

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.06.2017

CORAM:

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

C.M.A.No.1591 of 2017
and CMP.No.8387 of 2017

The Manager,
Bharti AXA General Insurance Co. Ltd.,
Having office at No.19/A, 2nd Road,
Krishna Nagar, Officers' Line,
Vellore-1 Appellant/2nd Respondent

vs.

1. Thilagavathy
2. R. Jayabalan Respondents 1 & 2/Petitioners
3. C.Murugan 3rd Respondent/1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set-aside the Decree and Judgment dated 01.07.2016 in M.C.O.P.No.33 of 2014, passed by the Motor Accidents Claims Tribunal, (I Additional District and Sessions Court), Vellore.

For Appellant : Mr.S.Arun Kumar
For Respondents: Mr.C.Prabhakaran (for R1&R2)

J U D G M E N T

[Order of the Court was made by S.MANIKUMAR, J.]

Being aggrieved by the quantum of compensation of Rs.47,76,000/- with interest, at the rate of 7.5% per annum from the date of claim till deposit and costs, awarded to the parents/legal representatives of the deceased, a Homeopathy Doctor, aged about 24 years, M/s.Bharti AXA General Insurance Company Limited, is on appeal, on the grounds that the tribunal has grossly erred in determining the monthly income of the deceased as Rs.30,000/- for the purpose of computing the loss of contribution to the family. Insurance Company has further submitted that the tribunal has failed to consider that at the time of accident, father of the deceased was also engaged in the same profession i.e. Homeopathy Doctor and that therefore, he has his own income, and consequently, contribution to the family arrived at by the tribunal has to be suitably deducted.

2. Per contra, Mr.S.Prabhakaran, learned counsel for the respondents/legal representatives submitted that quantum of compensation awarded by the tribunal under various heads, is just and reasonable and the same does not require any reduction.

3. Heard the learned counsel for the parties and perused the materials available on record.

4. At the time of accident, deceased was aged 24 years. She had completed BHMS Course and registered with Tamilnadu Homeopathy Medical Council. Ex.P12, is the Registration Certificate. Deceased died as a spinster. Though, in the claim petition it was pleaded that deceased was working in her father's clinic viz., 'Jaya Clinic', Omerabad Post, Gadambur, Vellore District, during the course of examination, PW1, mother has deposed that deceased had her own private clinic. However, taking note of G.O.Ms.No.234, Finance [Pay Cell] Department, dated 01.06.2009, which states that BHMS Degree is equivalent to MBBS Degree and Ex.P14, dated 07.07.2013, University Rank Certificate, wherein, the deceased was shown to have obtained third position in the University, academic excellence, and also a decision in New India Assurance Company Limited Vs. Indubai, reported in 2016 (1) TNMAC 713 (DB), wherein the deceased was 21 years old and a third year MBBS student, the tribunal fixed the notional income of the deceased as Rs.30,000/- per month for the purpose of computing loss of contribution to the family, and added 50% of the same under the head future prospects. The deceased being a spinster deducted 50% of the income towards personal and living expenses and adopted '18' multiplier and arrived at the loss of contribution to the family as Rs.46,44,000/-.

5. In addition to the above, following Asha Verman Vs. Maharaj Singh, reported in 2015(1) TNMAC 465 (SC), the tribunal awarded Rs.1,00,000/- as lumpsum compensation under the head loss of love and affection. Following the decision of the Hon'ble Supreme Court in Rajesh Vs. Rajbir Singh, reported in CDJ 2013 SC 485, the tribunal awarded Rs.25,000/- under the head funeral expenses. Towards transportation, Rs.5,000/- has been granted. For damages to clothes and articles, Rs.2,000/- has been awarded. Altogether, the tribunal awarded Rs.47,76,000/- with interest.

