

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.03.2016

CORAM

THE HONOURABLE MR.JUSTICE R.SUDHAKAR  
and  
THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

C.M.A.No.550 of 2016  
and  
C.M.P.No.4588 of 2016

M/s. Bajaj Allianz General  
Insurance Company Limited  
D.No.11, People's Park, 3<sup>rd</sup> floor  
Government Arts College Road  
Coimbatore. ... Appellant/ 2<sup>nd</sup> Respondent

vs.

1. Tmt. Jayamalini
2. Minor S. Kishore  
Rep. By his mother and natural  
guardian S. Jayamalini ... Respondents 1 & 2 /  
Petitioners 1 and 2
3. K.A. Divakar ... 3<sup>rd</sup> Respondent/  
1<sup>st</sup> Respondent

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the common Judgment and Decree dated 17.08.2015 made in M.C.O.P. No. 666 of 2012 (connected with MCOP Nos. 150, 151 and 152 of 2013) on the file of the Motor Accidents Claims Tribunal, (IV Additional District and Sessions Judge), Coimbatore.

For Appellant : Mr. Srinivasan Ramalingam  
For Respondents/  
Caveators : Mr.C. Veeraraghavan for R1 and R2

JUDGMENT

(Judgment of the Court was delivered by R.SUDHAKAR,J.)

This Civil Miscellaneous Appeal has been preferred by the Insurance Company, challenging the common Judgment and Decree

dated 17.08.2015 made in M.C.O.P. Nos. 666 of 2012 and 150, 151 and 152 of 2013, on the file of the Motor Accidents Claims Tribunal, (IV Additional District and Sessions Judge), Coimbatore, whereby, the Tribunal has awarded a compensation of Rs.14,36,000/-, together with interest at 9% p.a. from the date of the petition till such deposit is made.

2. This is a case of fatal accident. On 07.08.2011, at about 9 a.m., the car bearing Registration No.TN 37 AR 7434, driven by one Smt.Meenakshi, on the portico of her house, instead of moving to the front, mistakenly reversed, whereby she lost control and the car fell into a 200 ft. deep well, nearby. In that accident, the co-passengers, Mr.Sivarajan and Mrs. Vasanthi died, Minor D. Adish Indraajith and Minor D. Pawnjith sustained grievous injuries. The wife and the minor son, of the deceased Sivarajan, aged about 40 years has filed the claim petition for a compensation of Rs.15,00,000/-.

3. In support of the claim, the wife of the deceased Sivarajan was examined as P.W.1, Mr. K.M. Ayyasamy, husband of the deceased Vasanthi, was examined as P.W.2 said to be an eye witness, one Mr. S.Jayaprakash was examined as P.W.3 and the Dr. Gajendran, as PW.4. Exs.P-1 to Ex.P.48 were marked, the details of which are as follows:-

| Ex.No. | Details                                          |
|--------|--------------------------------------------------|
| P1     | Certified copy of F.I.R                          |
| P2     | Certified copy of charge sheet                   |
| P3     | Certified copy of rough sketch                   |
| P4     | Certified copy of MVI report                     |
| P5     | Certified copy of Referred Charge sheet          |
| P6     | Certified copy of Post Mortem certificate        |
| P7     | Original death certificate of Sivarajan          |
| P8     | Original Legal Heir Certificate of Sivarajan     |
| P9     | Original Driving Licence of Sivarajan            |
| P10    | Xerox copy of Learner's licence of Meenakshi     |
| P11    | Xerox copy of family card of Sivarajan           |
| P12    | Xerox copy of Transfer certificate of Jayamalini |
| P13    | Xerox copy of Birth certificate of Kishore       |
| P14    | Salary certificate of Sivarajan                  |
| P15    | Xerox copy of Death certificate of Vasanthamani  |

