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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.11.2016

Coram:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A(MD)No.800 of 2015
and
M.P(MD)No.2 of 2015

The Oriental Insurance Company Limited,
Rep. Through its Branch Manager,
Karaikudi. .. Appellant/3rd Respondent

-Vs-

1.Abdul Wahab
2.Nabiza .. Respondents 1 & 2/Petitioners 1 & 2

3.Rajkumar .. Respondent No.3/1st Respondent

4.Irudhayaraj .. Respondent No.4/2nd Respondent

(RR 3 & 4 remained ex-parte before the lower Court)

Prayer:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 01.10.2012 made in M.C.O.P.No.12 of 2010 on the file of the Motor Accident Claims Tribunal cum Sub Court, Devakottai.

For Appellant : Mr.K.Bhaskaran

For RR 1 & 2 : Mr.D.Venkatesh

For R – 4 : Mr.S.Vijayakumar

JUDGMENT

The Civil Miscellaneous Appeal has been preferred against the Judgment and Decree, dated 01.10.2012 made in M.C.O.P.No.12 of 2010 by the Motor Accident Claims Tribunal cum Sub Court, Devakottai.

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2.It is a case of fatal accident occurred on 03.10.2008 at 18.30 hours near Koviloor – Karaikudi Main Road. The death occurred instantly due to the accident and the heirs of the deceased filed an application seeking compensation before the Motor Accident Claims Tribunal cum Sub Court, Devakottai. The Tribunal considering the facts and circumstances of the case awarded Rs.8,88,000/- towards total compensation. Against which, the present Civil Miscellaneous Appeal is preferred challenging the quantum on the ground that the monthly loss of income adopted by the Tribunal is erroneous and contrary to the principles laid down by the Honourable Supreme Court in ***Sarla Verma and Others Vs. Delhi Transport Corporation and another*** reported in ***2009 ACJ 1298*** and the same is to be modified. However, the learned counsel appearing for the appellant/Insurance Company fairly submitted that the amount awarded under the other heads shall be enhanced.

3.The learned counsel appearing for the respondents 1 and 2 opposed the contention of the learned counsel for the appellant/Insurance Company by stating that the deceased was aged about 21 years at the time of accident and he was working as a driver and the Tribunal considering all these points granted Rs.8,88,000/- towards compensation and there is no infirmity in the order passed by the Tribunal, which does not require interference of the Court and accordingly, the appeal may be dismissed.

4.Considering the rival submissions made by both the learned counsel for the appellant and the respondents 1 and 2, this Court is of the view that the calculation said to have adopted by the Tribunal in respect of monthly loss of income is to be modified and the loss of income arrives at Rs.6,12,000/- (6000 X 12 X 17)/ 2. But the Tribunal has awarded Rs.8,16,000/-. Hence, monthly loss of income awarded by the Tribunal from Rs.8,16,000/- is reduced to Rs.6,12,000/-.

5.Further, the Tribunal has awarded a sum of Rs.50,000/- towards loss of love and affection, which is less and the same is enhanced to Rs.1,00,000/-; the Tribunal has awarded Rs.1,000/- towards Transportation and the same is enhanced to Rs.10,000/-; the Tribunal has awarded a sum of Rs.1,000/- towards damages to clothes, and the same is enhanced to Rs.2,000/- and the Tribunal has not awarded any amount under the head of loss of estate. Hence a sum of Rs.50,000/- is awarded under the head of loss of estate. The modified award amount is under:-

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Heads	Tribunal	High Court
Monthly Loss of income	Rs.8,16,000/-	Rs.6,12,000/-
For loss of love and affection	Rs. 50,000/-	Rs.1,00,000/-
For Transportation	Rs. 1,000/-	Rs. 10,000/-
Damages to clothes	Rs. 1,000/-	Rs. 2,000/-
For Funeral expenses	Rs. 20,000/-	Rs. 20,000/-
For loss of estate	-----	Rs. 50,000/-
Total	Rs.8,88,000/-	Rs.7,94,000/-

6.This apart, the interest amount of 6% awarded by the Tribunal is less. Hence, this Court is inclined to enhance the interest from 6% to 7.5%. Accordingly, the award of the Tribunal is modified and the total compensation award amount of Rs.8,88,000/- is reduced to Rs.7,94,000/- by adopting the above said calculation.

7.The learned counsel for the appellant/Insurance Company contended that the driver, who was driving the vehicle which met with an accident, was not in possession of a valid driving licence, the Tribunal failed to consider the issue despite the fact that the appellant/Insurance Company raised the question. Hence, the principles of pay and recovery is to be adopted as per the judgment reported in ***(2004)13 SCC 224*** in the case *of* ***Oriental Insurance Co. Ltd., vs. Nanjappan and others.***

8.The learned counsel appearing for the fourth respondent contended that it is not a case of no licence, but the licence of the driver expired two days prior to the date of accident.

9.Hence, it is crystal clear that on the date of accident, the driver was not holding a valid driving licence in view of the fact that the licence of the driver expired two days prior to the date of accident.

10.Indisputably, the claimants are third party. It is settled law that 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.

11.On this aspect, in the judgment reported in ***(2004)13 SCC 224*** in the case *of* ***Oriental Insurance Co. Ltd., vs. Nanjappan and others,*** the Hon'ble Apex Court made the following observations:-

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> "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."

12.In view of the facts and circumstances of the case, this Court is inclined to follow the Judgment of the Honourable Supreme Court in the case *of* ***Oriental Insurance Co. Ltd., vs. Nanjappan and others*** reported in ***(2004)13 SCC 224*** and accordingly, pay and recovery is ordered.

13.The modified compensation amount of Rs.7,94,000/- is allowed with interest at 7.5% p.a., from the date of claim petition till the date of deposit. Consequently, this Civil Miscellaneous Appeal is partly allowed with the above modifications.

14.The learned counsel for the appellant/Insurance Company represented that entire award amount had been deposited with proportionate interest and costs. The respondents 1 and 2/claimants 1 and 2 are permitted to withdraw the entire modified amount along with proportionate interest and costs, as per the

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ratio of apportionment made by the Tribunal through RTGS by filing necessary application before the Tribunal. The appellant/Insurance Company is permitted to withdraw the remaining balance amount along with proportionate interests and costs, if any. However, the appellant-Insurance Company is at liberty to recover the award amount from the insured as per the law laid down by the Honourable Supreme Court in Nanjappan's case cited supra. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

To

The Motor Accident Claims Tribunal,
Sub Court, Devakottai.

+1 cc to MR.K.BHASKARAN, Advocate SR.No.70214
+1 cc to MR.S.VIJAYAKUMAR, Advocate SR.No.71193
+1 cc to MR.D.VENKATESH, Advocate SR.No.70774

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and
M.P(MD)No.2 of 2015
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SMA/GSV-PM/02.01.2017:5P/5C

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