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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.03.2021

CORAM:

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

AND

THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

C.M.A(MD)No.248 of 2018

and

C.M.P(MD)No.3662 of 2018

Bajaj Allianz General Insurance Company Limited,
Pune, Through its General Manager,
GE Plaza, Airport Road,
Yerwada,
Pune.

... Appellant/2nd Respondent

Vs.

1.Thangam
2.Karthikeyan
3.Ramesh
4.Ezhil Arasan

... Respondents 1 to 4/Claimants

5.A.Jaffer Siddiq

... 5th Respondent/ 1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree order dated 06.10.2017 made in M.C.O.P.No.1195 of 2014, on the file of the Motor Accident Claims Tribunal (Special Subordinate Court), Tirunelveli.

For Appellant	: Mr.J.S.Murali
For RR 1 to 4	: Mr.R.J.Karthick
For R - 5	: No appearance

JUDGMENT

**(Judgment of the Court was delivered by
PUSHPA SATHYANARAYANA, J.)**

The Bajaj Allianz General Insurance Company is the appellant. Challenging the award, dated 06.10.2017 made in M.C.O.P.No.1195 of 2014, on the file of the Motor Accident Claims Tribunal (Special Subordinate Court), Tirunelveli, the present Civil Miscellaneous Appeal is filed with regard to quantum.

2.The claimants, who are the respondents 1 to 4, have filed a claim petition claiming compensation for the death of one Murugan,



who died in the accident that occurred on 11.04.2014 The respondents 1 to 4 are the wife and children of the deceased Murugan.

3.The brief facts relevant for the consideration of the above case are that on 11.04.2014, when the deceased-Murugan was walking in Palayamkottai - Tiruchendur road, the Omni Van bearing Registration No.TN-22-BJ-1666 belonging to the fifth respondent/first respondent, driven by its driver in a rash and negligent manner, came from behind, dashed against him, as a result of which, he sustained grievous injuries and died on 23.04.2014. Hence, the respondents 1 to 4/claimants, as legal heirs of the deceased, have filed this claim petition claiming a compensation of Rs.25,00,000/-.

4.Resisting the claim petition, the appellant-Insurance Company has filed a counter affidavit contending that the accident had occurred only due to the reckless act of the deceased and the quantum of compensation as claimed by the claimants is highly excessive and without any basis.

5.Before the Tribunal, on the side of the claimants, P.W.1 to P.W.4 were examined and Exs.P1 to Ex.P14 were marked. On the side of the appellant, R.W.1 and R.W.2 were examined and Ex.R1 & Ex.R2 were also marked.

6.The Tribunal, after considering the oral and documentary evidence, held that the accident had occurred only due to the rash and negligent driving of the driver of the fifth respondent/first respondent and that the deceased had sustained injuries and due to the impact, he died. The Tribunal further held that the appellant/Insurance Company is liable to pay compensation to the claimants and had awarded a total compensation of Rs.33,65,402/- under various heads.

7.The learned counsel appearing for the appellant/Insurance Company would submit that the Tribunal had awarded excessive compensation under different heads. The learned counsel further submitted that admittedly, the deceased was on the verge of retirement and as such, split multiplier ought to have been applied.

8.The learned counsel appearing for the respondents 1 to 4/claimants would submit that the Tribunal had correctly awarded the compensation under various heads and the same need not be interfered with.

9.Heard the learned counsel appearing on either side and perused the materials available on record.



10. On a perusal of the entire materials available on record, it is seen that the deceased was employed as a Secretary in the Government Medical College Hospital Co-operative Thrift Society, Tirunelveli and earned a sum of Rs.26,500/-, as per Ex.P.7. Since the deceased was aged about 50 years and left with another 8 years of service, 30% of the income shall have to be added towards future prospects. If 30% of the income towards future prospects is added to the monthly income of Rs.26,500/-, it comes to Rs.34,450/- (Rs.26,500 + Rs.7,950) and the annual income arrives at Rs.4,13,400/-. If 10% is deducted towards Income Tax, the same would arrive at Rs.3,72,060/- (Rs.4,13,400 - Rs.41,340). If 1/4th has to be deducted towards personal expenses of the deceased, it comes to Rs.2,79,045/- (Rs.3,72,060 - Rs.93,015).

