

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 10.02.2020

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THE HONOURABLE MR. JUSTICE M.M.SUNDRESH
and
THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

C.M.A.No.1752 of 2018
and
C.M.P.No.13543 of 2018

The Manager,
M/s.Bajaj Allianz General Insurance Company Limited,
Registered Office, G.E.Plaza,
Airport Road, Yerwada,
Pune - 411 006. ... Appellant /3rd Respondent

vs.

1.G.Bharathi
2.M.Sathyanarayanan (Minor)
3.M.Lalithasri (Minor)
[R2 and R3 represented NF/Mother by R1]

4.P.Elakkiya ... Respondent 1-4/ Claimants
5.K.Arivumani ... 5th Respondent /1st Respondent
6.K.C.Jagannathanan ... 6th Respondent/2nd Respondent

Appeal filed under Section 173 of the Motor Vehicles Act,
1988 against the judgment and decree made in M.C.O.P.No.332 of
2013, dated 24.02.2017 on the file of the Motor Accidents Claims
Tribunal, Special District Court, Krishnagiri.

For Appellant : Mr.M.B.Raghavan
For Respondents : Mr.Mukund R.Pandian
for R1 to R4
No Ready notice - R5 & R6

JUDGMENT

(Judgment of the Court was delivered by M.M.SUNDRESH, J.)

This appeal has been preferred by the insurer, challenging
the liability and quantum.

2. On 28.07.2011, when the deceased was riding his motorcycle, it was hit by a car insured with the appellant, causing fatal injuries. At the time of accident, the deceased was aged about 41 years. He was employed as a B.T. Assistant in a Government high school, earning a salary of Rs.32,000/- per month. He has put in about 17 years of service.

3. Respondents 1 to 3/claimants 1 to 3 are the wife and minor children of the deceased. Insofar as the fourth claimant is concerned, the Tribunal rightly rejected the compensation. Before the Tribunal, the claimants sought for a sum of Rs.75 lakhs as compensation. Upon considering the evidence available, the Tribunal has awarded a sum of Rs.42,20,660/- as compensation. The claimants examined four witnesses P.Ws.1 to 4 and Exs.P1 to P18 have been marked. On behalf of the appellant, the driver of the car has been examined as R.W.1 and the Legal Officer of the insurance company has been examined as R.W.2 while marking Exs.R1 and R2.

4. Learned counsel appearing for the appellant submitted that the vehicle was not identified at the time of accident. Therefore, the very accident itself is in dispute. The Tribunal has fixed higher amount with respect to the income of the deceased. Higher amounts have been awarded towards loss of love and affection and loss of consortium. Therefore, the appeal will have to be allowed.

5. Learned counsel appearing for respondents 1 to 4 submits that the deceased was a Government servant, his salary has been taken into consideration and based upon which, the loss of earning has been fixed at Rs.38,40,660/-. Insofar as the liability is concerned, P.W.2 has been examined along with the documents marked under Exs.P1 and P18. P.W.4 has also given evidence with respect to the accident. The vehicle has been subsequently identified and the driver has been arrested. The complaint given before the CBCID has also been closed. Therefore, the appeal will have to be dismissed.

6. On the question of liability, we do not find any reason to interfere with the finding on facts rendered by the Tribunal. The Tribunal did take into consideration P.Ws.2 and 4 along with two documents especially Exs.P1 and P18. Thus, the finding on liability stands confirmed.

7. On the issue of quantum also, we do not want to interfere much as the deceased was admittedly a Government servant. His salary certificate has been taken into consideration and on that basis, the loss of income has been arrived at. There is no dispute with respect to the deduction made and multiplier adopted. However, we find that the Tribunal has awarded a sum of

Rs.1,50,000/- towards loss of consortium and Rs.2,00,000/- towards loss of love and affection. With respect to these two heads, the claimants are entitled to Rs.40,000/- each. Accordingly, we award a sum of Rs.40,000/- towards loss of consortium and Rs.80,000/- towards loss of love and affection as there are two minor children. Thus, we arrive at the total compensation of Rs.39,90,660/- rounded off to Rs.40,00,000/- as under:

Loss of earning	..	Rs.38,40,660/-
Transport to hospital	..	Rs. 5,000/-
Funeral expenses	..	Rs. 25,000/-
Loss of consortium	..	Rs. 40,000/-
Loss of love and affection	..	Rs. 80,000/-
		=== = = = = =
Total	..	Rs.39,90,660/-
		= = = = = = = =
Rounded off to	..	Rs.40,00,000/-

The interest awarded by the Tribunal at 7.5% per annum shall stand confirmed. The reduced compensation amount shall be apportioned amongst claimants 1 to 3 in the same ratio as ordered by the Tribunal.

8.In such view of the matter, the Civil Miscellaneous Appeal stands allowed in part. No costs. Consequently, connected miscellaneous petition is closed.

9.The appellant insurance company is directed to deposit the reduced compensation amount along with proportionate interest, if not already deposited, to the credit of M.C.O.P.No.332 of 2013 on the file of the Motor Accidents Claims Tribunal (Special District Court), Krishnagiri, within a period of eight weeks from the date of receipt of a copy of the judgment.

10.We also direct the Tribunal to transfer the share of the first respondent by way of RTGS to her bank account within a period of three weeks from the date of receipt of a copy of this order. On such transfer, she is entitled to withdraw the same. Insofar as share of minor third claimant/third respondent is concerned, the same shall be deposited in any one of the Nationalised Banks under reinvestment scheme till she attains majority. The first respondent/mother of minor third claimant is permitted to withdraw the interest accrued on the minor's deposit once in three months directly from the Bank. The second respondent/second claimant, then minor, would have attained majority by now and he is permitted to withdraw his share along

with accrued interest, after filing necessary application before the Tribunal, to declare him as major.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

mmi

To

The Motor Accidents Claims Tribunal,
Special District Court, Krishnagiri.

Copy To

The Section Officer,
V.R. Section, High Court,
Madras.

+1cc to Mr.M.B.Gopalan Associates, Advocate, S.R.No. 11523

+1cc to Mr.Mukund R.Pandian, Advocate, S.R.No. 10601

C.M.A.No.1752 of 2018

RSV(CO)
GN(21/01/2021)

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