

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.04.2016

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G. RAMESH

and

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

C.M.A.No.442 of 2015 and M.P.No.2 of 2015

and Cross Objection No.27 of 2016

C.M.A.No.442 of 2015:-

- 1.Bajaj Allianz General Insurance Company Ltd.,
No.11 (Office No.6A) People's Park
III Floor, government Arts College Road
Coimbatore 641 018
 - 2.Bajaj Allianz General Insurance Company Ltd.,
No.11 (Office No.6A) People's Park
III Floor, Government Arts College Road
Coimbatore 641 018
- ...Appellants 1and 2/
3 and 5th Respondents

vs.

- 1.Gokila
 - 2.Minor Iswarya
rep. By her mother and
natural guardian
Gokila
 - 3.Jayaraj
 - 4.R.Velusamy
 - 5.S.Sureshkumar
 - 6.S.Saroja
 - A.R.Selvaraj
(deceased 7th Respondent in MCOP)
- ...Respondents 1 to 2/Petitioners 1 and 2
..Respondents 3 to 7/Respondents 1,2,4,6,7

Cross Objection No.27 of 2016:-

1.Gokila

2.Minor Iswarya

rep. By her mother and natural guardian Gokila

..Cross Appellants/R1 and 2

-Vs-

1.Bajaj Allianz General Insurance Company Ltd.,

No.11, Office No.6A, People's Park

2nd Floor, Government Arts College Road

Coimbatore-641 018

2.Bajaj Allianz General Insurance Company Ltd

No.11 (Office No.6A) People's Park

3rd Floor, Government Arts College Road

Coimbatore

...Respondents 1 and 2/Appellant 1 and 2

3.Jayaraj

4.R.Velusamy

5.Suresh Kumar

6.S.Saroja

A.R.Selvaraj (deceased 7th respondent in MCOP)

...Respondents 3 to 7/Respondents 3 to 7

Civil Miscellaneous Appeal and Cross Objection filed against the judgment and decree dated 28.08.2014 in M.C.O.P.No.1349 of 2008 on the file of Motor Accidents Claims Tribunal (Chief Judicial Magistrate), Tirupur.

For Appellant in CMA.

and R1 and R2

in Cross Objection

: Mr.Srinivasan Ramalingam

For Respondent 1 and 2 in CMA

and Cross Appellants in

Cross Objection

: Mr.K.Myilsamy for R1 and R2

COMMON JUDGMENT

(Judgment of the Court was delivered by HULUVADI G. RAMESH,J.)

The Bajaj Allianz General Insurance Company Ltd., has filed C.M.A.No.442 of 2015 challenging the quantum of compensation while the claimants/Gokila and Minor Iswarya have filed Cross Objection 27 of 2016 seeking enhancement of the compensation made in M.C.O.P.No1349 of 2008, dated 28.08.2014 on the file of Motor Accident Claims Tribunal, Chief Judicial Magistrate at Tiruppur.

2. It is a case of fatal accident. On 10.01.2008, while the deceased Senthil @ Senthilnathan was riding the motor cycle bearing Reg.No.TN-36-X-5631 from Sathyamangalam to Athani, he dashed against the Lorry bearing Reg.No.TN-36-D-3740, which was parked without danger light or indicator light in a negligent manner and in the resultant accident, Senthil @ Senthilnathan died due to head injuries. The claimants, who are wife and minor daughter filed a claim petition in M.C.O.P.No.1349 of 2008 seeking compensation of Rs.25,00,000/-.

3. In support of the claim, the claimant examined herself as P.W.1 and one Sivaraj and Palanisamy were examined as P.Ws.2 and 3 and Exhibits P.1 to P.16 were marked. On behalf of the Insurance Company, one Muthukumaran was examined as Ex.D.1 and Exhibits D.1 to D.4 were marked before the Tribunal.

4. The finding of the Tribunal is that both the 3rd respondent herein/Jayaraj and the deceased Senthil @ Senthilnathan are responsible for the accident and the liability was fixed in the ratio of 60 : 40 in respect of the 3rd respondent/Jayaraj/driver of the offending vehicle and the deceased/rider of the two-wheeler. Accordingly, the Tribunal, granted the following amounts as compensation with interest at 7.5% per annum:-

Sl. No.	Head	Amount granted by the Tribunal
1	Pecuniary loss	Rs. 20,37,600/-
2	Damage to clothing and properties	Rs. 5,000/-
3	Funeral Expenses	Rs. 20,000/-
4	Loss of consortium	Rs. 1,00,000/-
5	Loss of love and affection	Rs. 1,00,000/-
6	Pain and suffering	Rs. 50,000/-
	Total	Rs. 23,12,600/-

5. Learned counsel for the 2nd appellant contends that though the Tribunal fastened the contributory negligence on the part of the deceased at 40%, the Tribunal erred in directing the 2nd appellant to pay the compensation along with the owner of the two-wheeler, namely the 5th respondent. This contention is justifiable. Accordingly, the 2nd appellant is directed to pay the 40% of the award amount on behalf of the owner of the two-wheeler, namely the 5th respondent and recover the same from the owner of the two-wheeler.

6. Insofar as the issue regarding quantum of compensation is concerned, the learned counsel for the Insurance Company submitted that the compensation granted by the Tribunal is on the higher side and sought interference of this court.

7. On the other hand, the learned counsel for the claimants/Cross Objectors submitted that while awarding compensation, the Tribunal has not taken into consideration the future prospects of the deceased and thus sought for enhancement of compensation.

