IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.09.2020

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.1834 of 2014

M/s.Bajaj Allianz General Insurance Company Limited,
No.25/26, Prince Tower,
4th Floor, College Road, Nungambakkam,
Chennai. ...Appellant/2nd Respondent

vs.

Ammakannu (died)
(Amended as per order in
I.A.No.408/13 dated 19.09.2013)

1.Annadurai ..1st Respondent/2nd Petitioner

2.TVL Marks Cargo (P) Limited,
No.12, Poonthottam Mettu Street,
Villupuram Town, Villupuram District.
… 2nd Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, praying to set aside the award as made against the Appellant herein, who is the second respondent in the Claim Petition, under the judgment and decree in MCOP No.760 of 2013 dated 24.03.2014 on the file of the Motor Accident Claims Tribunal (Special Subordinate Judge), Tirupattur (previously numbered as MCOP 457 of 2010 on the file of Sub-Court, Tirupattur), dismiss the Claim Petition entirely as against the appellant herein.

For Appellant : M/s.T.K.Prem Kumar



For Respondents : M/s.M.Malar for R1
No such person for R2

JUDGMENT

(This case was heard through Video Conferencing)

This appeal has been filed by the Insurance Company challenging the Award dated 24.03.2014, passed by the Motor Accident Claims Tribunal, in M.C.O.P.No.457 of 2010, which was subsequently re-numbered as M.C.O.P.No.760 of 2013.

2. Heard Mr.T.K.Prem Kumar, learned counsel for the Appellant and Mrs.M.Malar, learned counsel for the first respondent.

3. A person by name Arumugam, who was working as a Branch Manager in a Beedi Manufacturing Company died at the age of 38 years, as a result of an accident caused by a vehicle owned by the second respondent, and insured with the appellant. The mother of the deceased Ammakannu and the first respondent Annadurai, preferred a claim before the Motor Accident Claims Tribunal seeking compensation for the death of Arumugam. During the pendency of the claim, the mother of the deceased Ammakannu died and the first respondent who is the brother of the deceased was brought on record as the only legal heir of the deceased Ammakannu. The Tribunal under the impugned Award directed the appellant / Insurance Company to pay a compensation of Rs.7,50,000/- to the first respondent together with interest and cost for the death of Arumugam as detailed hereunder:

| | | |
|---|---|---|
| For loss of dependency | - | Rs.7,20,000/- |
| For loss of Estate to petitioner | - | Rs.10,000/- |
| For loss of love and affection | - | Rs.10,000/- |
| For funeral and transportation | - | Rs.10,000/- |
| Total | | Rs.7,50,000/- |

4. The appellant has challenged the impugned Award on the following grounds:

a) the first respondent who is the brother of the deceased is not his dependent and hence they are not liable to compensate the claim to him.

b) the quantum of compensation awarded by the Tribunal under the impugned Award is excessive.

5. Insofar as the first contention raised by the appellant is concerned, admittedly the first respondent is the brother of the deceased. It is also an admitted fact that deceased died without leaving any issues and his wife predeceased him. The claim petition was filed by the mother of the deceased namely Ammakannu as well as the first respondent, who is the brother of the deceased. During the pendency of the claim petition, Ammakannu died and the first respondent was the only legal heir of the deceased Arumugam.

6. Before the Tribunal, the claimants have filed 9 documents which were marked as Exs.P1 to P9 and three witnesses were examined on their side namely PW1 - the brother of the deceased who is the first respondent herein, PW2 - an eye witness to the accident and PW3 - co-worker of the deceased. On the side of the appellant / Insurance Company,

four documents were filed which were marked as Exs.R1 to R4 and one witness was examined on their side namely their official RW1. The first respondent has adduced oral evidence deposing that he is entirely dependent on the income of the deceased as he is only a Coolie (labourer). The co-worker of the deceased (PW3) has also deposed that the first respondent is the dependent on the income of the deceased Arumugam. The mother of the deceased Ammakannu also died only after she filed the claim along with her son before the Tribunal. No convincing evidence has been produced by the appellant / Insurance Company before the Tribunal to disprove the contention of the first respondent that he is dependent on the income of the deceased who is his brother. Except producing the Ration Card of the deceased, which was marked as Ex.R3 and the Ration Card of the first respondent which was marked as Ex.R4, they have not produced any other evidence to disprove the contention of the claimants. The Ration Card only discloses that the deceased as well as the first respondent were residing at different addresses.

