Mr.Srinivasan Ramalingam, learned counsel for the appellant-Insurance Company, that in case of employees in unorganised sector or non-salaried or persons, without any permanent job, addition of 30% under the head, “future prospects”, with the income drawn, at the time of death, should not be made, for computation, this Court is not inclined to accept the said submission that for the reason, that the expression “future prospects” should not be confined only to the prospects of the deceased in the career, progress or upgradation of position, in which, he was engaged, prior to death, but we are of the considered view that the expression “future prospects” should also be extended to the likelihood of increase in wages, salary or other emoluments and thereby, increase in income, earned by either a skilled or semi-skilled person, considering the upward increase in cost price, inflation and such other factors.

6. Judicial notice can also be taken, that the cost of essential commodities, labour, etc., have never remained static and it is always on the rise. Periodically, electricity and water charges, are on the increase. Consequent to the upward revision of fuel, cost of transportation has increased. To meet out the basic amenities, there would be an increase in the income. In relation to employment, education plays an important role. If there are more qualified persons and less number of jobs, then there is a possibility of fixing lesser salary, in the case of unorganised sectors. However, there cannot be a thumb rule, that there would not be any change in income, forever.

7. Considering the avocation pleaded and the number of dependants, this Court is not inclined to interfere with the inocme of the deceased at Rs.10,000/- per month, determined by the Tribunal. However, instead of adding up 50% of the said income under the head future prospects, this Court deems it fit to adopt only 30%. There is no change in the application of multiplier. Thus, the loss of dependency is computed after deducting 1/4 towards the personal and living expenses of the deceased, comes to Rs.13,000/- (Rs.10,000/- + 30% future prospects) x 12 x 16 x 3/4, which comes to Rs.18,72,000/-. Consortium of Rs.1,00,000/- awarded to the wife would remain intact. Sum of Rs.2,00,000/-, to be awarded under the head 'loss of love and affection to minors, is enhanced to Rs.3,00,000/-. Father has been awarded a compensation of Rs.50,000/-, under the abovesaid head. Though the Claims Tribunal has not awarded any compensation under the head 'transportation', considering the expenses incurred for transporting the corpse to the residence and thereafter, to the burial ground or crematorium, a sum of Rs.10,000/- is awarded. Funeral expenses of Rs.10,000/- awarded by the

Tribunal is sustained. Minor children have lost support and guidance of their father, at a very young age. Therefore, Rs.25,000/- has been awarded under the head 'loss of estate'. There is no award for damage to clothes and articles. Hence, Rs.2,000/- has been awarded. Now, the quantum of compensation, after reworking, as stated supra, works out to Rs.23,84,000/- as under :

Loss of dependency	: Rs.18,72,000/-
Consortium	: Rs. 1,00,000/-
Loss of love and affection to minors	: Rs. 3,00,000/-
Loss of love and affection to father	: Rs. 50,000/-
Transportation	: Rs. 10,000/-
Funeral expenses	: Rs. 25,000/-
Loss of estate	: Rs. 25,000/-
Damages to clothes	: Rs. 2,000/-
	Rs.23,84,000/-
Amount awarded by the Tribunal	: Rs.25,10,000/-
Reduction	: Rs. 1,26,000/-

8. Record of proceedings show that on 28.11.2014, in M.P.No.1 of 2014, 50% of the award amount, with proportionate accrued interest and cost, in addition to the statutory deposit, has been directed to be deposited . Therefore, the appellant is directed to deposit the balance amount, less statutory deposit of Rs.25,000/-, to the credit of M.C.O.P.No.3605 of 2011, on the file of the Motor Accident Claims Tribunal-cum-V Court of Small Causes, Chennai, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit, first respondent/wife is permitted to withdraw the share of Rs.7,10,000/-, with proportionate interest, awarded by the Tribunal, by filing necessary application before the Tribunal. Respondents 2 to 4 are entitled to Rs.5,00,000/- each, less Rs.26,000/- altogether. Fifth respondent is entitled to get Rs.2,00,000/-. Fifth respondent is also permitted to withdraw his share, with proportionate interest, by filing necessary application before the Tribunal. In so far as compensation apportioned to the minor children, as revised supra, the Claims Tribunal shall deposit their shares in a Nationalised Bank, until they attain majority. Interest accrued on the minor shares is permitted to be withdrawn by the guardian of minors, once in three months.

9. C.M.A.is allowed in part, as above. Connected M.P.No.1 of 2014 is closed.

-Sd/-
Assistant Registrar

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Sub Assistant Registrar

To

1.The Motor Accident Claims Tribunal-
V Court of Small Causes,
Chennai.

2. The Section Officer,
V.R.Section,
High court,
Madras.

+1 cc to M/s.M.Malar,Advocate(sr.50443)
+1 cc to Mr.Srinivasan,Ramalingam,Advocate(sr.50342)

C.M.A.No.3360/2014

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cp 20/10/2015