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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.09.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.(MD)No.814 of 2016

and

C.M.P(MD)No.7766 of 2016

National Insurance Company Limited,
represented by its
Branch Manager,
135-1, First Floor,
Rose Building, Main Road,
Kovilpatti.

... Appellant/2nd Respondent

Vs.

1.Brindha
2.Minor Bala Krishnan
3.Minor Mani Sankar
4.Ganapathy Sundari

... Respondents 1 to 4/
Petitioners 1 to 3 & 5

(Minor respondents 2 and 3 are represented
through their mother and guardian,
the first respondent/Brindha)

5.K.Palmani

... 5th Respondent/1st Respondent

PRAYER: Appeal filed under Section 173 of the Motor Vehicles Act,
1988, against the judgment and decree in M.C.O.P.No.47 of 2009,
dated 29.04.2014, on the file of the Motor Accident Claims
Tribunal - Subordinate Court, Kovilpatti.

For Appellant : Mr.J.S.Murali

For Respondents : Mr.S.Ramasamy for R.1 to R.4

JUDGMENT

(Judgment of the Court was delivered by M.SATHYANARAYANAN,J.)

By consent, the appeal is taken up for final disposal.

2. The Insurance Company/second respondent in M.C.O.P.No.47 of
2009 on the file of the Motor Accident Claims Tribunal -
Subordinate Court, Kovilpatti, aggrieved by the findings rendered
by the Tribunal on negligence as well as quantum of compensation
served in and decree dated 29.04.2014 in M.C.O.P.No.47 of
2009, had filed this Civil Miscellaneous Appeal.



3. The facts briefly narrated necessary for the disposal of this appeal are as follows:

3.1. The husband of the first respondent was riding a motorcycle bearing Registration No.TN-69-W-9081 during the night hours on 10.05.2008 and at about 10.15 p.m, he was returning from Ettayapuram after purchasing cell phone recharge cards and at that juncture, near Kalugachalapuram junction, the Tractor bearing Registration No.TN-67-Y-4232 and the Trailer bearing Registration No.TN-67-V-8434, belonging to the fifth respondent herein/first respondent therein, insured with the appellant, dashed against him and as a consequence, he suffered grievous injuries and died on the spot. The jurisdictional police had also registered a case against the driver of the Tractor and Trailer in Cr.No.54 of 2008 under Section 304-A I.P.C.

3.2. The claimants, namely, the wife, two minor sons, father and mother of the deceased had filed the above said claim petition contending, among other things, that the deceased was aged 36 years at the time of his tragic demise and he was eking out his livelihood as a Distributor of Airtel Network Services and VKA Milk and earning a sum of Rs.15,000/- (Rupees Fifteen Thousand only) p.m., and therefore, claimed the following amounts:

21(a).PARTICULARS OF LOSS AND EXPENSES:	
PART - A	
(a) Loss of earning from 10.05.2008 to till approx. upto 60 years (for 25 years)	Rs.45,00,000/-
(b) Partial loss of earning from -- to --	
(c) Transport to Hospital	
(d) Extra Nourishment	
(e) Damages to clothings and articles	
(f) Others: Medical Expenses and expenses incurred by person who attended the petitioner	
PART - B	
(g) Compensation for pain and sufferings	Rs. 2,50,000/-
(h) Compensation for continuing permanent disability, if any.	
(i) Compensation for the loss of earning power	
(j) Loss of expectancy of life	Rs. 2,50,000/-
(k) Loss of Love and affection	Rs. 5,00,000/-
(l) Future Operation Expenses	----
TOTAL	Rs.55,00,000/-

Though the claimants claimed a sum of Rs.55,00,000/- (Rupees Fifty Five Lakhs only), they restricted their claim to Rs.15,00,000/- (Rupees Fifteen Lakhs only).

3.3. The appellant/Insurance Company had filed the counter affidavit denying the manner and mode of accident and also took a stand that the driver of the offending vehicle, namely, the Tractor and Trailer did not possess a valid driving licence and as such, they are exonerated from indemnifying the insured and also took a stand that the deceased had driven the motorcycle in a rash and negligent manner and contributed to the accident and hence, on that account also, he is not entitled to any compensation. That apart, they also denied the nature of employment and the income generated out of the said employment.

3.4. During the course of enquiry, the first respondent herein/wife had examined herself as P.W.1 and the eyewitness to the accident, namely, Jeyaprakash, was examined as P.W.2 and Exs.P.1 to P.8 were marked.