8. It is seen that the Tribunal has taken Rs.11,150/- as the monthly income of the deceased which he could have earned from his construction and medical shop business and by adopting a multiplier of 16 arrived at the pecuniary loss to the claimants at Rs.20,37,600/-. However, considering the age of the deceased i.e., 32 years at the time of the accident, no amount has been awarded under the head "Future Prospects" which the claimants are entitled to. Accordingly, following the ratio laid down by the Hon'ble Supreme Court in the case of MUNNA LAL JAIN AND ANOTHER VS. VIPIN KUMAR SHARMA AND OTHERS reported in (2015) 6 Supreme Court Cases 347, the claimants are entitled to addition of 50% on the actual income of the deceased as future prospects and accordingly, Rs.10,18,800/- is fixed as future prospects. Considering the facts and circumstances of the case, this court is not inclined to disturb the award already granted by the Tribunal in respect of the conventional heads. However, the ratio of liability fixed by the Tribunal at 60 : 40 in respect of the 3rd respondent/Jayaraj and the deceased is confirmed.

9. Accordingly, the compensation awarded by the Tribunal stands modified as follows:

Sl. No.	Head	Amount granted by the Tribunal	Amount granted by this Court
1	Pecuniary loss	Rs. 20,37,600/-	Rs. 20,37,600/-
2	Damage to clothing and properties	Rs. 5,000/-	Rs. 5,000/-
3	Funeral Expenses	Rs. 20,000/-	Rs. 20,000/-
4	Loss of consortium	Rs. 1,00,000/-	Rs. 1,00,000/-
5	Loss of love and affection	Rs. 1,00,000/-	Rs. 1,00,000/-
6	Pain and suffering	Rs. 50,000/-	Rs. 50,000/-
7	Future Prospects	----	Rs. 10,18,800/-

Sl. No.	Head	Amount granted by the Tribunal	Amount granted by this Court
	Total	Rs. 23,12,600/-	Rs. 33,31,400/-

10. In the result, the Civil Miscellaneous Appeal filed by the Insurance Company is Partly Allowed. The Cross Objection is also Partly allowed. Since the Cross Objection has been filed with the delay of 309 days and the compensation granted by the Tribunal is enhanced, the claimants are not entitled to claim any interest for the period of delay in filing the Cross Objection. Accordingly,

- (i) The award of the Tribunal is enhanced to Rs. 33,31,400/- from Rs.23,12,600/-.
- (ii) The award amount will carry interest at the rate of 7.5% per annum from the date of petition till the date of deposit as ordered by this Court.
- (iii) This Court by order dated 12.03.2015 directed the appellants/Insurance Company to deposit the entire award amount along with accrued interest. The insurer viz., the 2nd appellant is given liberty to recover 40% of the award amount from the owner of the vehicle.
- (iv) On such deposit, the claimants shall make appropriate application for withdrawal of the amount and the Tribunal shall distribute the enhanced amount also proportionately between the claimants in addition to the amount already awarded.
- (v) There will be no order as to costs in this appeal.
- (vi) Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

1.The Motor Accidents Claims Tribunal,
Chief Judicial Magistrate
Tirupur.

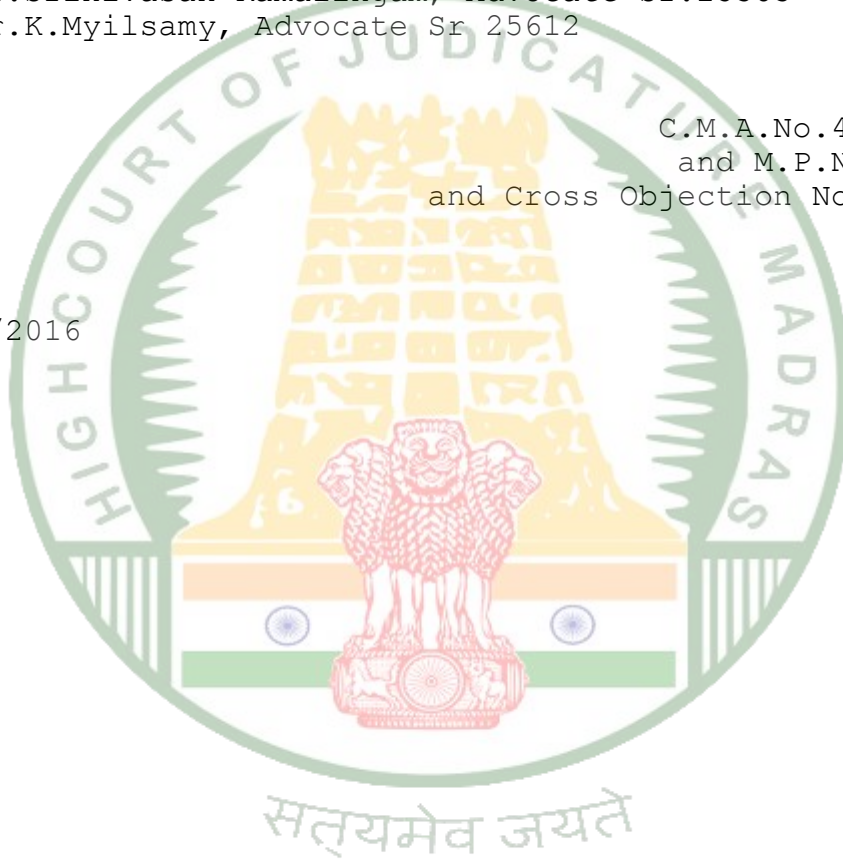
2.The Section Officer,
V.R.Section,
High Court, Madras.

+lcc to Mr.Srinivasan Ramalingam, Advocate Sr.25383

+lcc to Mr.K.Myilsamy, Advocate Sr 25612

C.M.A.No.442 of 2015
and M.P.No.2 of 2015
and Cross Objection No.27 of 2016

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