| Ex.No. | Details                                                  |
|--------|----------------------------------------------------------|
| P16    | Letter of alteration of name in postmortem certificate   |
| P17    | Original death certificate of Vasanthi                   |
| P18    | Original legal heir certificate of Vasanthi              |
| P19    | Xerox copy of passport copy of Vasanthi                  |
| P20    | Xerox copy of Certificate of registration                |
| P21    | Income tax return copy                                   |
| P22    | Income tax return copy                                   |
| P23    | Income tax return copy                                   |
| P24    | Income tax return copy                                   |
| P25    | Income tax return copy                                   |
| P26    | Discharge summary of Baby Indrajith                      |
| P27    | Inpatient receipt of Indrajith                           |
| P28    | Medical Bills                                            |
| P29    | Discharge summary of Baby Pawanjith                      |
| P30    | CT Scan of Brain                                         |
| P31    | CT Scan of Abdomen                                       |
| P32    | Ultra sound scan                                         |
| P33    | Inpatient receipt of Pawnjith                            |
| P34    | Medical Bills                                            |
| P35    | Original Death Certificate of Meenakshi                  |
| P36    | Day book of Subramania Gowder Jewellery                  |
| P37    | Day book of Subramania Gowder Jewellery                  |
| P38    | Day book of Subramania Gowder Jewellery                  |
| P39    | Day book of Subramania Gowder Jewellery                  |
| P40    | Day book of Subramania Gowder Jewellery                  |
| P41    | Statement of Account in the name of Subramaniam Ayyasamy |
| P42    | Statement of Account in the name of Vasanthi             |
| P43    | Notice of Commissioner                                   |
| P44    | Letter from Commercial Tax office                        |
| P45    | Disability Certificate of Indrajith                      |
| P46    | X-ray of Indrajith                                       |
| P47    | Disability Certificate of Pawnjith                       |
| P48    | X-ray of Pawnjith                                        |

On behalf of the Insurance Company no witness was examined and no document was marked on their side before the Tribunal.

4. The Tribunal based on the oral evidence of the witnesses, the F.I.R. and also taking note of the fact that the deceased was having a valid driving licence and the driver of the car was possessing Learner's license to drive the car, came to the conclusion that the driver of the car was responsible for the accident and consequently liability was fixed on the Insurance Company. On this issue, learned counsel for the appellant has no serious objection with regard to the finding of the Tribunal as no material has been placed to come to a different conclusion from that of the conclusion arrived at by the Tribunal.

5. Based on the oral and documentary evidence, the Tribunal granted the following amounts as compensation with interest at 9% per annum:-

| Sl. No | Head                                                       | Amount granted by the Tribunal |
|--------|------------------------------------------------------------|--------------------------------|
| 1      | Loss of Income                                             | Rs. 8,40,000/-                 |
| 2      | Loss of future prospects                                   | Rs. 4,20,000/-                 |
| 3      | Loss of consortium to the 1 <sup>st</sup> petitioner       | Rs. 1,00,000/-                 |
| 4      | Loss of Love & affection to the 2 <sup>nd</sup> petitioner | Rs. 50,000/-                   |
| 5      | Loss of Estate                                             | Rs. 25,000/-                   |
| 6      | Transportation and Funeral expenses                        | Rs. 1,000/-                    |
|        | Total                                                      | Rs. 14,36,000/-                |

6. Learned counsel for the appellant/ Insurance Company has filed this Appeal questioning the quantum. It is submitted that while the Tribunal has already granted a sum of Rs.8,40,000/- towards loss of income, has further awarded 50% of the same, under the heading "loss of future prospects", in the absence of any concrete proof that the deceased had a permanent job. Further, the Tribunal has also erred by fixing the income of the deceased as Rs.7000/- per month and thereby calculating the amount towards loss of income. He further contended that the Tribunal has granted a very huge amount under the heading 'loss of dependency' and grant of 9% interest is much excessive. Hence, this appeal has been filed seeking for reduction of compensation.

7. On the other hand, the learned counsel for the respondents/claimants submitted that though the deceased was

working as a driver and earning a sum of Rs.8000/- per month, the Tribunal has fixed the income only as Rs.7000/- and adopting 15 multiplier, after deducting 1/3<sup>rd</sup> towards personal expenses, has granted total compensation of Rs.14,36,000/-, which includes compensation under conventional heads, with 9% interest. The age of the deceased was only 30 years, at the time of accident and hence the compensation granted under the heads loss of consortium, loss of love and affection and other heads, considering the age of the widow wife and minor son, is fair and reasonable.

8. This Court considered the submissions made on the learned counsel on either side and perused the materials available on record.