11. Since the deceased was aged about 50 years and the regular multiplier is '13', on the basis of split multiplier method, the claimants are entitled to full compensation for '8' and 50% on remaining '5' multiplier, then the compensation payable will be as under:

Rs.2,79,045/- X '8' multiplier	= Rs.22,32,360/-
50% of Rs.2,79,045/- is Rs.1,39,522	
(Rs.1,39,522 X '5' multiplier)	= Rs. 6,97,613/-

	Rs.29,29,973/-

Therefore, compensation payable under the head of 'loss of dependency' is **Rs.29,29,973/-** (Rs.22,32,360/- + Rs.6,97,613/-).

12. As far as the loss of consortium is concerned, the Tribunal had awarded a sum of Rs.1,00,000/- to the first respondent and a sum of Rs.4,00,000/- towards loss of love and affection to the respondents 1 to 4, which is on the higher side. As per the decision in **Magma General Insurance Co. Ltd., v. Nanu Ram & Others.**, reported in **2018 (1) TN MAC 452 (SC)**, the respondents 1 to 4 each are entitled to Rs.40,000/- which comes to Rs.1,60,000/- (Rs.40,000 x 4=Rs.1,60,000/-).

13. The amounts awarded by the Tribunal under the other heads, viz., a sum of Rs.10,000/- towards transportation charges; a sum of Rs.25,000/- towards funeral expenses; a sum of Rs.7,500/- towards mental agony and a sum of Rs.55,365/- towards medical expenses are very reasonable and they are confirmed.

14. As regards the interest awarded by the Tribunal at the rate of 9% per annum, normally, the Court used to award interest at the rate of 7.5% per annum due to economical changes in the Country and



therefore, the interest awarded by the Tribunal is required to be reduced to 7.5% per annum from 9% per annum and it is reduced accordingly.

15. Accordingly, the Award of 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 (left over service period)		22,32,360	
	Loss of dependency (remaining period)		(+)	
			6,97,613	
		27,67,537/-	29,29,973/-	enhanced
2.	Loss of consortium to the first respondent	1,00,000/-	40,000/-	reduced
3.	Loss of love and affection to the respondents 2 to 4	4,00,000/-	1,20,000/- (40,000 X 3)	reduced
4.	Transport expenses	10,000/-	10,000/-	Confirmed
5.	Funeral expenses	25,000/-	25,000/-	Confirmed
6.	Mental Agony	7,500/-	7,500/-	Confirmed
7.	Medical expenses	55,365/-	55,365/-	Confirmed
	Total	Rs.33,65,402/-	Rs.31,87,838/-	Reduced by Rs.1,77,564/-

19. In the result, the Civil Miscellaneous Appeal is allowed in part as follows:-

(i) The Award of the Tribunal is reduced to Rs.31,87,838/- from Rs.33,65,402/-.



(ii) The interest granted by the Tribunal at 9% per annum is reduced to 7.5% per annum.

(iii) The learned counsel appearing for the Insurance Company is directed to deposit the award amount together with accrued interest and costs to the credit of claim petition, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this order.

(iv) The Tribunal is directed to refund the excess award amount, if any, to the appellant-Insurance Company.

(v) The respondents 1 to 4 are permitted to withdraw their share in the award amount with proportionate accrued interest and costs, less the award amount withdrawn already, as per the apportionment made by the Tribunal.

No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CSIIII)

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Sub Assistant Registrar(CS)

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Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

- 1.The Special Subordinate Judge,
Motor Accident Claims Tribunal,
Tiruneveli.
- 2.The V.R Section (Records),
Madurai Bench of Madras High Court,
Madurai.



+1 CC to M/s.J.S.MURALI, Advocate (SR-11315[F] dated 16/03/2021)

+1 CC to M/s.R.J.KARTHICK, Advocate (SR-11934[F] dated 17/03/2021)

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