

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.11.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.Nos.870 and 2499 of 2018
and C.M.P.No.7235 of 2018

C.M.A.No.870 of 2018:

M/s.Bajaj Alliance General Insurance Company Limited
No.497 and 498, IV Floor,
Isana Kattima Building,
Poonamallee High Road,
Arumbakkam, Chennai-106.

.. Appellant/ 2nd Respondent

Vs.

1.Baby ..1&2nd Respondents /1st &2nd Petitioners

2.Santhosh

3.P.M.Raviyathul Bazarla ..3rd Respondent/1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 08.11.2017 made in M.C.O.P.No.5369 of 2014 on the file of the Motor Accident Claims Tribunal IV Court of Small Causes, Chennai.

For Appellant : Mr.J.Michael Visuvasam
For R1 & R2 : Ms.A.Subadra for Mr.V.Velu
For R3 : No appearance

C.M.A.No.2499 of 2018

1.Baby

2.Santhosh

.. Appellants/Petitioners

vs.

1.P.M.Raviyathul Bazarlia

2.M/s.Bajaj Alliance General Insurance Company Limited
No.497 and 498, V Floor,
Isana Kattima Building,
Poonamallee High Road,
Arumbakkam, Chennai-106. .. Respondents/ Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 08.11.2017 made in M.C.O.P.No.5369 of 2014 on the file of the IV Court of Small Causes, Chennai.

For Appellants : Ms.A.Subadra for Mr.V.Velu
For R1 : Exparte vide in EB
For R2 : Mr.J.Michael Visuvasam

C O M M O N J U D G M E N T

C.M.A.No.870 of 2018 is filed against the award dated 08.11.2017 made in M.C.O.P.No.5369 of 2014 on the file of the IV Court of Small Causes, Chennai.

C.M.A.No.2499 of 2018 is filed for enhancement of compensation granted by the award dated 08.11.2017 made in M.C.O.P.No.5369 of 2014 on the file of the IV Court of Small Causes, Chennai.

2.Both the appeals are arising out of the same accident and hence, they are disposed of by this common judgment.

3.Parties in these appeals are referred to by their respective ranks in the claim petition for the sake of convenience.

4.The appellants in C.M.A.No.2499 of 2018 are the claimants and respondents are the respondents in M.C.O.P.No.5369 of 2014 on the file of the IV Court of Small Causes, Chennai. The claimants filed the said claim petition claiming a sum of Rs.30,00,000/- as compensation for the death of one Kuppusamy, who died in the accident that took place on 14.05.2014.

5.The Tribunal considering the pleadings, oral and documentary evidence held that the accident occurred due to rash and negligent driving by the driver of the car belonging to the first respondent and as insurer of the first respondent, second respondent/Insurance Company is liable to pay compensation and awarded a sum of Rs.16,65,000/- as compensation to the claimants.

6. Aggrieved against the said award dated 08.11.2017 made in M.C.O.P.No.5369 of 2014, the claimants have come out with C.M.A.No.2499 of 2018 seeking enhancement of compensation and the second respondent/Insurance Company has come out with C.M.A.No.870 of 2018 challenging the liability as well as quantum of compensation awarded by the Tribunal.

7. The learned counsel appearing for the claimants contended that the deceased was aged 48 years at the time of accident. He was an agriculturist and was doing wholesale paddy business and was earning a sum of Rs.1,00,000/- for every three months. The Tribunal erroneously fixed notional income of the deceased at Rs.12,000/- per month, which is very low. The Tribunal has granted only 25% enhancement for future prospects and arrived at a sum of Rs.1,80,000/- towards annual income of the deceased. The Tribunal ought to have granted more percentage and erred in deducting 1/3rd towards personal expenses of the deceased. The Tribunal has not awarded any amount towards loss of estate. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

8. The learned counsel appearing for the second respondent/Insurance Company contended that the claimants failed to mark the driving license of the deceased to prove that the deceased was authorized to drive the two wheeler. The deceased was only responsible for the accident as he suddenly tried to cross the busy Chennai-Trichy National Highways to go to Karadipakkam and suddenly stopped in the middle of the road, resulting in the accident. The deceased was not wearing helmet at the time of accident, resulting in head injury, which caused the death. The claimants failed to prove that the deceased was owning 10 acres of land and was doing agricultural activities and wholesale paddy business. The Tribunal erroneously fixed a sum of Rs.12,000/- per month as notional income in the absence of any evidence and mechanically awarded 25% enhancement for future prospects. The second claimant, son of the deceased, who is aged 26 years, is an M.Phil degree holder and is not a dependent on the income of the deceased father. The Tribunal erroneously granted a sum of Rs.50,000/- to the second claimant towards loss of love and affection. The Tribunal ought to have deducted 50% from the notional income as only the first claimant is depending on the deceased. Therefore, he prayed for setting aside the award passed by the Tribunal.