9. The Tribunal has fixed the income of the deceased at Rs.7000/- per month, who was a driver holding Light Motor Vehicle license and has adopted the correct multiplier and after the usual deductions, has granted the compensation towards loss of income; loss of consortium; loss of love and affection, etc.

10. The only question that is in dispute is, the rate of interest, which is fixed at 9%. This plea though tenable, we are not inclined to accept the same. Considering the prevailing rate of bank interest, this Court feels that the rate of interest of 9% could be reduced to 7.5%.

11. Accordingly, the Civil Miscellaneous Appeal is modified, by reducing only the rate of interest to 7.5% from 9%, from the date of petition till the date of deposit. The quantum of compensation granted by the Tribunal remains unchanged. The appellant Insurance Company is directed to deposit the entire award amount, with the modified interest and costs, less the amount already deposited, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit being made, the major claimant/ 1<sup>st</sup> respondent is permitted to withdraw her share as apportioned by the Tribunal. The share of the minor/2<sup>nd</sup> respondent shall continue to be in deposit till he attains majority and the 1<sup>st</sup> respondent is permitted to withdraw interest accruing on such deposit once in three months. There will be no order as to costs. Connected miscellaneous petition is also closed. There will be no order as to costs in this appeal.

Sd/-

Asst.Registrar (CS VI )

/true copy/

Sub Asst. Registrar

avr

To

The IV Additional District and Sessions Judge,  
(The Motor Accidents Claims Tribunal )  
Coimbatore.

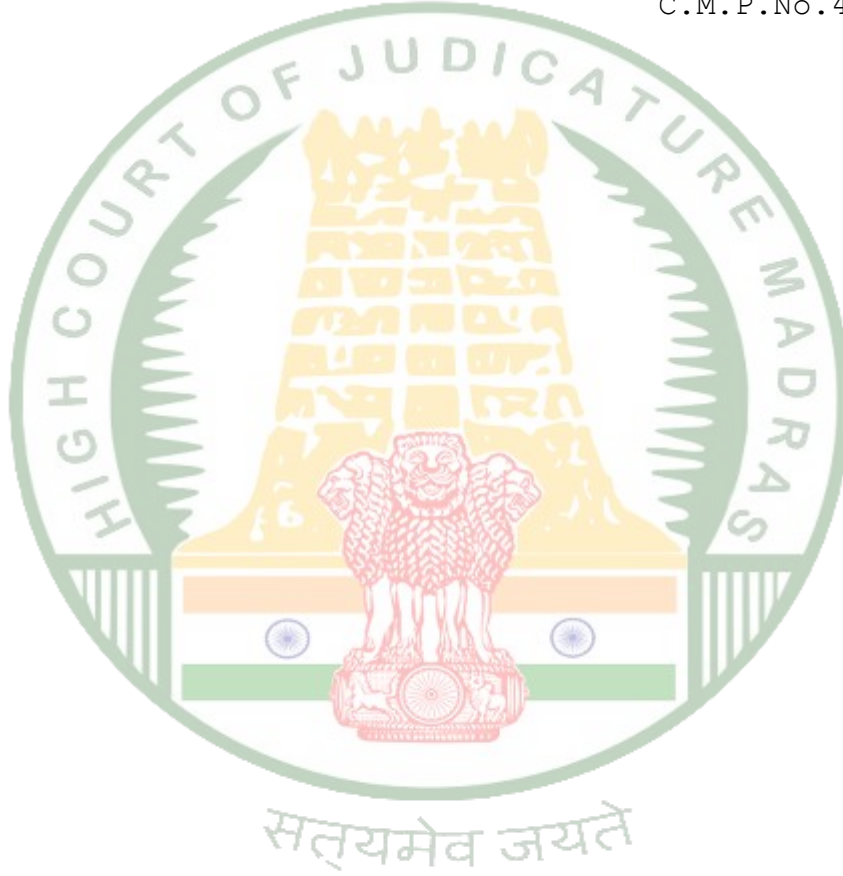
1 cc to Mr.C . veeraraghavan, Advocate, Sr. 17805

1 cc to Mr. Srinivasan Ramalingam, Advocate, sr. 17744

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MSM (CO)  
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