BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.11.2016

CORAM :

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

CMA(MD)No.625 of 2014
and
CROS.OBJ(MD)No.7 of 2016

CMA(MD)No.625 of 2014
The Branch Manager,
National Insurance Co.Ltd.,
Thanthai Periyar Market Valagam,
Govindasamy Pillai Street,
Near Old Bus Stand,
Salem-636 661. ... Appellant

vs.

1)Mariammal
2)Minor Manjula
(Minor 2nd respondent is represented through her mother and next guardian, the 1st respondent herein)
3)S.Palanivel ... Respondents

Appeal filed under Section 173 of the Motor Vehicles Act, against the order and decreetal order dated 07.10.2013 made in MCOP.No.112 of 2011 on the file of the Motor Accident Claims Tribunal, Principal District Court, Tirunelveli.

For Appellant : Mr.J.S.Murali
For R1 & R2 : Mr.P.Pethu Rajesh

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1)Mariammal
2)Minor Manjula
(Minor 2nd respondent is represented through her mother and next guardian, the 1st respondent herein)
... Cross Objectors

vs.

1)S.Palanivel

2)The Branch Manager,
National Insurance Co.Ltd.,
Thanthai Periyar Market Valagam,
Govindasamy Pillai Street,
Near Old Bus Stand,
Salem-636 661. ... Respondents

Cross Objection filed under Order 41 Rule 1 of the Civil Procedure Code, against the order and decreetal order dated 07.10.2013 made in MCOP.No.112 of 2011 on the file of the Motor Accident Claims Tribunal, Principal District Court, Tirunelveli.

For Cross Objectors : Mr.P.Pethu Rajesh

For R2 : Mr.J.S.Murali

COMMON JUDGMENT

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It is the unfortunate case of fatal accident took place on 14.02.2010 around 09.15 p.m on Sankarankovil-Puliyangudi main road. The legal heirs of the deceased filed application seeking compensation before the Motor Accident Claims Tribunal, Principal District Court, Tirunelveli, and the Tribunal considering the facts and the circumstances of the case, awarded compensation of Rs.8,50,500/- with 7.5% interest per annum. Challenging the award passed by the Tribunal, the appellant insurance company preferred this appeal, on the ground that the driver, who was driving the vehicle which met with the accident was not in possession of the driving licence at all and the fact was proved before the Tribunal. Having found that it is the case of no driving licence, the Tribunal has not followed the principles laid down by the Apex Court.

2.In respect of the liability of the insurance company, this Court and the Hon'ble Apex Court settled the principle that the claimant is a third party and even if there is any violation of policy condition, in respect of the claim made by the third parties, the Insurance Company has to pay the award amount to the claimant at the first instance and thereafter, to recover the same from the owner of the vehicle.

3.On the aspect of mode of recovery available to the insurer, the Hon'ble Supreme Court in the judgment reported in **(2004)13 SCC 224** in the case of **Oriental Insurance Co. Ltd., vs. Nanjappan and others**, has held as follows:-

> *"..... 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."*

4.In view of the settled principles both by this Court and the Hon'ble Supreme Court of India, the order of the Tribunal with regard to pay and recovery is confirmed and the appellant is directed to recover the same from the owner of the vehicle as per the mode stated in *Nanjappan's* case(supra).

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5.The learned counsel for the Cross Objectors contended that the Tribunal has not granted any compensation towards loss of love and affection and further, a meagre amount of compensation was granted towards funeral expenses and further, under the head loss of consortium, only Rs.50,000/- was awarded.

6.Considering the fact that the deceased was aged about 35 years and left behind his wife and minor child, this Court is inclined to enhance the compensation towards loss of consortium from Rs.50,000/- to Rs.75,000/- and Rs.50,000/- is awarded for loss of love and affection and Rs.10,000/- awarded by the Tribunal towards funeral expenses is enhanced to Rs.25,000/-. The award of

Rs.2,500/- towards loss of estate is enhanced to Rs.20,000/-. A sum of Rs.2,500/- is hereby awarded for transportation. The total compensation is modified and apportioned as hereunder:-

Loss of income	=	Rs.7,68,000/-
Love and affection	=	Rs. 50,000/-
Loss of consortium	=	Rs. 75,000/-
Funeral expenses	=	Rs. 25,000/-
Loss of estate	=	Rs. 20,000/-
Transportation	=	Rs. 2,500/-
Total	=	Rs. 9,40,500/-
(Less)Amount awarded by the Tribunal	=	Rs.8,50,500/-
Enhanced compensation	=	Rs.90,000/-

7.The enhanced compensation of Rs.90,000/- shall carry interest at 6% per annum from the date of petition to till the date of realisation. The compensation of Rs.8,50,500/- as awarded by the Tribunal shall carry interest at 7.5% per annum as ordered by the Tribunal and the appellant is directed to deposit the modified compensation of Rs.9,40,500/- with proportionate interest as above, to the credit of the claim petition, within a period of four weeks from the date of receipt of a copy of this order, less the amount already deposited. On such deposit, the 1st respondent/claimant is permitted to withdraw her share as per the apportionment made by the Tribunal with interest, through RTGS, by filing necessary application before the Tribunal. The share of the 2nd respondent/minor claimant shall be deposited in a Nationalised Bank in Fixed Deposit, till she attains majority and on attaining majority, it is for her to approach the Tribunal for disbursement of her share, by making necessary application. The liberty granted by the Tribunal to the appellant with regard to pay and recovery is confirmed.

In the result, the Civil Miscellaneous Appeal is dismissed and Cross Objection is allowed in part. No costs.

Sd/-
Assistant Registrar (RTI)

/True Copy/

Sub Assistant Registrar

To

The Principal District Judge,
Motor Accident Claims Tribunal,
Tirunelveli.

+ 2 CC TO Mr.J.S.MURALI, ADVOCATE IN SR No. 78860 & 78861
+ 1 CC TO Mr.P.PETHU RAJESH, ADVOCATE IN SR No. 74321

NBI
TE/SS2-KSM : 19/01/2017 : 6P/4C

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