

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.04.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1833 of 2018
and C.M.P.No.14193 of 2018

M/s.BAJAJ ALLIANZ General
Insurance Company Limited,
'Isana Kattima Building', V Floor,
No.497/498, Poonamallee High Road,
Arumbakkam,
Chennai - 106.

.. Appellant/2nd Respondent

Vs.

1.M.Malar

2.M.Manimegalai

3.Mahavishnu

4.Backiyam

5.K.Nagarajan

(R5 set exparte in Tribunal itself) Petitioners 1 to 4

.. Respondents 1 to 4/

5th Respondent/1st respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 24.01.2018 made in M.C.O.P.No.728 of 2015 on the file of the Motor Accident Claims Tribunal, III Court of Small Causes, Chennai.

For Appellant : Mr.J.Michael Visuvasam

For RR1 to 4 : Mr.Amar D.Pandiya
for Mr.M.Udhaya Banu

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company challenging the award dated 24.01.2018 made in M.C.O.P.No.728 of 2015 on the file of the Motor Accident Claims Tribunal, III Court of Small Causes, Chennai.

2.The appellant/Insurance Company is 2nd respondent in M.C.O.P.No.728 of 2015 on the file of the Motor Accident Claims Tribunal, III Court of Small Causes, Chennai. The respondents 1 to 4 filed the said claim petition claiming a sum of Rs.30,00,000/- as compensation for the death of one Manivannan, who died in the accident that took place on 29.08.2014. The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver-cum-owner of the car belonging to the 5th respondent and directed the appellant/Insurance Company being insurer of the said car to pay a sum of Rs.16,02,500/- as compensation to the respondents 1 to 4. Against the said award dated 24.01.2018 made in M.C.O.P.No.728 of 2015, granting compensation to the respondents 1 to 4, the appellant/Insurance Company has come out with the present appeal.

3.The learned counsel appearing for the appellant/Insurance Company contended that the Tribunal ought to have seen that the accident has occurred when the deceased suddenly crossed the road and invited the accident. The Tribunal erred in fixing entire negligence on the part of the driver of the car belonging to the 5th respondent. The respondents 1 to 4 have not proved the age, avocation and income of the deceased. In the absence of material evidence, the Tribunal erroneously fixed a sum of Rs.10,000/- as notional income of the deceased and granted 25% enhancement. The compensation awarded by the Tribunal towards loss of love and affection is also excessive and prayed for setting aside the award of the Tribunal.

4.Per contra, the learned counsel appearing for the respondents 1 to 4 contended that the accident has occurred only due to rash and negligent driving by the driver of the car. They examined P.W.2/eye witness to prove the same. F.I.R. was registered only against the driver of the car and he was charge sheeted. The Tribunal has not awarded any amount towards funeral expenses and loss of estate. The compensation awarded by the Tribunal is not excessive and prayed for dismissal of the appeal.

5. Heard the learned counsel appearing for the appellant/Insurance Company as well as the respondents 1 to 4 and perused all the materials available on record.

6. From the materials available on record, it is seen that the respondents 1 to 4 have contended that the accident has occurred due to rash and negligent driving by the driver of the car, when he dashed against the deceased while he was crossing the road. The respondents 1 to 4 examined P.W.2/eye witness to prove their contention. F.I.R. was registered against the driver of the car and he was charge sheeted. The appellant did not examine the driver of the car or any other witness to disprove the contention of the respondents 1 to 4. The Tribunal considering the evidence of P.W.1, P.W.2, F.I.R. and charge sheet, held that the accident has occurred only due to rash and negligent driving by the driver of the car. The appellant has not proved that the accident occurred due to the negligence of the deceased. There is no error in the said finding of the Tribunal warranting interference by this Court.

7. As far as quantum of compensation is concerned, the respondents 1 to 4 have contended that the deceased was a rickshaw man and was earning a sum of Rs.700/- per day. They have failed to substantiate the said contention. The Tribunal fixed a sum of Rs.10,000/- per month as notional income of the deceased. The accident is of the year 2014. The notional income fixed by the Tribunal is excessive and the same is reduced to Rs.9,000/- per month. The Tribunal applied multiplier 13 and deducted $1/4^{\text{th}}$ towards personal expenses. The Tribunal has not granted any enhancement towards future prospects. The deceased was aged 48 years at the time of accident and the appellants are entitled to 25% enhancement towards future prospects. The amount granted by the Tribunal towards loss of dependency is modified to Rs.13,16,250/- (Rs.9,000/- + 2250 (Rs.9,000/- X 25%) X 12 X $13 \times 3/4$). The Tribunal has not awarded any amount towards funeral expenses and loss of estate. A sum of Rs.15,000/- each are granted towards funeral expenses and loss of estate. The Tribunal awarded a sum of Rs.75,000/- towards loss of love and affection to the respondents 2 to 4 and the same is not excessive. A sum of Rs.40,000/- awarded by the Tribunal towards loss of consortium is just and reasonable and the same is hereby confirmed. Though the Tribunal arrived at a sum of Rs.15,77,500/- as compensation, it has erroneously ordered for payment of Rs.16,02,500/- as compensation payable to the respondents 1 to 4. 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	14,62,500	13,16,250	Reduced
2.	Loss of consortium	40,000	40,000	Confirmed
3.	Loss of love and affection to the respondents 2 to 4	75,000	75,000	Confirmed
4.	Funeral expenses	-	15,000	Granted
5.	Loss of estate	-	15,000	Granted
	Total	15,77,500	14,61,250	Reduced by Rs.1,41,250/-

8. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.16,02,500/- is hereby reduced to Rs.14,61,250/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 1st respondent being the wife of the deceased is entitled to a sum of Rs.4,64,750/-, the respondents 2 and 3 being son & daughter of the deceased are entitled to a sum of Rs.4,64,750/- each and the 4th respondent being mother of the deceased is entitled to a sum of Rs.67,500/- as compensation. The appellant/Insurance Company is directed to deposit the modified award amount along with interest and costs, less the amount already deposited if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the respondents 1 to 4/claimants are permitted to withdraw their respective shares of the award amount along with proportionate interest and costs, after adjusting the amount if any, already withdrawn. The appellant/Insurance Company is permitted to withdraw the excess amount lying in the deposit to the credit of M.C.O.P.No.728 of 2015, if the entire award amount

has already been deposited by them. No costs. Consequently,
connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1.The III Judge,
Small Causes Court,
Motor Accidents Claims Tribunal,
Chennai.

2.The Section Officer,
VR Section,
High Court,
Madras.

+1 cc to Mr.J.Michael Visuvasam Advocate sr33161

+1 cc to Mr.M.Udhaya Banu Advocate sr33788

C.M.A.No.1833 of 2018
and C.M.P.No.14193 of 2018

aa10/09/2019

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