

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.06.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
AND
THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.NO.1467 OF 2016
AND
CMP NO.11269 OF 2016

Bharti AXA General Insurance Co. Ltd.,
T.P. Cell, Metro Plaza, 2nd Floor,
No.162, Anna Salai,
Chennai - 600 002.

... Appellant/2nd Respondent

Versus

1.Shilpadevi Jain

2.Minor Rishi Jain

(Unnamed while filing the petition since born
only 20 days before filing the petition and
his name was included as per the order in
MP No.2804/2014 dated 05.08.2014)
(Rep. by mother and natural guardian
Mrs.Shilpadevi Jain)

3.Kamala Devi Jain

4.J.Raghavendra Babu

... Respondents/
Petitioners 1 to 3 and
1st Respondent

PRAYER: Appeal filed under Section 173 of Motor Vehicles Act,
1988, against the judgment and decree dated 16.03.2016 made in
M.C.O.P.No.5432 of 2013 on the file of the Motor Accidents
Claims Tribunal (II Court of Small Causes) Chennai.

For Appellant : Mr.Srinivasan Ramalingam
For Respondents : Mr.K.Varadha Kamaraj
1 to 3

J U D G M E N T

(JUDGMENT OF THE COURT WAS MADE BY M.GOVINDARAJ, J.)

Challenging the award of compensation made by the Motor Accidents Claims Tribunal (II Court of Small Causes) Chennai, in MCOP No.5432 of 2013 dated 16.03.2016, M/s.Bharti AXA General Insurance Co. Ltd., has preferred the above appeal.

2. On 22.07.2013, at about 17.10 hours, when the deceased was riding his two wheeler bearing Registration No.TN04-AC-2404, from Poonamallee to Chennai, Poonamallee Bypass Road, from west to east direction in a very cautious manner and when nearing to Saveetha Dental College, a Tipper Lorry bearing Registration No.TN46-A-2886, came from behind in a very rash and negligent manner, hit the motorcycle, due to which, the deceased sustained fatal injury and died on the spot. A case was registered in Crime No.1035/PH3/2013 under Sections 279 and 304 (A) IPC on the file of Poonamallee Police Station, Ambattur (Chennai) District against the driver of the Lorry.

3. Based on the above facts, the respondents 1 to 3 / claimants have filed a claim petition before the Tribunal seeking compensation of Rs.45,00,000/-.

4. The appellant - insurance company has filed a counter affidavit denying the allegations of age, occupation and monthly income of the deceased, manner of accident as well as negligence and liability, before the Tribunal.

5. Before the Tribunal, on the side of the claimants, P.W.1 to P.W.3 have let in evidence and 17 documents were marked as Exs.P1 to P17. On the side of the respondents, no witnesses were examined and no documents were marked.

6. On the basis of the materials, oral and documentary evidence available before the Tribunal, the Tribunal has concluded that the driver of the Tipper Lorry, belonging to the fourth respondent herein, was rash and negligent in driving the vehicle. The offending vehicle is covered by insurance policy and therefore, insurance company is liable to pay the compensation.

7. In so far as the quantum is concerned, the Tribunal has awarded a sum of Rs.25,15,000/- as compensation, under various heads. The claimants have marked Ex.P10 - employer's certificate, Ex.P16 - appointment letter and Ex.P17 - salary slip of the deceased, which reveals that the deceased was working as Sales Executive and was earning Rs.17,000/- per month. However, the Tribunal has fixed monthly income at

Rs.10,000/-, stating that there was no valid proof like payment of salary through bank account, non furnishing of PF number and educational qualification of the deceased to prove the same.

8. At the time of accident, the deceased was aged 28 years. Following the judgment of the Hon'ble Supreme Court in SARLA VERMA (SMT) AND OTHERS VS. DELHI TRANSPORT CORPORATION AND ANOTHER [2009 (6) SCC 121] the Tribunal has added Rs.5,000/- i.e., 50% of the income, under the head future prospects. The Tribunal has fixed monthly income of the deceased as Rs.15,000/- for the purpose of computing loss of pecuniary benefits. As the number of dependents were 3, the Tribunal has deducted 1/3rd towards personal and living expenses. Multiplier 17 has been applied. Tribunal has computed the loss of pecuniary benefits as Rs.20,40,000/- (Rs.10,000 X 12 X 17).

9. The Tribunal has awarded a sum of Rs.3,00,000/- towards loss of love and affection to the claimants. That apart, the Tribunal has awarded a sum of Rs.1,00,000/- towards loss of consortium to the first respondent/wife, who was aged about 27 years at the time of death of her husband. The Tribunal has awarded Rs.25,000/- for funeral expenses and Rs.50,000/- for loss of estate. In total, the Tribunal awarded a sum of Rs.25,15,000/- as compensation to the claimants.

10. However, when the matter was taken up before this Court for hearing, the learned counsel appearing for the insurance company and the claimants have arrived at a consensus and accepted for modification of the award. On the basis of the consensus arrived, the award is modified as under:

Loss of pecuniary benefits	-	Rs.20,40,000.00
Loss of love and affection	-	Rs. 1,50,000.00
Loss of consortium	-	Rs. 1,00,000.00
Funeral expenses	-	Rs. 25,000.00
Total	-	Rs.23,15,000.00

11. Accordingly, the total compensation is determined as Rs.23,15,000/-. By way of consensus, the award amount is reduced from Rs.25,15,000/- to Rs.23,15,000/-. Therefore, the appellant - insurance company is directed to deposit the modified award amount, with interest at the rate of 7.5% per annum, from the date of claim till deposit, after deducting the amount already deposited, if any, to the credit of M.C.O.P.No.5432 of 2013, on the file of Motor Accidents Claims Tribunal (II Court of Small Causes) Chennai, within a period of four weeks from the date of receipt of a copy of this order.

12. On such deposit being made, the respondents 1 and 3 are permitted to withdraw their respective shares, on filing proper applications before the Tribunal.

13. In so far as the share apportioned to the minor is concerned, the same should be deposited in favour of the minor viz., second respondent, in a Nationalised Bank, in a reinvestment scheme, till he attains majority. The first respondent / mother is entitled to withdraw interest accrued thereon, for the welfare of the minor. The apportionment given by the Tribunal can be applied for the rest of the amount.

14. The Civil Miscellaneous Appeal is disposed of with the above observation and direction. No costs. Consequently, connected civil miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

TK

To

The II Judge, Small Causes Court,
Motor Accidents Claims Tribunal
Chennai.

+1cc to Mr.Srinivasan Ramalingam, Advocate Sr. 40246
+1cc to Mr.K.Varadha Kamaraj, Advocate Sr. 40356

KS (CO)
VR(24/8/2017)

C.M.A.NO.1467 OF 2016

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