



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.11.2016

Coram:

THE HONOURABLE MR. JUSTICE S.M. SUBRAMANIAM

WEB COPY

C.M.A (MD) No.1320 of 2014andM.P. (MD) No.1 of 2014

The Branch Manager,
National Insurance Company Limited,
1st Floor, Anguvilas Building,
112, North Car Street, Nagercoil,
Kanyakumari District.

.. Appellant/3rd Respondent**Vs.**

1. Mani s/o. Manickam
2. Latha D/o. Mani
3. Rosa w/o. Mani
4. Kingsly
5. Azhagesan
6. Premashyla
7. Devadoss

..1 to 3rd Respondents/Petitioner

8. The Branch Manager,
United India Insurance Company Limited,
Xavier Building 2nd Floor, P.W.D. Road,
Nagercoil, Kanyakumari District.

4th to 8th respondents/1st, 2nd, 4th 5th and 6th Respondents

(Notice to R6 to R8 are dispensed with)

Prayer:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree in M.C.O.P.No.162 of 2007, dated 22.02.2012, on the file of the Motor Accident Claims Tribunal, Subordinate Court, Kuzhithurai.

For Appellant : Mr.J.S.Murali

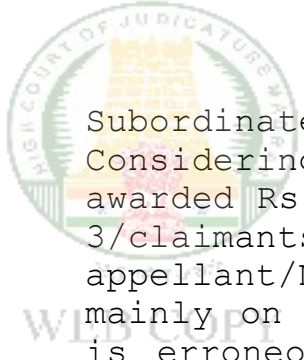
For Respondents 1 to 5 : No Appearance

(R6 to R8 Dispense with)

JUDGMENT

The appellant/National Insurance Company has filed the present C.M.A (MD) No.1320 of 2014, challenging the award passed in MCOP.No.162 of 2007, dated 22.02.2012, on the file of the Motor Accident Claims Tribunal, Subordinate Court, Kuzhithurai.

2. It is a fatal case caused through an accident took place on 30.08.2006 around 11.00 p.m. opposite to Canara Bank, Marthandam. The heirs of the deceased filed an application seeking compensation before the Motor Accident Claims Tribunal,



Subordinate Court, Kuzhithurai in MCOP.No.162 of 2007. Considering the facts and circumstances of the case, the Tribunal awarded Rs.7,58,000/-. The amount claimed by the respondents 1 to 3/claimants was Rs.7,00,000/-. Challenging the same, the appellant/National Insurance Company has preferred the appeal mainly on the ground that the multiplier adopted by the Tribunal is erroneous and further the Insurance Company is not liable to pay the compensation.

3.It is a case of the appellant/National Insurance Company that the driver, who was driving the vehicle met with an accident did not possess valid and effective driving licence and therefore, the National Insurance Company ought to have been exonerated from total liability. In respect of liability aspects, this Court is not inclined to consider and the Tribunal has rightly fixed the liability on the appellant/National Insurance Company. In respect of the quantum, the multiplier adopted by the Tribunal is erroneous to the extent that the 2/3rd towards personal expenses of the deceased was erroneous and 50% ought to have been adopted, because the deceased was a Bachelor at the time of death and was aged about 20 years. Hence, this Court is inclined to consider the change of adoption of multiplier alone and accordingly $\text{Rs.}5,000 \times 50/100 \times 12 \times 17 = 5,10,000/-$ is fixed.

4.Consequently, the total award amount of Rs.7,58,000/-is reduced to Rs.5,88,000/-. Accordingly, the Civil Miscellaneous Appeal is allowed and the quantum of compensation awarded by the Tribunal is modified from Rs.7,58,000/- to Rs.5,88,000/-. In all other aspects, the award of the Motor Accident Claims Tribunal, Subordinate Court, Kuzhithurai, dated 22.02.2012, is confirmed.

5.In respect of the liability, the judgment of the Hon'ble Supreme Court of India is to be followed and accordingly the appellant/National Insurance Company shall pay the entire compensation to the respondents 1 to 3/claimants and recover the same by following the procedure laid down by the Hon'ble Supreme Court of India in the case of **Oriental Insurance Company Limited vs. Nanjappan and others** reported in (2004) 13 SCC 224 is applied which is extracted below:

"8.Therefore, while setting aside the judgment of the High Court we direct in terms of what has been stated in Baljit Kaur's case (supra) that the insurer shall pay the quantum of compensation fixed by the Tribunal, about which there was no dispute raised, to the respondent-claimants within three months from today. For the purpose of recovering the same from the insured, the insurer shall not be required to file a suit. It may initiate a proceeding before the concerned Executing Court as if the dispute between the insurer and the owner was the subject matter of determination before the



Tribunal and the issue is decided against the owner and in favour of the insurer. Before release of the amount to the insured, owner of the vehicle shall be issued a notice and he shall be required to furnish security for the entire amount, which the insurer will pay to the claimants. The offending vehicle shall be attached, as a part of the security. If necessity arises the Executing court shall, take assistance of the concerned Regional Transport authority. The Executing Court shall pass appropriate orders in accordance with law as to the manner in which the insured, owner of the vehicle shall make payment to the insurer. In case there is any default it shall be open to the Executing court to direct realization by disposal of the securities to be furnished or from any other property or properties of the owner of the vehicle, the insured. The appeal is disposed of in the aforesaid terms, with no order as to costs."

6.The appellant/National Insurance Company represented that the entire award amount has already been deposited and the respondents 1 to 3/claimants are permitted to withdraw the reduced award amount of Rs.5,88,000/- with accrued interest through RTGS, by filing necessary application before the Tribunal. The remaining award amount with proportionate accrued interest shall be withdrawn by the appellant/National Insurance Company by filing necessary application. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

/True copy/

Sub Assistant Registrar/

To

The Motor Accident Claims Tribunal,
Subordinate Judge, Kuzhithurai.

Copy To:-

The Section Officer, V.R.Section,
Madurai Bench of Madras High Court, Madurai.

+1cc To MR.J.S.MURALI ADVOCATE, SR NO.73055

+1CC To MR.S.SIVAKUMAR,ADVOCATE,SR NO.73776

VSA

TE/SS-2/12.01.2017/3P-5C

C.M.A(MD)No.1320 of 2014 and
M.P. (MD)No.1 of 2014
25.11.2016