

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 26.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN  
and

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

C.M.A. No.2206 OF 2017  
& C.M.P. Nos.16299 & 11770 of 2017  
Caveat Petition No.2522 of 2017

Bajaj Alliance General  
Insurance Co. Ltd.,  
No.25/26, College Road,  
Prince Towers, Chennai - 600 006. ... Appellant / 2<sup>nd</sup> respondent

Versus

1.Mangala  
2.Renu  
3.Parameshwari  
4.Sasikala  
Govindammal (Died)  
Pattupillai (Died) ... Respondents 1 to 4 /petitioners

... petitioners  
[in Caveat Petition No.2522 of 2017]

5.Kadar Basha ... 5<sup>th</sup> respondent/1<sup>st</sup> respondent  
6.K.Kannan ... 6<sup>th</sup> respondent/3<sup>rd</sup> respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the order and decree dated 14.12.2016 made in M.C.O.P.No.1314 of 2010 on the file of the Motor Accidents Claims Tribunal [Chief Court of Small Causes], Chennai.

For Appellant : Mr.S.Arun Kumar  
[in C.M.A.No.2206 of 2017]

For Respondent Nos.1 to 4 : Mr.Terry Chellaraja  
[in C.M.A.No.2206 of 2017]

J U D G M E N T

[Judgment of the Court was delivered by R.PONGIAPPAN, J.]

This Civil Miscellaneous Appeal is directed against the order dated 14.12.2016 in M.C.O.P.No.1314 of 2010, whereby the Tribunal has awarded compensation of Rs.15,37,500/- to the claimants, who are the wife, children and parents of the

deceased, namely, Haridas, who died in a road accident on 01.12.2009.

2. The brief facts are that, on 01.12.2009, at about 19.00 hours, while the deceased [Haridas] was standing at Gangaianman Koil Street, Chengalpet, along with his friend Madurai Muthu, at that time, an auto bearing Registration No.TN-10-B-4221, owned by the fifth respondent insured with the appellant came in a rash and negligent manner and dashed against the deceased and his friend, thereby, the deceased sustained fatal injuries and died on 06.12.2009. At the time of death, the deceased [Haridas] was aged about 45 years. He was self-employed. Regarding the accident, a criminal case was registered in Crime No.729 of 2009 of Chengalpet Town Police Station, Kancheepuram District alleging that the accident had happened due to the rash and negligent driving of the auto driver. The claimants, who are the wife, children and parents of the deceased [Haridas] filed a Claim Petition claiming compensation of Rs.30,00,000/-. After elaborate enquiry, the Claims Tribunal awarded compensation of Rs.15,37,500/- with interest at the rate of 7.5% per annum, against which, the present appeal has been preferred by the Insurance Company.

3. Before the Tribunal, the first claimant [Mangala] was examined as P.W.1. One Renu, who was an eye-witness to the alleged occurrence was examined as P.W.2. Ex.P.1 to Ex.P.7 were marked on the side of the claimants. Further, one Ramalingam was examined as P.W.3 and he deposed that the deceased was working under him as Kothanar [Mason] and was paid a sum of Rs.15,000/- as salary and also filed Ex.P.7 his Identity Card issued by the Tamil Nadu Building Construction Labours Welfare Board. On the side of the appellant, one Kamalavalli, Legal Officer of the Insurance Company was examined as R.W.1 and 5 documents were exhibited as Ex.R.1 to R.5.

4. After elaborate trial, the Claims Tribunal came to the conclusion that the alleged accident had happened only due to the rash and negligent act of the auto driver. Further, it was held that during the time of accident, the driver of the offending vehicle was not having any valid licence. Therefore, considering the fact that the driver of the offending vehicle was not having any valid licence, the Claims Tribunal permitted the appellant to recover the entire compensation from the owner of the vehicle after paying the same to the claimants.

5. Now, on going through the findings of the Claims Tribunal with regard to the Loss of Dependency, we find that the Claims Tribunal has fixed the monthly income of the deceased as Rs.7,000/-. Further, the Tribunal added 50% of the monthly income towards Future Prospects and deducted 1/4<sup>th</sup> of the monthly income towards Personal and Living Expenses of the deceased.

Thereafter, applying the multiplier 15 calculated the Loss of Dependency as Rs.14,17,500/-. Further added Rs.50,000/- towards Loss of Consortium, Rs.40,000/- towards Loss of Love and Affection, Rs.5,000/- for Transport Charges and added Rs.25,000/- towards Funeral Expenses and arrived at total compensation of Rs.15,37,500/- and ordered the appellant to pay the said amount to the claimants and afterwards permitted to recover the same from the owner of the vehicle.

6. It is not necessary for us to narrate the entire facts in detail, as to how the accident had occurred, who is negligent and who is liable to pay the compensation and also coverage of the policy. It is for the reason that these aspects are recorded in favour of the claimants and consequently none of the findings are under challenge and only the quantum is under dispute in this appeal.

