

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.01.2019

CORAM

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

C.M.A.NO.2603 OF 2010
and
CROS. OBJ NO. 71 of 2018

Bajaj Allianz General Insurance Co. Ltd.
Door No.11, (Office No. 6-A)
People's Park, 3rd Floor
Government Arts College Road,
Coimbatore.

...Appellant in CMA / 1st respondent in
Cros. Obj No.71 of

2018

Vs.

1. Devi
2. Minor.Divya
3. Minor Loganathan (Minor rep by Mother Devi)
4. Kittusamy
5. Bakkiyammal

....Respondents 1 to 5 in CMA /
Cross objectors

in Cros.Obj No.71

of 2018

6. Arunkumar
7. Duraisamy

...Respondents 6 and 7 in CMA /
Respondents 2 and 3 in
Cros Obj No.71 of 2018

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988, and cross objection filed under Order 41 Rule 22 of CPC against the award dated 30.09.2009 made in MCOP No.173 of 2008 on the file of the Principal Sub Judge, Motor Accidents Claims Tribunal, Tiruppur.

For Appellant in CMA/R1 in cross objection : Mr.S.Arun Kumar

For R1 to R5 in CMA/Cross Objectors : Mr.Ma.Pa.Thangavel.

JUDGMENT

The appellant Bajaj Allianz General Insurance Co. Ltd., Coimbatore, is the third respondent in MCOP No.173 of 2008 on the file of the Principal Sub Judge, Motor Accidents Claims Tribunal, Tiruppur.

2.The respondents 1 to 5 / claimants / petitioners in Cros. Obj No.71 of 2018 filed the claim petition under Section 166 of the Motor Vehicles Act,1988 seeking compensation of Rs.15,00,000/- for the death of one Venkatesh @ Venkatachalam, the husband of the first claimant and the father of the claimants 2 and 3 and the son of the claimants 4 and 5, in a road accident that took place on 30.12.2007.

3. The brief case of the claimants is as follows:

On 30.12.2007, the deceased Venkatesh @ Venkatachalam was riding his motor cycle bearing registration No.TN 38C 3385 on Nochipalayam - Vigneswara Road. At about 10.30 P.M, a speeding Mini Door Auto bearing registration No.TN 39 U 8329 belonging to the second respondent and insured with the present appellant hit the two wheeler, as a result of which, the deceased Venkatesh @ Venkatachalam sustained injuries all over his body. According to the claimants, the deceased was immediately rushed to the Government Hospital Tiruppur from where he was referred to CMC Hospital, Coimbatore. However, he succumbed to injuries on 11.01.2008. Their further contention is that the rash and negligent driving of the driver of the Mini Door Auto bearing registration No.TN 39 U 8329 was the cause of accident and that since the vehicle was insured with the present appellant / Bajaj Allianz General Insurance Co. Ltd., both of them are jointly and severally liable to pay compensation of Rs. 15,00,000/- to them.

4. The owner of the Mini Door Auto remained absent before the tribunal and he was set exparte. The driver of the Mini Door auto and the present appellant contested the claim petition before the tribunal. The learned Principal Sub Judge, Tiruppur, after analysing the evidence on record, awarded a compensation of Rs.8,35,000/- to the claimants together with interest at the rate of 7.5% per annum from the date of claim petition. The award passed by the tribunal under various heads is extracted hereunder:

Sl.No.	Head	Amount (Rs.)
1.	Loss of Income	7,65,000/-
2.	Loss of consortium to the 1 st petitioner	10,000/-

Sl.No.	Head	Amount (Rs.)
3.	Loss of love and affection to the 1 st petitioner	10,000/-
4.	Loss of love and affection to the petitioners 4 and 5	14,000/-
5.	Loss of love and affection to the petitioners 2 and 3	30,000/-
6.	Funeral expenses	5,000/-
7.	Transportation	1,000/-
	Total	8,35,000/-

5. Aggrieved over the orders passed by the tribunal, Bajaj Allianz General Insurance Co. Ltd., has filed the present appeal under Section 173 of the Motor Vehicles Act 1988.

