



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.07.2017

CORAM:

THE HONOURABLE MRS.JUSTICE **J.NISHA BANU**

C.M.A. (MD) No.520 of 2014

and

M.P. (MD) .No.1 of 2014

The Branch Manager,
Bajaj Allianz General Insurance Co.Ltd.,
1/32, Nanjammal Complex,
Mettupalayam Road, Thudiyaloor,
Coimbatore.

... Appellant

Vs.

1.Sathasivan
2.Radhakrishnan
3.Rajakumari
(3rd petitioner through her brother and
guardian the 1st petitioner.
1st petitioner is declared as guardian
for the mentally ill-person viz.,
A.Rajakumari as per the order of the
Principal District Court, Tirunelveli in
MHOP.No.209/2010 dated 11.07.2011).

4.Chelladurai

... Respondents

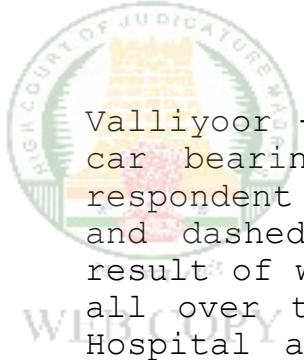
PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act 1988, against the Order and decree dated 05.12.2013 made in M.C.O.P.No.216 of 2010 on the file of the Motor Accident Claims Tribunal (Subordinate Judge), Valliyoor.

For Appellant	: Mr.S.Srinivasaraghavan
For R1 to R3	: Mrs.J.Ranjani Devi for Mr.S.Palanivelayutham
For R4	: No appearance

O R D E R

The Civil Miscellaneous Appeal has been filed against the judgment and decree dated 05.12.2013 made in M.C.O.P.No.216 of 2010 on the file of the Motor Accident Claims Tribunal (Subordinate Judge), Valliyoor.

2. It is a case of fatal accident took place on 28.09.2010 at about 9.00 a.m., when the deceased Duraisamy @ Arunachalam was proceeding in his bike bearing Registration No.TN-72-Az 9587 in



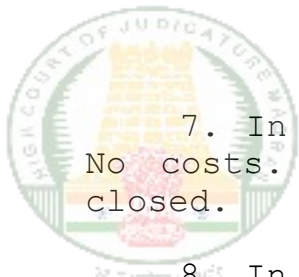
Valliyoora - T.P.Road Bye Pass Road towards North, a Maruthi Swift car bearing Registration No.TN-30-M-6924 belonging to the first respondent came from South to North in a rash and negligent manner and dashed against the motorcycle driven by the deceased. As a result of which, Duraisamy @ Arunachalam sustained multiple injuries all over the body and subsequently, he was admitted in Thiraviam Hospital at Nagercoil and thereafter he died on the same day. Hence, the claimants filed an application in M.C.O.P.No.216 of 2010 on the file of the Motor Accident Claims Tribunal, (Subordinate Judge), Valliyoora seeking compensation.

3. The Tribunal, after considering the facts and circumstances of the case, granted a sum of Rs.4,41,060/- towards total compensation. Challenging the same, the appellant / Bajaj Alliance General Insurance Company Limited filed the present appeal questioning the quantum of compensation awarded by the Tribunal mainly on the ground that the son of the deceased was receiving family pension for himself and the first and second claimants are married sons are not eligible for compensation.

4. Before the Tribunal, P.Ws.1 to 3 were examined and Exs.P1 to P12 were marked on the side of the claimants.

5. The learned counsel for the respondents opposed the contention of the learned counsel for the appellant by stating that at the time of accident, the deceased was a retired Teacher and was paid pension of Rs.10,277/- per month. He further submitted that as per the judgment of the Honourable Supreme Court in **Smt.Sarala Varma and other vs. Delhi Transport Corporation and another** reported in **2009 (2) TNMAC 1 (SC)**, 1/3rd has to be deducted towards the personal and living expenses of the deceased. Hence, by deducting 1/3rd from Rs.10,277/-, the loss of income comes to Rs.6861/- and per year it comes to Rs.82,212/- and as per the said judgment, the multiplier for the age group of 77 is '5'. According to the sudden death of Duraisamy @ Arunachalam, the future loss of income comes to Rs.4,11,060/-. Further, the Tribunal awarded a compensation at Rs.10,000/- for Love and Affection and Rs.20,000/- for Funeral Expenses. Altogether, the Tribunal awarded compensation at Rs.4,41,060/- with interest at the rate of 7.5% p.a. In support of his contention, he relied on a judgment reported in **2013(1) TNMAC 641 (Vimal Kanwar & Others vs. Kishore Dan & others)**.

6. In the light of the above, the contention of the appellant/Insurance Company that the family pension amount received by the first respondent/claimant ought to have been deducted while computing the dependency compensation is liable to be rejected and accordingly rejected. The finding of negligence, application of multiplier, for computing the loss of income of the deceased is confirmed. I see no grounds to interfere with the order of the Motor Accident Claims Tribunal, Sub Judge, Valliyoora in M.C.O.P.No.216 of 2010, dated 05.12.2013.



7. In the result, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected Miscellaneous petition is also closed.

8. In view of the dismissal of the appeal, the appellant/Bajaj Alliance General Insurance Company Limited is directed to deposit the entire award amount with accrued interests and costs within a period of four weeks from the date of receipt of a copy of this order, if not already deposited and on such deposit being made, the claimants are permitted to withdraw their share as apportioned by the Tribunal, with accrued interests and costs.

Sd/-

Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar

To

1. The Subordinate Judge,
Motor Accident Claims, Valliyoor.

+1cc to Mr.S.SRINIVASA RAGHAVAN Advocate in SR. No. 65861

+1cc to Mr.S.PALANI VELLAYUTHAM Advocate in SR. No.

AKV

JS/KP/SAR.1/11.09.2017/3P-4C

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