

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.551 of 2016

and

C.M.P.No.4589 of 2016

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

vs.

1. Sri. K.M. Ayyasamy
2. Smt. Sangeetha ... Respondents 1 & 2 /
Petitioners 1 and 2
3. K.A. Divakar ... 3rd Respondent/
1st 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. 150 of 2013 (connected with MCOP Nos. 666 of 2012, 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.33,68,000/-, 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 husband and the daughter of the deceased Vasanthi, aged about 51 years has filed the claim petition for a compensation of Rs.75,00,000/-.

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
P16	Letter of alteration of name in postmortem certificate
P17	Original death certificate of Vasanthi
P18	Original legal heir certificate of Vasanthi

Ex.No.	Details
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 Pawanjith
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 Pawanjith
P48	X-ray of Pawanjith

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

Meenakshi, who drove the car was possessing Learner's license to drive the car but accompanied with a professional driver, deceased Sivarajan, who was holding a valid license, 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. 21,12,000/-
2	Loss of future prospects	Rs. 10,56,000/-
3	Loss of consortium to the 1 st petitioner	Rs. 50,000/-
4	Loss of Love & affection to the 1 st petitioner	Rs. 50,000/-
5	Loss of Love & affection to the 2 nd petitioner	Rs. 50,000/-
6	Loss of Estate	Rs. 25,000/-
7	Transportation and Funeral expenses	Rs. 25,000/-
	Total	Rs. 33,68,000/-

6. The income of the deceased at Rs.24,000/- per month, fixed by the Tribunal based on the Ex.21 to 25, is not seriously disputed. However, the compensation granted under the heading 'loss of future prospects' is seriously objected by the appellant Insurance company and the same is justified stating that since the deceased was of age 51 years at the time of accident, the 'future prospects' should be only 15% as per the Judgment of the Hon'ble Supreme Court in the case of Rajesh & Ors. vs. Rajbir Singh & Others reported in 2013 (2) TN MAC 55 (SC). Further, the Tribunal ought to have noted that deceased was only doing business and that income from any business has its elements of uncertainties and when the deceased was not in a stable and permanent job with assured periodical increase in income, addition of income on the score of future prospects ought not to have been granted. Learned counsel also pleaded that the compensation awarded on the other heads is also excessive and particularly the rate of interest at 9%, is very high. 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

running a jewellery shop, earning a sum of Rs.65,000/- and was an income tax assessee for more than 10 years, and that her income was gradually increasing every year and hence the income of the deceased was fixed at Rs.24,000/-. Further, the Tribunal as per the Apex Court guidelines, adopting 11 multiplier, has granted total compensation of Rs.33,68,000/, which includes compensation under conventional heads, with 9% interest. Considering that the first claimant, at his old age has lost his wife, the Tribunal has granted compensation under the heads of loss of consortium, loss of love and affection and other heads, which is fair and reasonable.

8. Heard learned counsel for both sides and also perused the material available on records.

9. We find that there is no serious dispute on the income of the deceased fixed as Rs.24,000/- per month and the consequential determination of loss of income of Rs.21,12,000/- . The only point that has been raised for consideration is the compensation granted under the heading "future prospects", which is also justified based on the judgment of the Hon'ble Supreme Court, stated supra. Therefore, the deceased being a lady of 51 years, the amount under the heading "future prospects" is reduced to Rs.3,16,800/-. As rightly pointed out by the learned counsel for the appellant/ Insurance Company, compensation cannot be granted twice, separately, under the heading "loss of consortium" and "loss of love and affection" to the first claimant/ husband. Therefore, a sum of Rs.50,000/- is granted to the first claimant/ husband towards loss of consortium alone and Rs.50,000/- to the 2nd claimant/ daughter towards loss of love and affection. Moreover, the sum of Rs.50,000/- granted towards "loss of estate" and "transport and funeral expenses" is very excessive and hence we are inclined to grant Rs.20,000/- under the said heading.

10. Considering the prevailing rate of bank interest, this court feels that the rate of interest of 9% could be reduced to 7.5% per annum.

