IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30/9/2016

C O R A M

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
AND
THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

Civil Miscellaneous Appeal No.2098 of 2016

Bajaj Allianz General Insurance
Company Ltd
Old No.276 & 277 New No.497 & 498
Isanan Kattima Building
5th Floor
Poonamallee High Road
Arumbakkam
Chennai 600 106. ... Appellant/2nd Respondent

Vs

1.Royammal

2.A.Yagappan

3.Y.Mejala Rexcy ... Respondents 1 to 3/Petitioners 1 to 3

4.C.A.Gunasekaran ... Respondent 4/1st Respondent

Prayer: Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 29/4/2016 in M.C.O.P.No.3460 of 2013 on the file of the Motor Accident Claims Tribunal (Special Sub-Court - 2), Chennai.

For appellant : Mr.Srinivasan Ramalingam

For respondent : Mr.N.Sundaram for R.1.

J U D G M E N T
(Judgment of the Court was made by S.Manikumar,J)

Quantum of compensation of Rs.27,16,500/-, with interest, at the rate of 7.5% p.a., from the date of claim, till deposit, awarded by the Motor Accident Claims Tribunal (Special Sub-Court - 2), Chennai, to the legal representatives of the deceased, is the only challenge in this appeal by Bajaj Alliance General Insurance Company Limited.

2. Deceased was a B.E Graduate, aged about 23 years. Determining the monthly income as Rs.15,000/-, the Tribunal has added 50% towards future prospectus. Rs.22,500/- has been fixed, as the income for the purpose of computing loss of contribution to the family, comprising of parents and unmarried sister. After deduction, Tribunal has computed the annual loss of income, as Rs.2,68,000/-. As the deceased was a bachelor, 50% has been deducted towards the personal and living expenses and applied 18 multiplier. The Tribunal has computed the loss of contribution to the family as Rs.24,12,000/- (2,68,000 x 18 x ½). In addition to the above, the Tribunal has awarded Rs.1,50,000/- under the head loss of love and affection (Rs.50,000/- each of the claimants). A further sum of Rs.1 lakh has been awarded under the head loss of Estate, Rs.19,500/- for transportation, Rs.10,000/- for funeral expenses and Rs.5,000/- for damages to clothes and articles. Under the head expectation for life, the Tribunal has awarded Rs.20,000/-. Altogether, the Tribunal has awarded compensation of Rs.27,16,500/-, with interest, at the rate of 7.5% p.a., and apportioned the same to the claimants.

3. Assailing the correctness of the quantum of compensation and placing reliance on the decision of 2003 ACJ 81 (Madras), 2008 ACJ 614 (SC), 2010 ACJ 1971 (SC), 2012 ACJ 1180 (Madras DB), 2012 ACJ 2113 (Madras DB), Mr.Srinivasan Ramalingam, learned counsel for the appellant submitted that the Tribunal ought to have deducted, income tax from the annual income, determined for the purpose of computing the loss of contribution to the family. He further submitted that during the financial year 2012 - 2013 (assessment year 2013 - 14), relevant to the date of accident i.e., 7/4/2013, exemption from income tax was for Rs.2,00,000/- only.

4. Annual Income has been determined as Rs.2,70,000/-. For the relevant year, it is contended that for the balance amount of Rs.70,000/-, 10% of Income Tax, ought to have been deducted and according to him, the same works out to Rs.1,26,000/-. However, inviting the attention of this Court that the Tribunal had already deducted Rs.2,000/- p.a., and while computing the loss of contribution to the family, deducted Rs.36,000/- as income tax, for 18 years multiplier, he submitted that what requires to be deducted from the total compensation amount is Rs.90,000/-.

5. Mr.N.Sundaram, learned counsel for the respondents/ claimants, is agreeable for the deduction to be made. Submission is placed on record.

6. Going through the award, it could be seen that on account of the injuries, son of the respondents 1 and 2 died, and that the Tribunal has erred in awarding compensation of Rs.20,000/- under the head loss of expectation of life.

7. Though the learned counsel for the appellant contended that a sum of Rs.1 lakh awarded under the head loss of estate, is on the higher side and sought for reduction, considering the total compensation of Rs.1,50,000/- awarded under the head loss of love and affection, this Court is not inclined to disturb the same.

8. Though Mr.Srinivasan Ramalingam, learned counsel for the appellant-Insurance Company contended that the Tribunal has erred in fixing the monthly income of the deceased, on the basis of the income-Tax returns, submitted after the death of the deceased, this Court is not inclined to accept the same, for the reason that the Hon'ble Apex Court in a recent decision in Kalpanaraj Vs. Tamil Nadu State Transport Corporation reported in 2015 (2) SCC - 764, has determined the monthly income on the basis of Income-Tax returns.

9. A sum of Rs.10,000/- has been awarded for funeral expenses. On the aspect of quantum of compensation, under the head, funeral expenses, the Hon'ble Supreme Court in Rajesh and others Vs. Rajbir Singh and others reported in 2013(3) CTC 883, held as follows:

> "21. We may also take judicial notice of the fact that the Tribunals have been quite frugal with regard to award of compensation under the head 'Funeral Expenses'. The 'Price Index', it is a fact has gone up in that regard also. The head 'Funeral Expenses' does not mean the fee paid in the crematorium or fee paid for the use of space in the cemetery. There are many other expenses in connection with funeral and, if the deceased is follower of any particular religion, there are several religious practices and conventions pursuant to death in a family. All those are quite expensive. Therefore, we are of the view that it will be just, fair and equitable, under the head of 'Funeral Expenses', in the absence of evidence to the contrary for higher expenses, to award at least an amount of Rs.25,000/-."

10. Compensation awarded by the Tribunal is Rs.27,16,500/- with 7.5% p.a., interest. Applying the decision, stated supra, and after deducting 10% towards income tax and deducting Rs.20,000/- under the head loss of expectation of life, compensation due and payable to the legal representatives of the deceased, works out to Rs.26,21,500/- with interest at the rate of 7.5% p.a.

11. In the result, this Civil Miscellaneous Appeal is allowed in part. Rs.26,21,500/- (Rupees Twenty Six lakhs twenty one thousand and five hundred only) now determined by this Court shall be deposited, with accrued interest and costs, to the credit of M.C.O.P.No.3460 of 2013, on the file of the Motor Accidents Claims Tribunal (Special Sub-Court – 2), Chennai, within a period of four weeks, from the date of receipt of a copy of this order. No costs. Consequently, the connected Miscellaneous Petition No.15739 of 2016 is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

mvs.

To

1.The Motor Accident Claims Tribunal
(Special Sub-Court - 2),
Chennai.

2.The Section Officer,
V.R.Section,
High Court, Madras 104.

+1cc to Mr.Srinivasan Ramalingam, Advocate, S.R.No.56331
+2cc's to Mr.N.Sundaram, Advocate, S.R.No.56551

C.M.A.No.2098 of 2016

RSK(CO)
CA(09/11/2016)