

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.01.2020

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.3713 of 2010
and MP.No.1 of 2010
and Cross.Obj.No.40 of 2013

CMA.No.3713 of 2010

M/s.Bajaj Allianz General Insurance Co Ltd.,
Surya Bala Autos Private Ltd,
No.1662, New No.1062/1, Trichy road,
Sungam Sinthamani Bus Stop,
Coimbatore. ... Appellant/2d Appellant

Vs.

1.M.Saradha ...1st Respondent/Respondent

2.P.Praveen Kumar ...2nd Respondent/1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree made in MCOP.No.835 of 2010 dated 30.07.2010 on the file of the Motor Accident Claims Tribunal, Subordinate Judge, Dharapuram.

For Appellant : Mr.M.B.Gopalan

For Respondents : Mr.Ma.P.Thangavel for R1.
R2 - Exparte.

Cross.Obj.No.40 of 2013 सत्यमेव जयते

M.Saradha ... Cross objector/1st Respondent in CMA

Vs.

1. M/s.Bajaj Allianz General Insurance Co Ltd.,
Surya Bala Autos Private Ltd,
No.1662, New No.1062/1, Trichy road,
Sungam Sinthamani Bus Stop,
Coimbatore. ...1st Respondent/Appellant in CMA

2.P.Praveen Kumar ...2nd Respondent/2nd Respondent in CMA

Prayer: This cross appeal is filed under Order 41 Rule 22 of CPC, to set aside the decree and judgment made in MCOP.No.835 of 2010 dated 30.07.2010 on the file of the Motor Accident Claims Tribunal, Subordinate Judge, Dharapuram.

For Cross objector : Mr.Ma.P.Thangavel

For Respondents : Mr.M.B.Gopalan for R1.
R2 - Exparte.

COMMON JUDGMENT

This appeal has been filed by the insurance company against the judgment and decree made in MCOP.No.835 of 2010 dated 30.07.2010 on the file of the Motor Accident Claims Tribunal, Subordinate Judge, Dharapuram.

2. The case of the first respondent/claimant before the Tribunal is as follows :-

On 27.05.2007 at about 9.30pm the deceased Shreeja was standing on the northern edge of the East to West Coimbatore Town Perur main road near CGV Nagar in front of Doctor Thottam. At that time, the first respondent drove the pulsar motorcycle bearing Reg.No.TN37-AS-3717 in a rash and negligent manner without blowing the horn or following the rules of the road in a high speed from west to east due to high speed the first respondent lost the control, the motorcycle came to the northern edge of the road and dashed against the deceased with a great force. Due to the accident the deceased was thrown away and sustained grievous injuries all over the body, then the deceased was taken to CMC Hospital, Coimbatore for treatment and the deceased was died next day i.e, on 28.05.2017 midnight. At the time of accident the deceased was 20years and doing tailoring works and also part time worker in Mahalakshmi book house at Town Hall, Coimbatore and earning a sum of Rs.8,000/-p.m. The claimant lost her guiding light in financial dealings, the deceased alone look after the social financial and business interests of the claimant. FIR was also registered against the owner of the vehicle for the offence under Section 279, 304(A) IPC in Cr.No.190 of 2007 on the file of the Coimbatore TIW West police station.

3. The learned counsel for the insurance company/second respondent therein filed counter stating that the driver of the motorcycle has no valid driving licence at the time of accident and therefore, the insurer is not liable to pay the compensation. There is a contributory negligence on the part of the deceased at the time of the accident, the liability is to be apportioned. The claimant has stated that the deceased was doing tailoring work and part time job in Mahalakshmi book house

at Town hall, Coimbatore and earning a sum of Rs.8,000/-p.m., the income of the deceased has to be proved with valid documentary evidence.

4. In order to prove the case of the claimant, the claimant examined herself as PW1 and marked Ex.P1 to Ex.P6. No oral and documentary evidence has been marked on the side of the respondents.

5. Heard both sides and perused the materials available on record.

6. The learned counsel for the appellant/insurance company mainly contended that the accident took place on 27.05.2007 at about 9.30pm and the deceased died on 28.05.2007. The Tribunal has erred in calculating the income of the deceased at Rs.3,000/-p.m. without any proof to prove the income of the deceased and after deducting 1/3rd towards her personal expenses, Rs.2,000/- has been taken as her income, which is on higher side. Hence, the learned counsel prays for reducing the compensation awarded by the Tribunal.

7. The learned counsel for the claimant submits that the Tribunal has grossly erred in calculating the income of the deceased, the Tribunal ought to have considered atleast a sum of Rs.4,500/- towards the income of the deceased after deducting 1/3rd a sum of Rs.3,000/- can be adopted for calculating the future income of the deceased.

8. From the available records, it is seen that the it will be sufficient if the income of the deceased has been taken at Rs.4,500/-p.m. after deducting 1/3rd towards her personal expenses a sum of Rs.3,000/-p.m. shall be taken for calculating the loss of income of the deceased. This Court finds some sound force in the arguments advanced by the counsel for the claimant for enhancing the compensation under the head of Loss of income and future prospects $\text{Rs.3000} \times 12 \times 17 = \text{Rs.6,12,2000/-}$, the deceased would have contributed atleast more than Rs.6,000/- to her family expenses, as she is unmarried and doing tailoring job and a part time worker in the book shop, this Court is also of the view that now a days the tailors are charging more rates depends upon the design work they done in the dresses.