3.5. On behalf of the respondents, the Administrative Officer of the appellant/Insurance Company was examined as R.W.1 and the Assistant attached to the jurisdictional Regional Transport Officer was examined as R.W.2. Exs.R.1 and R.2 - insurance particulars of the Tractor and Trailer bearing Registration Nos.TN-67-Y-4232 and TN-67-V-8434 respectively, were marked. Exs.R.3 and R.4 were also marked on the side of the respondents.

3.6. Apart from the above said documents, the letter of the Regional Transport Officer, dated 08.03.2014, was also marked as Ex.X.1

3.7. The Tribunal after considering the oral and documentary evidence and other materials, had awarded a sum of Rs.13,36,340/- (Rupees Thirteen Lakhs Thirty Six Thousand Three Hundred and Forty only) towards compensation with interest at the rate of 7.5% p.a. from the date of claim petition till date of realisation, as under:

Sl. No.	Head(s)	Amount awarded by the Tribunal
1.	Loss of Income	Rs. 9,11,340.00
2.	Loss of Consortium to 1 st Claimant/Wife of the deceased	Rs. 1,00,000.00
3.	Loss of Love and Affection to Claimants 2 and 3/Sons of the deceased [Rs.1,00,000/- each]	Rs. 2,00,000.00
4.	Compensation for Shock and Mental Agony to the claimants 1 and 5/Wife and Mother of the deceased [Rs.50,000/- each]	Rs. 1,00,000.00
5.	Funeral Expenses	Rs. 25,000.00
	Total	Rs.13,36,340.00



4. The learned Counsel for the appellant/Insurance Company would contend that since the driver of the Tractor had driven the vehicle during night hours, it can be safely presumed that it was not, thus, utilised for agricultural purposes. Since there is a deviation for the purpose coupled with the fact that the driver of the offending vehicle did not possess any valid driving licence, they are exonerated from liability.

5. The learned Counsel for the appellant/Insurance Company, on the issue of quantum, would point out that no documents have been produced by the claimants that the deceased was earning Rs.15,000/- (Rupees Fifteen Thousand only) per month. He would further contend that while the Tribunal has awarded a sum of Rs.1,00,000/- (Rupees One Lakh only) to the first claimant/wife on account of loss of consortium, it has also awarded a further sum of Rs.50,000/- (Rupees Fifty Thousand only) each, to the claimants 1 and 5/wife and mother of the deceased on the ground of mental agony and hardship. On this ground also, the quantum awarded by the Tribunal requires reduction and he, therefore, prayed for appropriate orders.

6. Per contra, the learned Counsel for the respondents 1 to 4/claimants would contend that the Tribunal, on a thorough appreciation of oral and documentary evidence, had rightly reached the conclusion to award the compensation and in the facts and circumstances of the case, it is a fair and reasonable compensation and therefore, the impugned award and decree cannot be interfered with and prayed for the dismissal of this appeal.

7. This Court paid it's best attention to the rival submissions and also perused the materials placed on record.

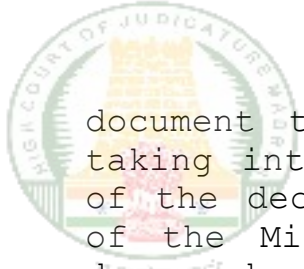
8. It is seen that the father of the deceased who was alive at the time of filing of the claim petition, died later on.

9. The Tribunal after taking note of the evidence of P.W.2 and also Ex.X1, found that absolutely, no documents have been produced to prove that the Tractor and Trailer have been used for a different purpose and in the absence of any material to show that the driver of the offending vehicle did not possess any valid driving licence, the appellant/Insurance Company is liable to indemnify the insured.

10. In the considered opinion of this Court, the said finding has been recorded by the Tribunal based on appreciation of relevant oral and documentary evidence and therefore, it cannot be interfered with.

<https://hcservices.ecourts.gov.in/hcservices/>

11. Insofar as the quantum is concerned, the Tribunal on a fair assessment, found that the claimants did not produce any



document to show as to the income earned by the deceased, but taking into consideration the circumstances, in which the family of the deceased is placed, has applied the benevolent provisions of the Minimum Wages Act and fixed the monthly income of the deceased as Rs.4,500/-. At the time of the accident, the deceased was aged 36 years and therefore, added 50% of the income and applied multiplier '15' and after deducting 1/4th amount towards his personal expenses, has rightly arrived at a sum of Rs.9,11,340/- (Rupees Nine Lakhs Eleven Thousand Three Hundred and Forty only) towards loss of income.

