

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.06.2019

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.2642 of 2019
and
C.M.P.No.12874 of 2019

M/s.Bajaj Allianz General Insurance
Company Limited,
No.25/26, Fourth Floor,
Prince Tower, Nungambakkam,
College Road, Chennai - 600 006. ..Appellant /3rd Respondent

Vs

1.B.Siva
2.S.Parameswari
3.S.Arivindh (Minor) ..Respondents 1 to 3 / Claimant
(3rd respondent Minor rept.by
father and NF 1st respondent)

4.M.Packiaselvam
5.K.T.Palanichamy
6.R.Vijayarangan
7.R.Devendran
8.M/s.United India Insurance Company Limited,
Tarapore Towers,
7th Floor, (Insurer of the Auto),
No.826, Anna Salai,
Chennai - 600 002. ..Respondents 4 to 8/Respondents
1,2 and 4 to 6

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of
the Motor Vehicles Act, 1988 against the Judgment and Decree
made in M.C.O.P.No.3508 of 2012, dated 24.08.2018 on the file of
the Motor Accidents Claims Tribunal, II Court of Small Causes,
Chennai.

For Appellant : Mr.R.Mohan Babu for
Mr.M.B.Gopalan Asso.

For Respondents: Mr.Ma.P.Thangavel
for R1 to R3

J U D G M E N T

(Judgment of the Court was delivered by N.KIRUBAKARAN, J)

The appeal has been preferred by the Insurance Company against the award of Rs.20,46,000/- for the death of one Mr.Ramesh, aged about 20 years, who worked as a Delivery and Sales In charge in Nokia Service Centre allegedly earning about Rs.10,000/- per month. The accident occurred on 12.04.2012, when the deceased was travelling as a passenger in an auto bearing Registration No.TN-22-T-8098 which was hit by an Eicher Aavin Milk Mini Lorry bearing Registration No.TN-18-7966, coming in the opposite direction.

2.Heard Mr.R.Mohan Babu, learned Counsel appearing for the Appellant and Mr.Ma.P.Thangavel learned Counsel appearing for respondents 1 to 3.

3.The points canvassed before this Court by the learned counsel for the appellant are that the deceased was a bachelor. However, on the contrary, 1/3rd has been deducted towards personal expenses and therefore, it is submitted that 50% has to be deducted towards personal expenses. Secondly, he would submit that the offending vehicle is the Eicher lorry and the driver of the lorry does not have the badge endorsement in his driving license for driving goods vehicles. Therefore, he would submit that it is a violation of policy condition and submitted that pay and recovery has to be ordered.

4.Heard the parties and perused the records.

5.It is seen that based on Ex.P.14, pay slip and Ex.P.15, Statement of account, the tribunal has taken Rs.10,000/- as monthly income. However, in the pay slip and in the statement of account, it is seen that the deceased was earning Rs.10,139/- per month and the same is taken as monthly income of the deceased. The age of the deceased was 20 years as proved by Ex.P.8, 10th Mark sheet and Ex.P.9, Transfer Certificate and hence, the multiplier of '18' was rightly adopted by the tribunal and the same is confirmed. However, tribunal did not deduct 50% towards personal expenses as the deceased was a bachelor. Therefore, 50% is deducted towards personal expenses.

6.Further, it is seen that 40% has been added towards future prospects. As the monthly income of the deceased is a proved one, 40% awarded towards future prospects is enhanced to 50%. If 50% is added towards future prospects, the monthly income of the deceased would be Rs.10,139/- + 50% toward future prospects = Rs.15,208/-.

7. Further, on deducting 50% towards personal expenses, the monthly income of the deceased would be Rs.7,604/-. Hence, the loss of income to the family of the deceased would be Rs.10,139/- + 50% towards future prospects - 50% towards personal expenses x 12 x 18 = Rs.16,42,518/-. Since, no amount was awarded towards loss of love and affection, a sum of Rs.1,10,000/- is awarded towards loss of love and affection to the parents and brother of the deceased. A sum of Rs.15,000/- each awarded towards funeral expenses and loss of estate are confirmed. Since, no amount was awarded towards transportation, a sum of Rs.15,000/- is awarded. Therefore, the sum of Rs.20,46,000/- awarded by the tribunal is modified as follows:

SI.No	Head	Amount (Rs.)
1.	Loss of Income	16,42,518/-
2.	Loss of Love and affection	1,10,000/-
3.	Funeral Expenses	15,000/-
4.	Loss of estate	15,000/-
5.	Transportation	15,000/-
	Total	17,97,518/-
	Rounded off amount	18,00,000/-

8. Hence, the total compensation payable in this case is Rs.18,00,000/-. Therefore, the sum of Rs.20,46,000/- awarded by the tribunal is reduced to Rs.18,00,000/-

9. The interest awarded by the Tribunal at the rate of 7.5% per annum is confirmed. The appellant is directed to deposit the entire award amount along with interests and costs within a period of four weeks from the date of receipt of the copy of this order after deducting the amount, if any, already deposited and on such deposit, the tribunal is directed to transfer the respective shares of major claimants through RTGS as per the ratio fixed by the Tribunal within a period of one week. As far as the minor's share is concerned, the same shall be deposited in interest bearing fixed deposit in any one of the Nationalized Banks till he attains majority. The interest accruing on such deposit is permitted to be withdrawn by the 1st respondent once in three months.

10. Since the driver of the mini lorry did not possess the badge to drive goods vehicles as proved by Ex.R.3, Extract of the Driving license issued by RTO, it amounts to violation of policy conditions and therefore, the insurance company is not

liable to pay the amount. Hence, pay and recovery is ordered. The insurance company is directed to deposit the entire amount and thereafter, recover the same from the owner of the mini lorry.

11. Accordingly, this appeal is partly allowed, by reducing the award of the Tribunal from Rs.20,46,000/- to Rs.18,00,000/-. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

The Motor Accident Claims Tribunal,
II Court of Small Causes,
Chennai.

+1 cc to M/s.M.B.Gopalan Associates, Advocate, S.R.No.51877

+1 cc to M/s.Ma.P.Thangavel, Advocate, S.R.No.51823

C.M.A.No.2642 of 2019
and
C.M.P.No.12874 of 2019

SPD(CO)
SSM(30/09/2019)



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