IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.01.2016

CORAM:

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A.No.1439 of 2010
and
M.P.No.1 of 2010
and
Cross Objection No.111 of 2015

CMA 1439/2010:

Bajaj Allianz General Insurance Co. Ltd.,
25/26. Prince Towers, College Road,
Nungambakkam, Chennai-6. ... Appellant

Versus

1.R.Pappa
2.D.Ragupathy
3.S.Ramesh ... Respondents

Prayer: Civil Miscellaneous Appeal filed under section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 18.09.2009 made in M.C.O.P.No.930 of 2007 on the file of the Motor Accident Claim Tribunal, Additional District and Sessions Court (FTC-1), Poonamallee.

For Appellant : Mr.S.Arun Kumar

For Respondents : Mr.P.Selvaraj for R1 and R2
R3-Exparte before Tribunal

Cross Objection No.111 of 2015:
1.R.Pappa
2.D.Ragupathy ... Cross Objectors

Vs

1. Bajaj Allianz General Insurance Co. Ltd.,
25/26. Prince Towers, College Road,
Nungambakkam, Chennai-6.

2. S.Ramesh ... Respondents

Prayer: Cross Objection filed under Order XLI Rule 22 of CPC against the judgment and decree dated 18.09.2009 made in M.C.O.P.No.930 of 2007 on the file of the Motor Accident Claim Tribunal, Additional District and Sessions Court (FTC-1), Poonamallee.

For Cross Objectors : Mr.P.Selvaraj

For Respondents : Mr.S.Arun Kumar for R1
R2-Exparte before Tribunal

J U D G M E N T

This civil miscellaneous appeal has been filed by the Insurance Company against the award dated 18.09.2009 made in M.C.O.P.No.930 of 2007 passed by the Motor Accident Claim Tribunal, Additional District and Sessions Court (FTC-1), Poonamallee, awarding a sum of Rs.12,73,000/- as against the claim of Rs.40,00,000/-. A cross-objection has also been filed by the claimant against the above award.

2.Learned counsel for the Insurance Company would submit that the learned Tribunal erred in considering the income of the deceased as Rs.12,000/- per month despite no proper proof was filed. Admittedly, the deceased was a student and he was a trainee. He would further submit that the learned Tribunal ought to have deducted 50% towards personal expenses as per the judgment reported in 2009 ACJ 1298. The learned Tribunal also has erred in fixing the contribution at Rs.8,000/- per month when the income of the deceased stands unproved.

3.Per contra, learned counsel for the cross objectors/claimants would submit that the learned Tribunal ought to have fixed the income of the deceased at Rs.25,000/- per month as per Ex.P.11 and by taking note of the deposition of P.W.3, who has deposed that the deceased was working as Chartered Accountant in Sundar & Ram Company. The learned Tribunal has not considered the educational qualification of the deceased. Without considering any of above evidences, the learned Tribunal has awarded only Rs.10,000/- for loss of love and affection of parents, who lost their son, and awarded Rs.10,000/- only towards funeral expenses.

4.The point for consideration is whether the deceased Ashok Kumar was working as Chartered Accountant Trainee for monthly income of Rs.25,000/- as per Ex.P1.

5.In an effort to establish the monthly income of the deceased, two Exhibits vis., Exs.P10 dated 27.10.2005 and Ex.P11 dated 16.08.2007, namely, Appointment order and Income Certificate respectively were sought to be marked through P.W.3. However, the Insurance Company strongly opposed the marking of the above documents, but, with an objection, they were allowed to be marked. The Tribunal, after perusing Ex.P10, the letter inviting the bachelor/deceased to come for Audit Executive post for a monthly salary of Rs.9,000/- and Ex.P11 showing that he was drawing Rs.25,000/- at the relevant point of time, declined to accept Ex.P11, which showed an increased salary, as a genuine and acceptable document, as a result, the Tribunal fixed the notional income of the deceased at Rs.12,000/- per month and deducted 1/3rd towards his personal expenses. However, the Tribunal, taking into account the age of the dependent, namely, the mother of the deceased at 45, adopted the multiplier of 13. This has been seriously objected by the learned counsel for the cross objectors/claimants. At this juncture, the learned counsel for the appellant/Insurance Company submitted that since the claimants are suffering due to the untimely death of Mr.Ashok Kumar on 01.08.2007, the Insurance Company is prepared to accept the notional monthly income at Rs.7,500/-. Therefore, this court, taking into account the age of the deceased at 26, is inclined to adopt the multiplier of 17. Accordingly, the loss of income is arrived at Rs.15,30,000/- (7500X12X17). This Court also, applying the principles laid down by the Apex Court in the case of Rajesh vs. Rajbir Singh reported in 2013(9) SCC 54, in which the Apex Court has held that it would be just and reasonable to award atleast Rs.1 lakh for the loss of love and affection, is inclined to award a sum of Rs.1,00,000/- towards the loss of love and affection. In addition thereto, the funeral expenses is redetermined at Rs.25,000/- while the transport expenses is fixed at Rs.5,000/-. In the result, the claimants are entitled to the total compensation of Rs.16,60,000/-.

6.Thus, in view of the above, the cross objection filed by the claimants is allowed and the civil miscellaneous appeal filed by the Insurance Company is dismissed. The connected miscellaneous petition is also dismissed. No costs.

7.The appellant Insurance Company is directed to deposit the modified compensation of Rs.16,60,000/- along with interest at

7.5% p.a., less the amount already deposited if any, within a period of four weeks from the date of receipt of a copy of this order. On such deposit, the claimants are permitted to withdraw the same by moving appropriate application before the Tribunal.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

The Motor Accident Claim Tribunal,
Additional District and Sessions Court (FTC-1),
Poonamallee.

+1cc to Mr.S.Arun Kumar, Advocate, S.R.No.2396
+2cc's to Mr.P.Selvaraj, Advocate, S.R.No.2403

CMA No.1439 of 2010
and
Cross Obj.No.111 of 2015

PPA(CO)
CA(30/05/2016)