6. Mr.S.Arun Kumar, learned counsel appearing for the appellant would contend that the driver of the Mini Door Auto was not in possession of valid driving license on the date of accident and therefore, the tribunal ought to have directed the Bajaj Allianz General Insurance Co. Ltd. to pay the compensation amount at the first instance and recover the same from the owner of the Mini Door Auto.

7. In the decision rendered in Oriental Insurance Co. Ltd., Vs. Nanjappan and others reported in AIR 2004SC 1630, it has been held that when there is no driving license, the Insurance Company should be directed to pay the award amount in the first instance and then recover the same from the owner of the two wheeler. In the instant case, the appellant / third respondent, had actually issued notice to the owner as well as the driver of the mini door auto to produce the driving license and the driver of the mini door auto, had in fact, sent a reply dated 21.02.2009 (Ex.R4) to the present appellant contending that he was not in possession of valid driving license on the date of accident. As per the decision stated supra, the Bajaj Allianz General Insurance Co. Ltd., should pay the award amount at the first instance and then recover the same from the owner of the vehicle.

8. As far as the quantum of compensation is concerned, the claimants have filed Cross Objections only in the year 2018 after a delay of 1792 days. The contention of the claimants is that the deceased was a mason earning a sum of Rs.7,000/- per month. No document was produced on the side of the claimants to show that the deceased was actually earning a sum of Rs.7,000/- on the date of accident. Hence, the notional income is fixed as Rs.6,500/- per month. As per the decision rendered in National Insurance Co. vs Pranay sethi and others reported in 2017 (2) TNMAC 601, 40% should be added towards future prospects of the deceased since the deceased was aged 26 years on the date of accident. Therefore, a sum of Rs.9,100/- (Rs.6,500/- + 2600=Rs.9,100) is taken up for calculating the loss of dependency. Since five persons were depending on the income of the deceased, one fourth alone can be deducted towards personal expenses of the deceased, which would come to Rs.6,825/- (Rs.9,100-Rs.2,275=6,825/-).

9. As per the decision rendered in Sarlavarma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121, the proper multiplier to be adopted in the instant case is 17. Therefore, the loss of dependency is Rs.6,825/- x 12 x 17 = Rs.13,92,300/-. Apart from the abovesaid amount, the claimants are entitled to a sum of Rs.40,000/- towards loss of consortium and Rs.15,000/- towards the funeral expenses and Rs.15,000/- towards loss of estate. Thus, the compensation amount is enhanced as detailed below:
Calculation:

Notional Income = Rs.6,500/-

40% Future Prospects = Rs.2,600/-

Total = Rs.6,500/- + Rs.2,600 = Rs.9,100/-

Multiplier Method:

= Rs.9,100/- * 12 * Multiplier 17 - 1/4 deduction

= Rs.18,56,400/- less Rs.4,64,100/- (1/4th)

= Rs.13,92,300/-

= Rs.13,92,300/-

S.No	Head	Amount granted (Rs.)
1.	Loss of dependency	13,92,300/-
2.	Loss of love and affection	40,000/-
3.	Funeral expenses	15,000/-
4.	Loss of estate	15,000/-
Total		14,62,300/-

10. In the result,

(i) The appeal in C.M.A.NO.2603 OF 2010 filed by the appellant/Insurance Company is partly allowed. No costs.

(ii) The Bajaj Allianz General Insurance Co. Ltd., is directed to pay the compensation amount at the first instance and recover the same from the owner of the vehicle in the same proceedings.

(iii) CROS. OBJ NO. 71 of 2018 filed by the claimants is partly allowed. No costs.

