

In the High Court of Judicature at Madras

Dated: 11.01.2016  
Coram

The Honourable Mr. Justice T.RAJA  
C.M.A.No.2840 of 2015

Bajaj Alliance General Insurance Co. Ltd.,  
No.25/26, College Road,  
Nungambakkam, Chennai-34. ... Appellant/2nd Respondent

..vs..

1.Rahmath Beevi ...1st Respondent/Petitioner  
2.WSAR Habbibullah,  
M/s.WSA Reality Company,  
No.4323, P.H. Road,  
Aminjikarai, Chennai-29 ...2nd Respondents/1st  
Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award and decree passed by the learned Chief Judge, (Small Causes Court), (MACT), Chennai in M.C.O.P.No.641 of 2012 dated 13.11.2013.

For Appellant : Mr.S.Arun Kumar  
For Respondent-1/Caveator: Mr.M.Liagat Ali

JUDGMENT

Aggrieved by the impugned award passed by the learned Chief Judge, Motor Accident Claims Tribunal, Small Causes Court, Chennai, in M.C.O.P.No.641 of 2012, the Bajaj Insurance Company has come forward with the present appeal.

2.The Tribunal has awarded a sum of Rs.9,50,000/- for the loss of life of the claimant/respondent's husband aged about 70 years who was working as an Administrator of Wavoo Wajeetha Women's College of Arts and Science, Kayalpatnam, Thoothukudi District.

3.Heard Mr.S.Arun Kumar, learned counsel for the appellant/Insurance Company as well as Mr.M.Liagat Ali, learned counsel for the respondent/claimant and also perused the materials available on record.

4.The learned counsel for the appellant submitted that the learned Tribunal had erred in awarding the compensation of Rs.9,50,000/- on surmises and conjunctures. He submitted that

the learned Tribunal had committed a grave error in coming to the conclusion and fixed the monthly income of the deceased at Rs.30,000/- (monthly salary of Rs.20,000/- and additional remuneration of Rs.10,000/-) as the same has not been proved by P.W.1 and P.W.3. Adding further, the learned counsel appearing for the appellant would submit that when the pay particulars of the deceased furnished in Ex.P9 were questioned by the appellant, challenging that the deceased was not even employed as Administrator at Wavoo Wajeeha Women's College of Arts and Science, Kayalpatnam stating that no registers whatsoever showing the proof of payment of monthly salary by the said college was produced, and that the P.W.3/Syed Ibrahim, Manager of the said college has also admitted during his cross examination before the Tribunal that the attendance register and salary register of the College were not produced, in the absence of any evidence like salary register, attendance register proving the continuous employment of the deceased from the said college prior to his demise, the Tribunal ought not to have fixed the income at Rs.30,000/-. Continuing his argument, the learned counsel would submit that the learned Tribunal ought not to have awarded any amount towards loss of estate but in the present case, a sum of Rs.10,000/- has been awarded towards loss of estate which is untenable in law and as such, the award is liable to be set aside, he pleaded.

5.Per contra, the learned counsel for the claimant/respondent would submit that the deceased worked as Professor of Economic Department in Athithanar College, Thiruchendur and thereafter, he worked as Principal of Muslim Arts College, Thiruvithangadu and retired and at the time of death, he was drawing a pension of Rs.35,000/- and the salary certificate/Ex.P9 issued by the Secretary being the owner of Wavoo Wajeeha Women's College of Arts and Science, Kayalpatnam on 18.01.2013, cannot be ordinarily doubted, for the salary certificate marked as Ex.P16 has been sufficiently corroborated by P.W.3/Syed Ibrahim/Manager of the said College and accordingly, opposed the contentions adduced by the learned counsel for the appellant in regard to non production of salary and attendance register of the said college, on this basis he further pleaded that the documents produced by the college authorities should not be taken on record is totally untenable.

