IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 5/6/2017

C O R A M

The Honourable Mr.JUSTICE S. MANIKUMAR
and
The Honourable Mr.JUSTICE M. GOVINDARAJ

Civil Miscellaneous Appeal No.1635 of 2017

Bharti AXA General Insurance Co Ltd
Metro Plaza, II Floor
No.164 Anna Salai
Chennai 600 002. ... Appellant /2nd Respondent

Vs

1. S.A.Halith Rahamathullah

2. Khadeeja Beevi

3. Mohammed Haneefa ...Respondent 1 to 3/
Petitioner 1 to 3

4. V. Saravanan ... Respondents

Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree, dated 26/9/016, in M.C.O.P.No.7162 of 2013, on the file of the Motor Accidents Claims Tribunal (II Court of Small Causes), Chennai.

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

J U D G M E N T

(Judgment of the Court was made by M.Govindaraj,J)

Appellant/Bharti AXA General Insurance Company Limited, Chennai 2, challenges the award passed in M.C.O.P.No.7162 of 2013, dated 26/9/2016, on the file of the Motor Accidents Claims Tribunal (II Court of Small Causes), Chennai, being excessive.

2. In the accident, which occurred, on 19/9/2013, when the deceased was travelling as a pillion rider in Honda Activa, bearing Registration No.TN02AX-7974, proceeding towards Kovalam Dharga, a Crane, bearing Registration No.TN11Z-2713, proceeding

in the same direction, driven in a rash and negligent manner, came from behind and dashed the deceased, resulting in her death.

3. Legal representatives - husband/first respondent and parents/second and third respondents herein had filed M.C.O.P.No.7162 of 2013, on the file of the Motor Accidents Claims Tribunal (II Court of Small Causes), Chennai, claiming compensation of Rs.50,00,000/-, under various heads.

4. The Tribunal, on the basis of Ex.P.1 and evidence of P.W.1 eye witness had fixed the negligence on the part of the crane driver. Since the crane is insured with the Insurance Company, liability was fastened on the appellant/Insurance Company.

5. In so far as the quantum is concerned, the deceased was working as tailor and it was stated that she was earning Rs.25,000/- p.m. To substantiate the same, no documentary proof was filed before the Tribunal. Hence, the Tribunal had fixed the monthly income of the deceased as Rs.7,500/-. Since the age of the deceased was 28 years, 50% was awarded towards future prospects. Accordingly, Rs.11,250/- (Rs.7,500 + Rs.3,750/-) was calculated. Following the judgment of the Hon'ble Supreme Court, in the case of Sarala Verma & Others Vs. Delhi Transport Corporation and Another {2009 (5) L.W- 561}, 1/3 was deducted towards her personal and living expenses. After reduction, contribution to the family was arrived at Rs.7,500/- p.m. Since the age of the deceased was 28 years, the Tribunal applied multiplier 17 and calculated the pecuniary loss as Rs.15,30,000/- (Rs.7,500 x 12 x 17). The Tribunal has awarded a sum of Rs.1 lakh towards loss of consortium to the husband/first claimant and Rs.2 lakhs to the loss of love and affection, Rs.50,000/- towards loss of estate and Rs.25,000/- towards funeral expenses. Thus, a total compensation of Rs.19,05,000/- was awarded by the Tribunal.

6. Aggrieved against the award passed by the Tribunal, the appellant/Insurance Company has preferred the instant appeal.

7. From the claim petition, we could see that the deceased was survived with her husband and parents. Considering the fact that the deceased was working as a tailor and taking orders from private firms, Tribunal has determined that a tailor can earn a minimum amount of Rs.250/- per day. Therefore, the income fixed by the Tribunal cannot be interfered with as the same is reasonable. Award of compensation amount and other heads are also reasonable, except the amount awarded under the head loss of love and affection to the parents. Tribunal has awarded a sum of Rs.2 lakhs, which we consider a little on the higher side. Therefore, we are not inclined to interfere with the

compensation awarded under all other heads except the compensation under the head loss of love and affection. Amount is reduced by Rs.1 lakh. The reduction is made from the amount apportioned to the husband. Accordingly, the husband of the deceased is entitled to Rs.13,05,000/-, mother and father of the deceased are entitled to Rs.3 lakhs and Rs.2 lakhs, respectively.

8. With this above modification, this Civil Miscellaneous Appeal is partly allowed.

9. Mr.Srinivasan Ramalingam, learned counsel appearing for the Insurance Company would submit that a sum of Rs.25,000/- was made towards statutory deposit.

10. Bharti AXA General Insurance Company Limited, Chennai/appellant is directed to deposit the entire award amount, less the statutory deposit, with proportionate interest and costs, to the credit of M.C.O.P.No.7162 of 2013, within a period of four weeks, from the date of receipt of a copy of this order. On such deposit being made, the respondents 1 to 3/claimants are permitted to withdraw the award amount, as apportioned by the tribunal, by making necessary applications.

No costs. Consequently, the connected Civil Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

mvs.

To

1.The Motor Accidents Claims Tribunal
(II Court of Small Causes), Chennai.

+1 cc to M/s.Srinivasan Ramalingam Advocate sr 39943 dt 31/07

C.M.A.No.1635 of 2017

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