(iv) The compensation amount of Rs.8,35,000/- awarded by the tribunal in MCOP No.173 of 2008 on the file of the Principal Sub Judge, Motor Accidents Claims Tribunal, Tiruppur, is enhanced to Rs.14,62,300/- which shall carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit. It is made clear that the claimants are not entitled to interest for 1792 days (the period of delay in filing the cross objection).

(v) The Bajaj Allianz General Insurance Co. Ltd., is directed to pay the enhanced compensation amount of Rs.14,62,300/- (Rupees Fourteen Lakhs Sixty two thousand three hundred only) together with interest at the rate of 7.5% from the date of claim petition to the claimants, less the amount already deposited by them within four weeks from the date of receipt of a copy of this order.

(vi) On such deposit being made by the Insurance Company, the claimants are entitled to withdraw the same as per the apportionment made by the tribunal, after following due process of law.

Sd/-

सत्यमेव जयते
Assistant Registrar (CS-V)

//True copy//

Sub Assistant Registrar

bga
To,

The Principal Sub Judge,
Motor Accidents Claims Tribunal, Tiruppur.

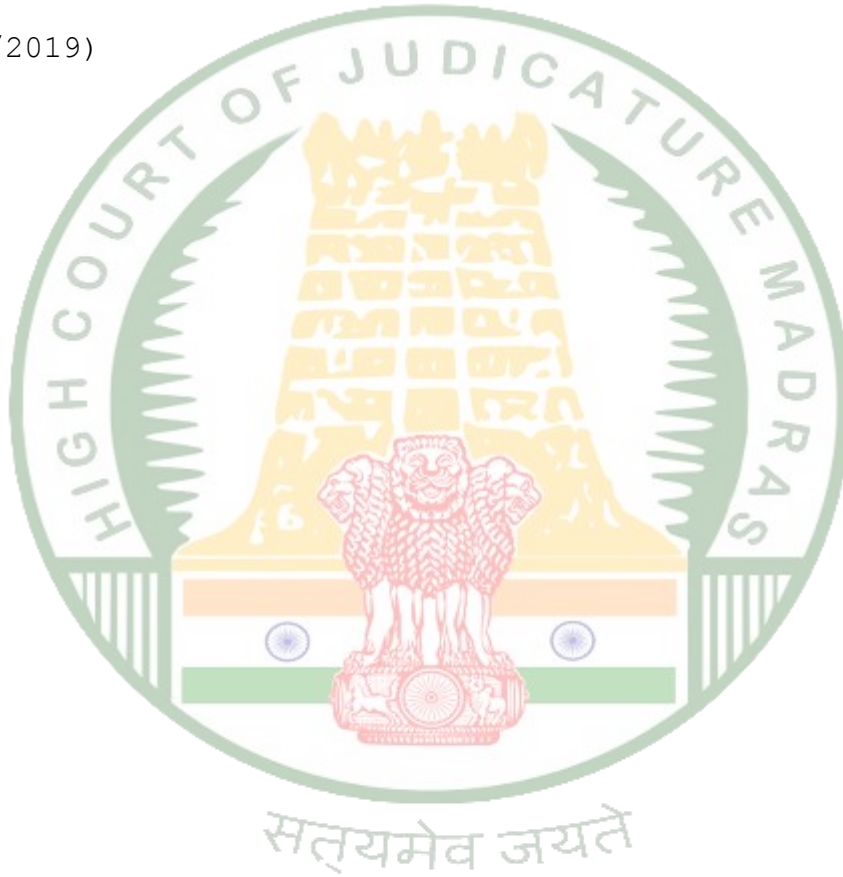
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The Section Officer,
VR Section, High Court, Madras

+1cc to Mr.S.Arun Kumar, Advocate SR.No.9398

+1cc to Mr.Ma.Pa.Thangavel, Advocate SR.No.8948

C.M.A.NO.2603 OF 2010
and
CROS. OBJ NO. 71 of 2018

VSN II (CO)
GMY (26/06/2019)



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