12. It is also pertinent to point out at this juncture that the first respondent/first claimant/wife was aged 32 years and two sons of the deceased were aged 7 and 5 years respectively and taking into consideration the other facts and circumstances of the case, the Tribunal has found that the first respondent/wife was entitled to a sum of Rs.1,00,000/- (Rupees One Lakh only) towards loss of consortium. Further, the Tribunal, taking into account the age of the sons of the deceased had fixed the amount under the head 'loss of love and affection' as Rs.1,00,000/- (Rupees One Lakh only) each.

13. It is the vehement submission of the learned Counsel for the appellant/Insurance Company that the Tribunal having awarded a sum of Rs.1,00,000/- (Rupees One Lakh only) towards loss of consortium to the first respondent/wife, has once again awarded a sum of Rs.50,000/- (Rupees Fifty Thousand only) to her, on the ground of shock and mental agony and it may not be sustainable.

14. In response to the said submission, the learned Counsel for the respondents 1 to 4/claimants would submit that the Tribunal on an overall consideration of the relevant facts and circumstances of the case has reached the conclusion and since the findings are based on a thorough appreciation of oral and documentary evidence, this Court, in exercise of appellate jurisdiction, in normal circumstances may not interfere with the same.

15. However, this Court is of the view that a further award of Rs.50,000/- (Rupees Fifty Thousand only) to the first respondent towards shock and mental agony cannot be sustained in the light of the fact that she was already awarded with a sum of Rs.1,00,000/- (Rupees One Lakh only) towards loss of consortium and therefore, the said amount requires reduction. But in all other respects, the compensation awarded by the Tribunal is sustainable.

16. In the result, this Civil Miscellaneous Appeal is partly allowed and the award and decree dated 29.04.2014, passed in <https://hcc.mca.gov.in/45> of 2009 on the file of the Motor Accident Claims Tribunal - Subordinate Court, Kovilpatti, is modified and the respondents 1 to 4/claimants 1 to 3 and 5 are entitled to a sum of

Rs.12,86,340/- (Rupees Twelve Lakhs Eighty Six Thousand Three Hundred and Forty only) with interest at the rate of 7.5% p.a., from the date of claim petition till date of full and final settlement, as under:

Sl. No.	Head(s)	Amount modified/ awarded by this Court
1.	Loss of Income	Rs. 9,11,340.00
2.	Loss of Consortium to 1 st Claimant/Wife of the deceased	Rs. 1,00,000.00
3.	Loss of Love and Affection to Claimants 2 and 3/Sons of the deceased [Rs.1,00,000/- each]	Rs. 2,00,000.00
4.	Compensation for Shock and Mental Agony to the fifth claimant/Mother of the deceased	Rs. 50,000.00
5.	Funeral Expenses	Rs. 25,000.00
Total		Rs.12,86,340.00

17. Now, it is represented that the compensation amount as awarded by the Tribunal, has already been deposited by the appellant/Insurance Company.

18. Therefore, the first respondent/wife is entitled to a sum of Rs.5,00,000/- (Rupees Five Lakhs only) and the minor respondents 2 and 3/claimants 2 and 3 are entitled to a sum of Rs.3,00,000/- (Rupees Three Lakhs only) each and it shall be deposited in any one of the nationalised banks initially for a period of three years and the interest accrued thereon shall be payable to the first claimant/mother of the minor claimants 2 and 3 once in three months and the shares of the minor respondents 2 and 3/claimants 2 and 3 should be periodically renewed till they attain majority. The fourth respondent/mother of the deceased is entitled to a sum of Rs.1,86,340/- (Rupees One Lakh Eighty Six Thousand Three Hundred and Forty only).

19. The appellant/Insurance Company after satisfying the award modified by this Court, is entitled to withdraw the excess/balance amount. Further, the appellant/Insurance Company is also entitled to pay the said award amount and recover the same from the fifth respondent/owner of the Tractor and Trailer bearing Registration Nos.TN-67-Y-4232 and TN-67-V-8434 respectively, in the light of the judgment in Oriental Insurance Co. Ltd., v. Shri Nanjappan and



others reported in 2004 (1) TN MAC (SC) 211. Consequently, the connected civil miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar (CS-I)

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Sub Assistant Registrar

To

1.The Subordinate Judge,
The Motor Accident Claims Tribunal
Kovilpatti.

2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court, Madurai.

+1cc to M/s.S.Ramasamy, Advocate SR.No.50684

+1cc to M/s.J.S.Murali, Advocate SR.No.50525

C.M.A. (MD) No.814 of 2016

and

C.M.P (MD) No.7766 of 2016

06.09.2016

rsb

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