6.A perusal of Ex.P9, a pay particulars of the deceased issued by the Secretary of Wavoo Wajeeha Women's College of Arts and Science, Kayalpatnam, Thoothukudi District, shows the educational qualification of the deceased, who being a retired person had served as an Administrator and received honorarium and also remuneration for the classes handled which are as follows:

### Honorarium

| Period                                                 | Amount    |
|--------------------------------------------------------|-----------|
| April 2006 to May 2006                                 | Rs.12000  |
| June 2006 to May 2007                                  | Rs.72000  |
| June 2007 to May 2008                                  | Rs.72000  |
| June 2008 to May 2009                                  | Rs.96000  |
| June 2009 to May 2010                                  | Rs.120000 |
| June 2010 to May 2011                                  | Rs.120000 |
| June 2011 to July 2011                                 | Rs.20000  |
| August 1 <sup>st</sup> to August 17 <sup>th</sup> 2011 | Rs.5484   |

### Remuneration

| Dates      | Amount   |
|------------|----------|
| 30.01.2009 | Rs.7000  |
| 05.05.2009 | Rs.6000  |
| 07.12.2009 | Rs.3000  |
| 07.12.2009 | Rs.6250  |
| 08.04.2010 | Rs.2400  |
| 08.04.2010 | Rs.6250  |
| 08.04.2010 | Rs.6250  |
| 16.12.2010 | Rs.10000 |
| 30.05.2011 | Rs.10000 |

When the Insurance Company had encountered the College authorities namely, the Manager of the college, doubting the salary certificate marked as Ex.P9, the appellant was right in raising the point before this Court that when the college has come forward to issue the above said salary certificate showing the honorarium and remuneration received by the deceased for the periods mentioned in Ex.P9 before the learned Tribunal, they could have also produced the attendance register along with the salary certificate. In the peculiar facts and circumstances of the case, considering the fact that the deceased, who was a Ph.D holder and served as an Administrator, this Court is inclined to fix the salary at Rs.18,000/- per month including honorarium and additional remuneration. Out of the said amount of Rs.18,000/-, 1/3<sup>rd</sup> has been deducted towards personal expenses of the deceased and therefore, the loss of income is arrived at Rs.12,000/- per month and adopting 5 as multiplier, the loss of dependency is arrived at Rs.7,20,000/- (12,000x12x5). With regard to the compensation fixed under loss of consortium, a sum of Rs.25,000/- alone has been awarded by the Tribunal, which appears to be meagre. In Rajesh & others Vs. Rajbir Singh &

others [2013 (3) CTC 883], the Hon'ble Supreme Court held that it would be just and reasonable to award atleast Rs.1,00,000/- for loss of consortium and hence, a sum of Rs.1,00,000/- is hereby awarded under the head of loss of consortium. In respect of the other heads such as funeral expenses and transportation, the learned Tribunal had awarded only a sum of Rs.5,000/- & 10,000/- respectively which seems to be on the lower side and hence, the same has been refixed and a total sum of Rs.25,000/- is awarded under funeral expenses and transportation. Accordingly, the award is modified and the appeal is disposed of.

7.The break-up details of compensation re-assessed by this Court is as follows:

| S.No.           | Heads                                                                          | Amount of Calculation           |
|-----------------|--------------------------------------------------------------------------------|---------------------------------|
|                 | Loss of income                                                                 | Rs.18000/- per month            |
|                 | 1/3 <sup>th</sup> of Rs.18,000/- deducted as Personal Expenses of the deceased | [Rs.18000-Rs.6000]= Rs.12,000/- |
|                 | Compensation after multiplier of 5 is applied                                  | [Rs.12000x12x5]= Rs.7,20,000/-  |
| 1               | Loss of dependency                                                             | Rs.7,20,000/-                   |
| 2               | Loss of Consortium                                                             | Rs.1,00,000/-                   |
| 3               | Funeral Expenses & Transportation                                              | Rs. 25,000/-                    |
| 4               | Loss of Estate                                                                 | Rs. 10,000/-                    |
| Total (1+2+3+4) |                                                                                | Rs.8,55,000/-                   |

8.In the result, the Civil Miscellaneous Appeal is disposed of to the extent as mentioned above. Since the appellant/Insurance Company had deposited the entire award amount, the appellant is permitted to withdraw the balance amount. The respondent/claimant is permitted to withdraw the compensation amount awarded by this Court with proportionate interest less the amount already withdrawn, if any. There shall be no orders as to costs.

s/d-

Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

To

1.The Chief Judge, Small Causes Court,  
(The Motor Accident Claims Tribunal),  
Chennai.

+ 1 cc to Mr.ArunKumar Advocate SR 2395

+ 1 cc to Mr.Liaqat Ali Advocate, SR 2003

CMA.No.2840 of 2015  
and  
MP.No.1 of 2015

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