6. Academic excellence, is supported by Ex.P14. University Rank Certificate. Registration as Doctor in Tamilnadu Homeopathy Medical Council is proved by Ex.P12, Registration certificate. As stated supra, though in the claim petition, a contention has been made that she was working in her father's clinic viz., 'Jaya Clinic', evidence has been adduced by PW1, mother that the deceased had her own clinic, which fact, has not been proved. Nevertheless, by production of G.O.Ms.No.234, Finance (Pay Cell) department

dated 01.06.2009, arguments have been adduced that the State Government has treated BHMS Degree in Homeopathy, to be equivalent to MBBS degree, awarded on the allopathy side. Accident has occurred on 10.11.2013. Registration with Tamilnadu Homeopathy Medical Council done on 29.04.2013 is proved. Though the deceased was claimed to have worked in her father's clinic, determination of Rs.30,000/- per month, within a very short period of registration with the Council, is slightly excessive.

7. Nevertheless, taking note of the trend in switching over to treatment to Indian medicine, like Ayurveda, Siddha, Unani and homeopathy medicine, research, employment opportunities, in the said discipline (AYUSH), and respecting medical education, either allopathy or Indian medicine, we are of the view that it would be just and reasonable to fix, atleast Rs.20,000/- as the notional monthly income, for the purpose of computing the loss of contribution to the family. Deceased was aged just 24 years. Loss of contribution to the family is restricted to only 18 years. She was a professional and in our considered view, addition of future prospects has to be made certainly. We propose to add 50% of the notional income, under the head future prospects and accordingly, compute the loss of contribution to the family, which works out to Rs.32,40,000/- (Rs.30,000/- x 12 x 18 x 1/2).

8. Tribunal has awarded Rs.1,00,000/- under the head loss of love and affection. Parents have lost the love and affection of their daughter aged about 24 years. Compensation under the above said head, is enhanced to Rs.2,00,000/-. Funeral expenses of Rs.25,000/- can be justified, in terms of the judgment in Rajesh's case [cited supra]. Transportation of Rs.5,000/- is less. Therefore, we are of the view that Rs.10,000/- would be just and reasonable. Sum of Rs.2,000/- awarded under the head, damages to clothes & articles is reasonable, and hence, sustained. There is no award under the heads loss of estate, and a sum of Rs.10,000/- is awarded under the head loss of estate.

9. In the light of the above discussion and reworking, compensation due and payable to the legal representatives of the deceased, works out to Rs.34,87,000/- and that the same is apportioned, as hereunder.

Loss of contribution to the family	: Rs.32,40,000/-
Loss of love and affection	: Rs. 2,00,000/-
Funeral Expenses	: Rs. 25,000/-
Transportation	: Rs. 10,000/-
Loss of estate	: Rs. 10,000/-
Damages to clothes & articles	: Rs. 2,000/-
Total	: Rs.34,87,000/-

10. Compensation awarded by the tribunal is Rs.47,76,000/-. Compensation now determined by this Court is

Rs.34,87,000/- and that the same is apportioned equally among the claimants/parents. On appeal, amount now reduced by this Court is Rs.12,89,000/-.

11. In the light of the above discussion, M/s.Bharti Axa General Insurance Company Limited, the appellant herein is directed to deposit the award amount, now determined by this Court, with interest, at the rate of 7.5% per annum from the date of claim till deposit, and costs, to the credit of MCOP No.33 of 2014, on the file of MACT [I Additional District and Sessions Court], Vellore, less the statutory deposit, within a period of four weeks from the date of receipt of a copy of this order. On such deposit, respondents/parents are permitted to withdraw their share with proportionate interest, and costs, by making necessary applications.

12. In the result, the Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, the connected Civil Miscellaneous Petition is closed.

s/d-
Assistant Registrar (CS VIII)

True Copy

Sub-Assistant Registrar

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To

The Motor Accidents Claims Tribunal,
[I Additional District and Sessions Court],
Vellore.

+1 CC to Mr.C. Prabakaran, Advocate sr 41699
+1 CC to Mr.S. Arunkumar, advocate sr 41874

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GP (CO)
sp(12/07/2017)

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