IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.03.2018

CORAM

THE HON'BLE MR. JUSTICE M.GOVINDARAJ

C.M.A.No.449 of 2018
and C.M.P.No.3883 of 2018

The Manager,
M/s.Bajaj Allianz General
Insurance Company Limited,
'Prince Towers', IV floor,
No.25/26, College Road,
Nungambakkam, Chennai ... Appellant

vs.

1. Vincent

2. Sowriyammal

3. Vennila ... Respondents

Civil Miscellaneous Appeal filed under Section 173 of The Motor Vehicles Act, 1988 to set aside the Decree and Judgment dated 01.06.2017 passed in M.C.O.P.No.214 of 2014 by the Motor Accidents Claims Tribunal (In the Court of Special Sub Judge) at Tiruvannamalai.

For Appellant : MR.J.Michael Visuvasam

J U D G M E N T

Aggrieved over the award of compensation passed by the Motor Accident Claims Tribunal, (Court of Special Sub Judge) at Tiruvannamalai in M.C.O.P.No.214 of 2014 dated 01.06.2017, the Insurance Company has preferred this appeal.

2. The appeal is against the finding of negligence and quantum by the Tribunal. According to the claimants, the deceased was riding two wheeler bearing registration No.PY-01-AH-1582 from Tiruvannamalai to Tirukovilur. On 14.01.2014 while he was riding the motor cycle on the extreme left side of the road near Kattukoil at T.Athipakkam Village, the driver of the offending vehicle bearing Registration No.TN-25-AE-2947, drove in a rash and negligent manner and hit the motor cycle from

behind. In the accident, the rider of the motor cycle sustained grievious injuries and succumbed to death. The claim made by the legal heirs was denied by the respondents. To prove the claim, the claimants examined the father of the deceased as PW1 and marked Exs.P.1 to Ex.P.9. On the side of the respondents no witnesses were examined and no documents were marked. Based on Ex.P.1-FIR and on the basis of the evidence adduced by PW1, the Tribunal came to a conclusion that the driver of the car bearing registration No.TN-25-AE-2947 was rash and negligent and being the insurer the appellant was fastened with liability. Since PW1 was an eye witness and Ex.P.1-FIR cogently proves the manner of accident, the findings of the Tribunal is based on strong reasons and I do not find any infirmity in the findings.

3. The main challenge by the Insurance Company is on the quantum arrived at by the Tribunal. According to the Insurance Company, there is no income proof filed in support of the claim that the deceased was earning. There is ample evidence adduced before the Tribunal on the side of the claimants that the deceased was working as a Mason and was earning a sum of Rs.500/- per day, but no documentary evidence was marked to prove the income. The Tribunal has taken a notional income at Rs.200/- per day and fixed the monthly income at Rs.6,000/-. The deceased was 21 years old and based on judgment of the Hon'ble Supreme Court reported in 2013(2) TNMAC 55 (SC) Rajesh Vs Rajbeer Singh held that the self earned persons and the persons having fixed wages are entitled to future prospects at the rate of 50% of their monthly income, if their age is below 40 years. Hence, the Tribunal added 50% of the monthly income of the deceased ie., Rs.3,000/- towards the future prospects of the deceased and arrived the monthly income at Rs.9,000/-. This cannot be said to be exorbitant.

Therefore, the grounds raised by the Insurance is not supported by material evidence and the same cannot be sustained.

4. In the result I do not find any merit in the appeal and accordingly dismissed. No costs. consequently connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To
1. The Motor Accidents Claims Tribunal/
   Special Sub Judge, Tiruvannamalai.

2. The Manager,
   M/s.Bajaj Allianz General
   Insurance Company Limited,
   'Prince Towers', IV floor,
   No.25/26, College Road,
   Nungambakkam, Chennai.

Copy to:-
   The section officer,
   VR section,High court,
   Madras.

1cc to Mr.J.Michael Visuvasam, Advocate, S.R.No.18523

C.M.A.No.449 of 2018
and C.M.P.No.3883 of 2018(CO)

CP(CO)
GSP(08/06/2018)