



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.02.2012

CORAM :

THE HONOURABLE MR.JUSTICE R.SUBBIAH

C.M.A.(MD).No.1373 of 2011

The Manager,
Bajaj Allianz General Insurance Co., Ltd.,
Madurai.

... Appellant

vs.

1.Vetrivel
2.Selvi
3.Minor Balamurugan
4.Minor Arthi
5.Minor Naveenkumar
6.Ayirasu
7.Muthusamy
8.Karthikeyan

.. Respondents

Prayer: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decretal order made in M.C.O.P.No.119 of 2009, dated 11.03.2011, by the Motor Accident Claims Tribunal (Additional District Judge/Special Court for Essential Commodities), Thanjavur.

For Appellant : Mr.S.Srinivasa Raghavan

For Respondents 1-7: Mr.S.Deenadhayalan

JUDGMENT

This appeal is filed by the appellant insurance company challenging the quantum of compensation awarded by the tribunal in and by award, dated 11.03.2011 made in M.C.O.P.No.119 of 2009 by the Motor Accidents Claims Tribunal, (Additional District Judge/Special Court for Essential Commodities), Thanjavur.

2.The only ground urged by the learned counsel appearing for the appellant insurance company is that the tribunal while calculating the amount under the head of loss of dependency has fixed a sum of Rs.6,000/- as monthly income which had ultimately resulted in awarding an exorbitant sum of Rs.7,68,000/- as compensation under the head of loss of dependency. In this regard, the learned counsel appearing for the appellant submitted that absolutely no proof was produced by the respondents/claimants to show that the deceased was earning a sum of Rs.6,000/- per month as monthly income of the deceased. Therefore, proper reduction has to be made in the award passed by the tribunal.

3.Per contra, the learned counsel for the respondents/claimants made his submissions supporting the award passed by the tribunal.

4. Keeping the submissions made by the learned counsel on either side, I have carefully gone through the entire materials available on record and I find that it is the case of the respondents/claimants that the deceased was a mason by avocation and he was earning a sum of Rs.9,000/- per month. But as contended by the learned counsel for the appellant, absolutely no documentary proof was produced to show that the deceased was earning a sum of Rs.6,000/- per month. In the absence of any documentary evidence, I am of the opinion, a sum of Rs.6,000/- fixed by the tribunal as monthly income is extremely on the higher side. However, considering the facts and circumstances of the case, by fixing a sum of Rs.4,500/- as monthly income of the deceased, the amount awarded by the tribunal could be modified. If a sum of Rs.4,500/- is fixed monthly income of the deceased, then the annual loss of income works out to Rs.54,000/- . Since the claimants are 7 in numbers, I am of the opinion, it would be appropriate to deduct $\frac{1}{4}$ th of the amount towards the personal expenses of the deceased and if $\frac{1}{4}$ th of the amount is deducted then the balance amount works out to Rs.40,500/- and if multiplier '16' is applied then the total income works out to Rs.6,48,000/- (40500x16). Therefore, the sum of Rs.7,68,000/- awarded by the tribunal under the head of loss of dependency is hereby reduced to Rs.6,48,000/-. The amount of Rs.60,000/- awarded under the head of loss of love and affection to the respondents 1,3,4 and 5 appears to be extremely on the higher side. Hence, the sum of Rs.60,000/- awarded by the tribunal under the head of loss of love and affection is hereby reduced to Rs.40,000/- by awarding a sum of Rs.10,000/- each to the respondents 1, 3, 4 and 5. Except the above modification, the award remains unaltered, in all other respects.

5. The break up details of the modified award amount are as follows:

		Rs.
For Loss of dependency	...	6,48,000/-
For Loss of Love and Affection	...	40,000/-
For Loss of Consortium	...	15,000/-
For Maintenance	...	20,000/-
For Funeral Expenses	...	7,000/-
		=====
Total		7,30,000/-
		=====

6. In view of the above modification, the total award amount of Rs.8,70,000/- is hereby reduced to Rs.7,30,000/-. The appellant insurance company is directed to deposit the entire award amount with proportionate interest within a period of six weeks. On such deposit being made, the second respondent/claimant is entitled to a sum of Rs.2,50,000/- and she is permitted to withdraw the amount of Rs.2,50,000/-. The respondents 1, 3, 4 and 5 are entitled to a sum of Rs.1 lakh each and the first respondent/claimant is permitted to withdraw the share amount of Rs.1 lakh and since the respondents 3 to 5 are minor, the amount shall be invested in any one of the Nationalised Banks initially for a period of two years and thereafter renewable under the reinvestment scheme, till they attain majority. The second respondent is permitted to withdraw the accrued interest once in three months. The balance amount of Rs.80,000/- has to be apportioned equally between the respondents 6 and 7 and permitted to withdraw their respective shares.



7.The Civil Miscellaneous Appeal is partly allowed to the extent indicated above. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (Crl.side)

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/True copy/

Sub Assistant Registrar (CS)

To

The Motor Accident Claims Tribunal,
(Additional District Judge/
Special Court for Essential Commodities),
Thanjavur.

sms

C.M.A. (MD) .No.1373 of 2011
29.02.2012

TR : 29.03.2012 : 3p/2c