IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED : 28.09.2016

CORAM:

THE HON'BLE MR. JUSTICE S. MANIKUMAR
AND
THE HON'BLE MR. JUSTICE N.AUTHINATHAN

C.M.A.No.2116 of 2016
and
C.M.P.No.15310 of 2016

Bharti AXA General Insurance Co., Ltd.
II Floor, 965 Avinashi Road
Coimbatore ... Appellant/2nd Respondent

Vs.

1.Senthamizselvi
2.Minor Vennila
3.Minor Rajalakshmi
4.Minor Ranjithkumar
(minors 2 to 4 rep. by their mother and guardian Senthamizselvi)
5.Karupayee
6.M/s.RVN Transports
Attur Trichy Bypass Road
Kamarajar Nagar, Udayappatti
Salem - 636 014 ... Respondents/Petitioners 1 to 5/1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree, dated 12.4.2016 made in MCOP No.259 of 2013, on the file of Motor Accidents Claims Tribunal (Additional District and Sessions Judge), Ariyalur.

For Appellant : Mr.Srinivasan Ramalingam

JUDGMENT
(delivered by S.MANIKUMAR, J.)

Quantum of Rs.19,82,000/- with interest, at the rate of 7.5% per annum, from the date of claim, till realisation, awarded to the legal representatives of the deceased, is the only challenge in this appeal, on the ground that the Tribunal, has erred in fixing a higher income of Rs.15,000/-, for the purpose of computing loss of contribution to the family. Therefore, there is no need to advert to the aspect of negligence and liability.

2. Short facts leading to the appeal are that, in the accident which occurred on 21.8.2013, a 47 years old man died. According to the legal representatives, by running cement dealership, the deceased earned Rs.50,000/- per month. Wife, three minor children and mother of the deceased have filed MCOP No.259 of 2013 on the file of the Motor Accident Claims Tribunal (Additional District Judge), Ariyalur, claiming compensation of Rs.50,00,000/-. To prove avocation and income of the deceased, PW1-Senthamilselvi, wife of the deceased has deposed that at the time of accident, deceased was running a cement dealership. To prove the same, PW1 has marked Exs.P10 to Exs.P17. Ex.P10 - Registration certificate for new branch issued by CTO, Ex.P11 - is dealership letter from Ultratech Cement, Ex.P12 - Authorisation Certificate, Ex.P13 - xerox copy of passport of the deceased, Ex.P14 - Certificate issued by Commercial Tax Officer, Jayankondam, Ex.P15 - Invoice for the supply from Sumathi Steel Rolling Mills, Ex.P16 - Rental Agreement and Ex.P17 - Salary Particulars. On perusal of the same, the Tribunal has observed that no specific amount was mentioned as monthly income earned by the deceased, and in the absence of income particulars, the Tribunal considered Rs.15,000/- as the monthly income for the purpose of computing the loss of contribution to the family. Thereafter, deducted 1/5th towards personal and living expenses of the deceased. As the deceased was aged 47 years, at the time of accident, applied multiplier 13, and computed the loss of contribution to the family as Rs.18,72,000/- (Rs.12,000 x 12 x 13).

3. That apart, the Tribunal has awarded a sum of Rs.10,000/- each to the respondents 1 to 5 herein/claimants, under the head loss of love and affection, awarded of Rs.10,000/- under the head funeral expenses and Rs.50,000/- under the head consortium to the wife of the deceased. Altogether, the Tribunal has awarded a sum of Rs.19,82,000/- as compensation, with interest, at the rate of 7.5% per annum from the date of claim till deposit.

4. Being aggrieved, the appellant herein/Bharti Axa General Insurance Co. Ltd. is on appeal, with a prayer to deduct the quantum of compensation. Though Mr.Srinivasan Ramalingam, learned counsel for the appellant submitted that the Tribunal has erred in fixing a higher sum of Rs.15,000/- as the monthly income, erred in deducting 1/5th instead of 1/4th, towards the personal and living expenses of the deceased and thus awarded excess compensation under the head loss of contribution to the family, this court is not inclined to accept the above contentions of the learned counsel for the insurance company, for the reason that, in order to meet the basic requirements, namely, food, shelter, clothing and other incidental expenses, one requires a reasonable income. Electricity consumption charges, rate of essential commodities and other statutory taxes are on the rise. In the case on

hand, the deceased is survived by a family, which comprises of wife, three minor children and mother of the deceased and thus the Tribunal has not erred in arriving at the monthly income.

5. Further, under the head loss of love and affection, compensation of Rs.10,000/- each, alone has been awarded to wife, three minor children and mother of the deceased, which is nothing but pittance. The Tribunal could have awarded Rs.1,00,000/- to wife, Rs.50,000/- each to minor children and Rs.25,000/- to the mother of the deceased under the said head.

6. The Tribunal has awarded a lesser sum of Rs.50,000/- under the head consortium, to the wife and Rs.10,000/- for funeral expenses. As per the decision of the Hon'ble Apex Court, the Tribunal ought to have awarded a sum of Rs.25,000/- under the head funeral expenses. There is no award for transportation and conventional damages. Thus the overall quantum of compensation awarded to the legal representatives, cannot be said to be higher or excess, warranting any reduction. Hence the civil miscellaneous appeal is liable to be dismissed.

In the result, the appeal is dismissed, confirming the judgment and decree of the Motor Accident Claims Tribunal (Additional District and Sessions Judge), Ariyalur dated 12.4.2016 made in MCOP No.259 of 2013. The appellant-Insurance Company, is directed to deposit the entire award amount, with proportionate accrued interest and costs, less the statutory deposit, to the credit of the above said MCOP, within a period of four weeks from the date of receipt of a copy of this order. The Tribunal is further directed to affix a copy of this judgment in the Notice Board of the Tribunal mentioning the name of the parties to MCOP No.259 of 2013, and the disposal of the appeal filed by Bharti Axa Insurance Co. Ltd.. The Tribunal is further directed to disburse the compensation amount, only after due verification and identity of the claimants/respondents herein. We wish to state that, there should be strict compliance. The share of the minors shall be deposited in any one of the Nationalised Banks in fixed deposit under the reinvestment scheme initially for a period of three years. The interest accruing on the share of the minors shall be paid to the guardian once in three months, till they attain majority. Deposit should be made within four weeks from the date of receipt of a copy of this judgment. No costs. Consequently, the connected civil miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

asr

To

The Additional District and Sessions Judge,
Motor Accident Claims Tribunal,
Ariyalur.

+1cc to Mr.Srinivasan Ramalingam, Advocate, S.R.No.55433

C.M.A.No.2116 of 2016

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