7. According to the evidence given by P.W.3 [Ramalingam], the deceased Haridas was working as Kothanar [mason] under his control. Ex.P.7 is the copy of the Identity Card of P.W.3 issued by the Tamil Nadu Building Construction Labours Welfare Board which shows that P.W.3 is doing construction work. According to the evidence of P.W.3, the deceased earned Rs.15,000/- per month. But without citing any reason, the Claims Tribunal fixed the monthly income of the deceased as Rs.7,000/-. In this context, it is necessary to refer the judgment of SYED SADIQ ALI AND OTHERS vs. DIVISIONAL MANAGER, UNITED INDIA INSURANCE CO. LTD. reported in 2014 [1] TNMAC 459 [SC], in which, our Honourable Apex Court has fixed the monthly income of a vegetable vendor as Rs.6,500/-. But the alleged occurrence pertaining to this Claim Petition had happened in the year 2009. So, we decided to fix the monthly income of the deceased as Rs.9,000/-.

8. Coming to the Future Prospects, it is necessary to follow the judgment of our Honourable Apex Court in NATIONAL INSURANCE COMPANY LIMITED vs. PRANAY SETHI AND OTHERS reported in 2017 ACJ 2700, in which, our Honourable Apex Court has held that if a person is self-employed and under the age of 45 years, 25% of the established monthly income to be the Future Prospects for calculating the Loss of Dependency. In this way, after adding 25% of the monthly income, the total income of the deceased Haridas would be Rs.11,250/-. Accordingly, the total income of the deceased per annum is calculated as Rs.1,35,000/- [Rs.11,250/- x 12 (11,250)].

9. Now, coming to the point of deduction, it is settled law that if the family of the deceased consists of 4 to 6 members, 1/4<sup>th</sup> of the total income has to be deducted towards Personal and Living Expenses of the deceased. In this case, the

size of the family is 6, so necessarily we have to deduct 25% of the annual income towards Personal and Living Expenses of the deceased. Accordingly, the Loss of Contribution per year is calculated as Rs.1,01,250/- [Rs.1,35,000/- (-) 25% (1,35,000/-)].

10. Coming to the choice of multiplier, at the time of accident, the deceased [Haridas] was aged about 45 years. Taking into consideration of the age of the deceased, the Tribunal had adopted multiplier 15. Now on going through the judgment of our Honourable Apex Court in SARLA VERMA vs. DELHI TRANSPORT CORPORATION reported in (2009) 6 SCC 121, if a person having the age between 41 and 45 years, the appropriate multiplier for calculating the Loss of Dependency is 14. Therefore, we decided that the appropriate multiplier in this appeal is 14. So, the Loss of Dependency is calculated as Rs.14,17,500/- [Rs.1,01,250 x 14].

11. In so far as the conventional damages, the Tribunal awarded Rs.50,000/- for Loss of Consortium, Rs.40,000/- towards Loss of Love and Affection, Rs.5,000/- towards Transport Charges and Rs.25,000/- towards Funeral Expenses. Even though the said amounts awarded by the Tribunal are reasonable, now, as per the judgment in Pranay Sethi's case [stated supra], this Court necessarily has to fix Rs.40,000/- towards Loss of Consortium to the first claimant and Rs.15,000/- towards Loss of Estate and Rs.15,000/- towards Funeral Expenses. So, following the judgment of our Honourable Apex Court, Rs.70,000/- is awarded towards conventional heads as above. Accordingly, the claimants / respondents 1 to 4 are entitled to the compensation as follows:

| Head               | Amount (Rs.) |
|--------------------|--------------|
| Loss of Dependency | 14,17,500.00 |
| Funeral Expenses   | 15,000.00    |
| Loss of Estate     | 15,000.00    |
| Loss of Consortium | 40,000.00    |
| Total              | 14,87,500.00 |

Hence, the compensation arrived by the Claims Tribunal is modified to the extent of Rs.14,87,500/-. In the said amount, the first claimant, who is the wife of the deceased [Haridas] is entitled to a sum of Rs.6,00,000/- and the claimants 2 to 4 are entitled to the balance amount to equal share.

12. The rate of interest awarded by the Tribunal at 7.5 % per annum remains unaltered. Accordingly, the award of the Tribunal [i.e.,] Rs.15,37,500/- is reduced to Rs.14,87,500/-. The appellant / Insurance Company is directed to deposit the

entire award amount along with interest and costs as per the modified award passed by this Court before the Tribunal, after deducting the amount already deposited, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the said amount to the Bank Account of the respondents 1 to 4 / claimants through RTGS/NEFT within a period of one week.

13. In the result, the Civil Miscellaneous Appeal is partly allowed. Consequently connected Miscellaneous Petitions are closed. There shall be no order as to costs.

Sd/-  
Assistant Registrar (CS VI)

//True copy//

Sub Assistant Registrar

sri

To

1.The Motor Accidents Claims Tribunal  
[Chief Court of Small Causes],  
Chennai.

2.The Record Keeper,  
VR Section, High Court,  
Madras-104.

+1cc to Mr.S.Arunkumar, Advocate SR.No.31416

+1cc to Mr.M.Malar, Advocate SR.No.31381

सत्यमेव जयते

C.M.A. No.2206 OF 2017

AK (CO)

GN (29/06/2018)

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