BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.11.2016

Coram:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A(MD)No.209 of 2014

The Manager,
Bajaj Allianz General Insurance Company Limited,
G.E. Plaza, Airport Road,
Yerwada, Pune. .. Appellant/2nd Respondent

-Vs-

1.S.Rajeshwari
2.A.Subramani ..1st&2nd Respondents/Petitioners
3.M.Sivaji ..3rd Respondent/1st Respondent

Prayer:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against Judgment and decree in M.C.O.P.No.402 of 2011, dated 11.10.2013, on the file of the Motor Accident Claims Tribunal, District Court, Karur.

For Appellant	:	Mr.J.S.Murali
For Respondents	:	Mr.T.Selvakumaran (for R1 and R2)
For R3	:	No Appearance

JUDGMENT

The appellant/Insurance Company has filed the present C.M.A (MD)No.209 of 2014, challenging the award passed in M.C.O.P.No.402 of 2011, dated 11.10.2013, on the file of the Motor Accidents Claims Tribunal, District Court, Karur.

2.The present case on hand, is an unfortunate case of a fatal accident and the deceased was 18 years old at the time of accident. The heirs of the deceased filed the claim petition before the Motor Accident Claims Tribunal, District Court, Karur. The Tribunal considering the facts and circumstances of the case, passed an award amount of Rs.9,29,472/- towards the total compensation.

3.The appellant/Insurance Company has preferred this appeal on the ground that the deceased was a Bachelor and was working in a

Hotel at Chennai. But, the learned counsel appearing for the appellant/Insurance Company represented that the salary of the deceased was not proved before the Tribunal, by filing acceptable documents. In the absence of the clear income of the deceased, the Tribunal ought not to have fixed the salary on the higher side and therefore, the quantum of compensation to be reduced. In respect of other heads awarded by the Tribunal, both the learned counsels have no quarrel and accordingly the same is to be confirmed.

4.Considering the facts and circumstances of the case, this Court is inclined to modify the order only in respect of the loss of income head awarded by the Tribunal and accordingly, the monthly income is fixed as Rs.5,000/- and the loss of income is re-calculated as below:

Rs.5,000X12X50/100X18=5,40,000/-

By applying the multiplier, the total loss of income is arrived as Rs.5,40,000/-. Hence, the order of Tribunal in loss of income is modified from Rs.8,29,472/- to Rs.5,40,000/-. Though the calculation is modified and the monthly income has not been proved by the claimants before the Tribunal, this Court is inclined to round off the reduced amount of reduction of loss of income to Rs.1,00,000/-. The total award amount of Rs.9,29,472/- is reduced to Rs.8,29,472/- and in respect of all other heads, the award of the Tribunal is confirmed. The learned counsel appearing for the appellant/Insurance Company pleaded for pay and recovery as per the principles 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."

5.It is a case that there was no valid driving licence on the part of the driver. Hence, the pay and recovery is ordered and the Civil Miscellaneous Appeal is partly allowed. The total compensation of Rs.9,29,472/- is reduced to Rs.8,29,472/-.

6.The appellant/Insurance Company has already been deposited 50% of total award amount and accordingly, the appellant/Insurance Company is directed to pay the balance award amount with accrued interest within a period of four weeks from the date of receipt of a copy of this order and thereafter, the respondents 1 and 2/ claimants are permitted to withdraw the entire award amount with accrued interest, by filing necessary application before the Tribunal. No costs.

Sd/-
Assistant Registrar(Crl.Side)

/True Copy/

Sub-Assistant Registrar

To

The Motor Accident Claims Tribunal,
District Court, Karur.

+One cc to Mr.J.S.Murali, Advocate, SR.No.67806
vsa
RL/3C/3P/SKS/RR/21.12.2016

C.M.A(MD)No.209 of 2014

10.11.2016