9. During the pendency of the civil miscellaneous appeal, the claimant filed a cross appeal in Cross.Obj.No.40 of 2013 for enhancement of compensation as against the judgment and decree made in MCOP.No.835 of 2010 dated 30.07.2010 on the file of the Motor Accident Claims Tribunal, Subordinate Judge, Dharapuram, with a delay of 747days in filing the cross appeal. This Court by an order dated 22.03.2013 condoned the delay with a condition

that the claimant shall not be entitled to any interest during the delay period?.

10. This Court however considering the material factors relevant for determination of just and fair compensation is inclined to enhance the compensation as stated below, the enhanced compensation on the heads of pain and sufferings, transportation, damages to cloths and funeral expenses are as follows :-

Sl.No.	Heads	Amount
1	Loss of income (3000 X 12 X 17)	6,12,000
2	Transportation	5,000
3	Damages to cloths	1,000
4	Funeral expenses	10,000
5	Pain and sufferings and love and affection	20,000
	TOTAL	6,48,000

11. The compensation of Rs.4,33,500/- is enhanced to Rs.6,48,000/-. The appellant/Insurance Company is directed to deposit the enhanced compensation with interest at 7.5% per annum from the date of petition till the date of payment and with proportionate cost. The judgment of the Tribunal remains unaltered in other aspects. The time for payment of amount is eight weeks from the date of receipt of copy of the Judgment and on such deposit of amount, the claimant is permitted to withdraw the entire amount by filing separate cheque application. As the claimant filed the cross appeal with a delay of 747days, hence, the claimant is not entitled for any interest during the delay period.

12. In the result, the Civil Miscellaneous appeal filed by the insurance company is dismissed. The Cross appeal filed by the claimant is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-IX)

//True copy//

Sub Assistant Registrar

tsh

To

The Subordinate Judge,
The Motor Accident Claims Tribunal,
Dharapuram.

Copy To

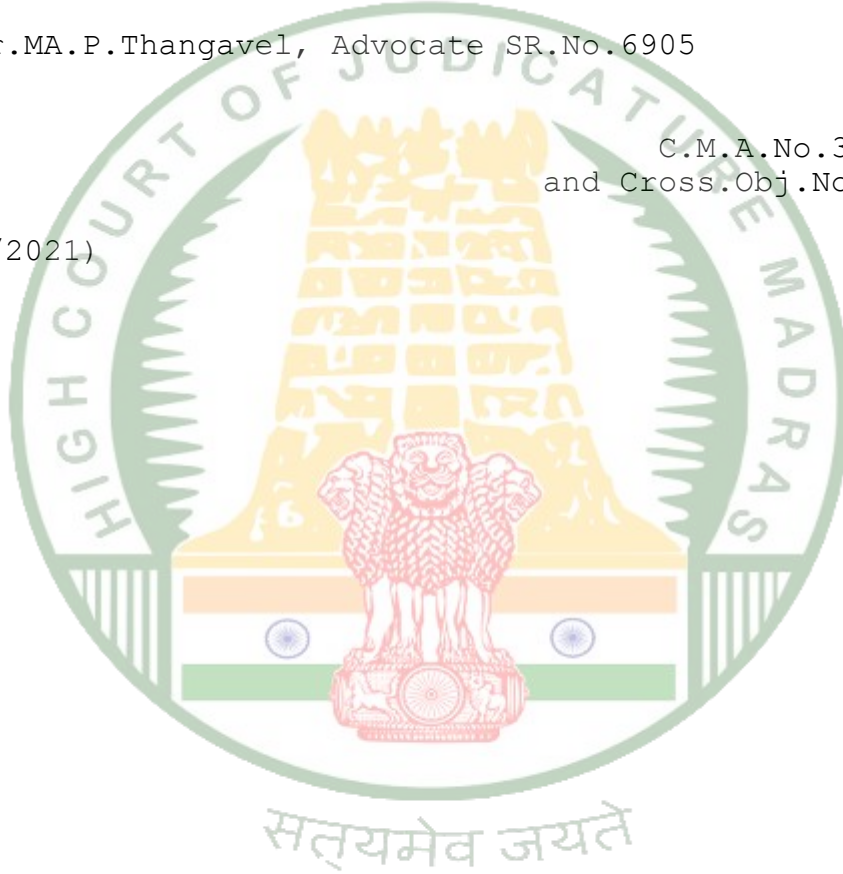
The Section Officer,
VR Section, High Court, Madras-104

+1cc to Mr.M.B.Gopalan, Advocate SR.No.7347

+1cc to Mr.MA.P.Thangavel, Advocate SR.No.6905

C.M.A.No.3713 of 2010
and Cross.Obj.No.40 of 2013

SSD (CO)
GMY (19/04/2021)



WEB COPY