9. Heard the learned counsel appearing for the claimants as well as the second respondent/Insurance Company and perused the materials available on record.

10.The learned counsel appearing for the claimants contended that the deceased was earning a sum of Rs.1,00,000/- for every three months by doing agricultural activities and as an agent of wholesale paddy business. From the materials on record, it is seen that the claimants have not produced any materials to substantiate their claim. In the absence of any materials to prove the income of the deceased, the Tribunal following the judgment of the Hon'ble Apex Court reported in 2015 (1) TN MAC 161 SC SC (Neeta vs. Divisional Manager, MSRTC, Kolhapur), fixed notional income of the deceased at Rs.12,000/- per month and the same is proper. The Tribunal, following the judgment of the Hon'ble Apex Court reported in National Insurance Company v. Pranay Sethi reported in 2017(2)TNMAC 609 (SC), granted 25% enhancement for future prospects and arrived at a sum of Rs.1,80,000/- (Rs.12,000/- + (25% of Rs.12,000/-) X 12) towards annual income and by adopting multiplier 13 and deducting 1/3rd towards personal expenses, awarded a sum of Rs.15,60,000/- towards loss of dependency. The Tribunal also awarded a sum of Rs.40,000/- towards loss of consortium and Rs.15,000/- towards funeral expenses. The said amounts awarded by the Tribunal are proper and hence, the same are hereby confirmed. The Tribunal did not grant any amount towards loss of estate and hence a sum of Rs.15,000/- is granted towards this head.

11.The contention of the learned counsel appearing for the second respondent/Insurance Company that the second claimant is not a dependent on the income of the deceased father is not supported by any material. Just because the second claimant is M.Phil degree holder and is aged 26 years, it cannot be said that he is not a dependent on the income of his father. However, the sum of Rs.50,000/- awarded towards loss of love and affection is on the higher side and hence, the same is hereby reduced to Rs.40,000/-. In the counter statement filed by the second respondent, it is not pleaded that the deceased was not wearing helmet at the time of accident and died due to the head injury. Therefore, the contention of the learned counsel for the second respondent that the deceased died due to the head injury suffered by him, as he was not wearing helmet at the time of accident, is not supported by any materials on record. Thus, the compensation awarded by the Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of dependency	15,60,000	15,60,000	confirmed

2.	Funeral expenses	15,000	15,000	confirmed
3.	Loss of consortium	40,000	40,000	confirmed
4.	Loss of love and affection	50,000	40,000	reduced
5.	Loss of estate	-	15,000	awarded
	Total	16,65,000	16,70,000	Enhanced by Rs.5,000/-

12. In the result, both the Civil Miscellaneous Appeals are partly allowed and the compensation awarded by the Tribunal at Rs.16,65,000/- is hereby enhanced to Rs.16,70,000/- with interest at the rate of 7.5% per annum from the date of petition till the date of realisation. The claimants shall pay necessary Court fee, if any, on the enhanced compensation. The learned counsel appearing for the second respondent/Insurance Company contended that they had already deposited the entire award amount before the Tribunal. Therefore, the second respondent is directed to deposit the balance amount within a period of eight weeks from the date of receipt of a copy of this judgment. The first claimant is entitled to a sum of Rs.10,05,000/- and second claimant is entitled to a sum of Rs.6,65,000/- and they are permitted to withdraw their respective shares with accrued interest and costs, after adjusting the amount, if any, already withdrawn. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS vi)

//True Copy//

Sub Assistant Registrar

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To

The Motor Accident Claims Tribunal
IV Court of Small Causes
Chennai.

+lcc to Mr.V.Velu , Advocate SR.No. 78809

+lcc to Mr. Michael Visuvasam, Advocate SR.No. 7864

C.M.A.Nos.870 and 2499 of 2018

and C.M.P.No.7235 of 2018

A.SK(11/02/2019)