7. Admittedly, the deceased has left behind no issues and his wife also predeceased him. He was a Manager in a Beedi Factory and in the claim petition filed by the claimants, they have pleaded that the deceased was earning Rs.15,000/- per month. However, the first respondent is only a Coolie (labourer). The avocation of the deceased as well as that of the first respondent has not been disputed by the appellant / Insurance Company before the Tribunal as seen from the evidence available on record. The deceased was admittedly enjoying better employment and drawing a higher salary than that of the first respondent, who is just a Coolie (labourer). It is also an admitted fact that the first respondent is married and has two children. Being a Coolie (labourer) and the deceased being his own brother, the first respondent / claimant would certainly depend upon the income of the deceased that too when the deceased was not having any issues and his wife has also predeceased him. The deceased before his death would have needed the support of the first respondent on a regular basis as he does not have issues and therefore the dependency is mutual between the first respondent and the deceased. The Tribunal has taken into consideration all these factors and has rightly held that the first respondent / claimant is a dependent of the deceased. Therefore, the contention raised by the appellant in this appeal that the first respondent / claimant is not a dependent of the deceased has to be necessarily rejected.

8. With regard to the second contention, that the quantum of compensation awarded by the Tribunal is excessive is concerned, this Court is of the considered view that the quantum of compensation assessed by the Tribunal under the impugned Award is a just compensation for the following reasons:

a) In the claim petition, the claimants have pleaded that the deceased was a Branch Manager in a Beedi Manufacturing Company and was aged 38 years and was earning Rs.15,000/- per month at the time of the accident. The F.I.R. and the Postmortem Certificate mentions the age of the deceased as 40 years and the same is taken as the age of the deceased at the time of the accident by the Tribunal. The age and avocation of deceased has not been disputed by appellant / Insurance Company before the Tribunal as seen from the evidence available on record. The accident happened in the year 2010. The Tribunal has assessed the notional monthly income of the deceased at Rs.6,000/-. Considering the year of the accident, this Court is of the considered view that the assessment made by the Tribunal is a correct assessment.

b) The Tribunal has rightly deducted 1/3rd towards personal expenses of the deceased since the deceased cannot be treated as a bachelor as he was a married person who had lost his wife. The Tribunal has also applied the correct multiplier of 15 since the deceased was aged 40 years as per the post-mortem certificate Ex.P2. The Tribunal has rightly adopted the correct multiplier in accordance with the settled practice. The compensation awarded by the Tribunal under various other heads as indicated earlier in this judgment is a just compensation in the considered view of this Court.

9.For the foregoing reasons, there is no merit in this appeal and the appeal shall stand dismissed. The Appellant Insurance Company is directed to deposit the amount awarded by the Tribunal, after deducting the amount already deposited if any, together with interest at the rate of 7.5% from the date of the claim till the date of realization to the credit of M.C.O.P.No.760 of 2013 on the file of the Motor Accidents Claims Tribunal (Special Subordinate Judge), Tirupattur, within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the Award amount directly to the bank account of the first respondent /claimant, through RTGS, within a period of two weeks thereafter. No costs.

Sd/-
Assistant Registrar(CS-VI)



//True copy//

Sub Assistant Registrar

Pns

To

1. The Special Subordinate Judge,
   The Motor Accident Claims Tribunal,
   Special Subordinate Judge, Tirupattur

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



BR(CO)
GMY(04/05/2021)