11. 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	Loss of Income	Rs. 21,12,000/-	Rs. 21,12,000/-
2	Loss of future prospects	Rs. 10,56,000/-	Rs. 3,16,800/-
3	Loss of consortium to the 1 st petitioner	Rs. 50,000/-	Rs. 50,000/-

Sl. No	Head	Amount granted by the Tribunal	Amount granted by this Court
4	Loss of Love & affection to the 1 st petitioner	Rs. 50,000/-	--
5	Loss of Love & affection to the 2 nd petitioner	Rs. 50,000/-	Rs. 50,000/-
6	Loss of Estate	Rs. 25,000/-	--
7	Transportation and Funeral expenses	Rs. 25,000/-	Rs. 20,000/-
	Total	Rs.33,68,000/-	Rs.25,48,800/-

12. Accordingly, the Civil Miscellaneous Appeal is partly allowed as follows:-

(i) The award of the Tribunal is reduced to Rs.25,48,800/- from Rs.33,68,000/-.

(ii) The interest granted by the Tribunal is also reduced from 9% to 7.5% per annum.

(iii) The appellant Insurance company is directed to deposit the modified award amount, less the amount already deposited, to the credit of M.C.O.P No.150 of 2013 on the file of the Motor Accidents Claims Tribunal, IV Additional District and Sessions Judge, Coimbatore, within a period of eight weeks from the date of receipt of a copy of this order.

(v) On such deposit, the respondents/ claimants are permitted to withdraw their respective shares, as apportioned by the Tribunal, on filing necessary application before the Tribunal.

(vi) Consequently, the connected Miscellaneous Petition is closed. There will be no order as to costs in this appeal.

Sd/-

Asst.Registrar

/true copy/

Sub Asst. Registrar

avr

To

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

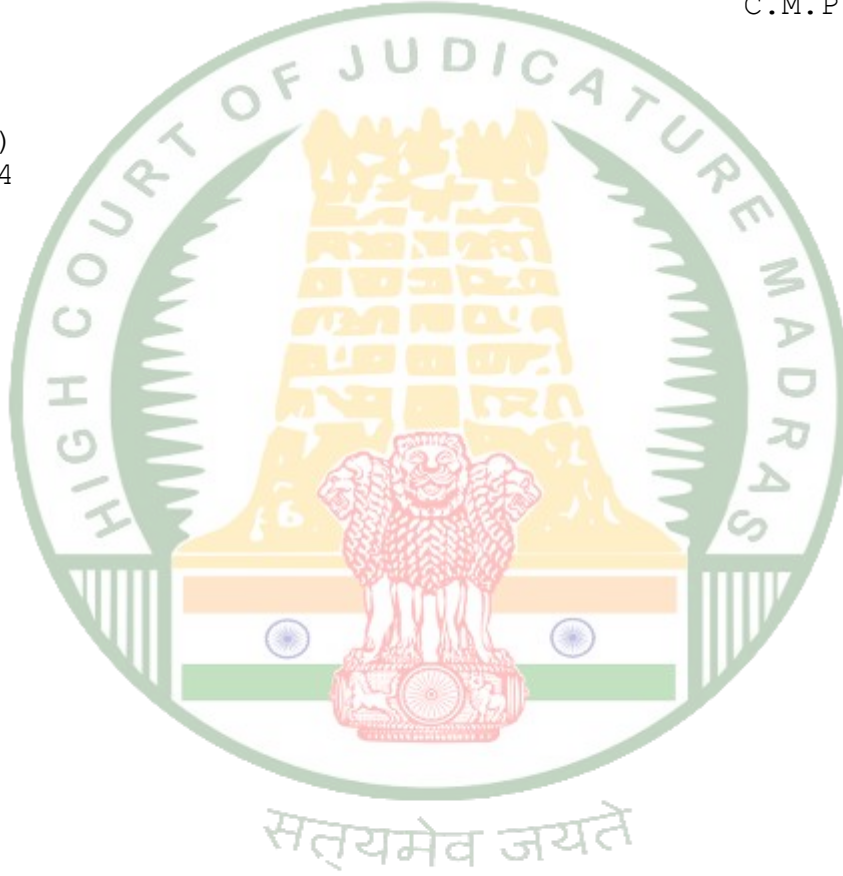
1 cc to Mr.C. Veeraraghavan, Advocate, Sr. 17804

1 cc to Mr. Srinivasan Ramalingam, Advocarte, sr. 17743

C.M.A.No.551 of 2016
and

C.M.P.No.4588 of 2016

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