BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.01.2016

CORAM:

THE HONOURABLE MR.JUSTICE T.MATHIVANAN

C.M.A (MD) No.1931 of 2013
and M.P(MD)Nos.1 of 2013 & 1 of 2015

The Branch Manager,
The Oriental Insurance Company Limited,
3607/21, 2nd Floor, Sathiamoorthy Road,
Pudukkottai Town, Taluk and District.
.. Appellant/Respondent No.2

-Vs-

1.Dhanavalli
2.Minor Ponraj
3.Minor Abila
4.Minor Abitha
5.Sivagami .. Respondents 1 to 5/Petitioners 1 to 5

6.M.Ramayi .. 5th Respondent/Respondent No.1

(Minor RR 2 to 5 are rep. by their mother and guardian of the first respondent)

(R - 6 remained exparte before the lower Court)

Prayer:- Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 19.02.2013 and made in M.C.O.P.No.22 of 2012 on the file of the Motor Accident Claims Tribunal (Additional District Court), Pudukkottai.

For Appellant	:	Mr.K.Bhaskaran
For RR 1 to 5	:	Mr.N.Balakrishnan
For R - 6	:	No appearance

JUDGMENT

This memorandum of Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 by the appellant/Insurance Company challenging the award, dated 19.02.2013 and made in the claim petition in M.C.O.P.No.22 of 2012 on the file of the Motor Accidents Claims Tribunal (learned Additional District Judge), Pudukkottai on the ground of quantum.

2. The respondents 1 to 5 are the claimants in the claim petition in M.C.O.P.No.22 of 2012, whereas the appellant/Insurance Company is the second respondent in the claim petition and the sixth respondent herein being the owner of the vehicle is the first respondent therein remained exparte before the claims Tribunal.

3. The respondents 1 to 5 being the wife, minor children and mother of the deceased Anandan had moved the Motor Accidents claims Tribunal (Additional District Court), Pudukkottai with a claim petition in M.C.O.P.No.22 of 2012 claiming a sum of Rs.20,00,000/- towards the compensation for the death of the said Anandan. The appellant/Insurance Company being the second respondent alone had contested the claim, while the sixth respondent/first respondent remained exparte.

4. The first petitioner, who is the widow of the deceased Anandan, had examined herself as P.W.1. One Rajendran, who claims to be the eye witness, was examined as P.W.2. During the course of their cross-examination, Exs.P.1 to P.11 were marked. On the other hand, three witnesses were examined on behalf of the appellant/Insurance Company. Besides this, 5 documents were marked on their behalf.

5. On evaluating the evidences both oral and documentary, the claims Tribunal had proceeded to award a total sum of Rs.8,46,000/-, as against the claim of Rs.20,00,000/-, directing the second respondent to pay this amount with interest at the rate of 7.5% p.a., to the claimants within 30 days from the date of award. Challenging the quantum of award, the second respondent/Insurance Company stands before this Court with this appeal.

6. Heard Mr.K.Bhaskaran, learned counsel appearing for the appellant/Insurance Company and Mr.N.Balakrishnan, learned counsel appearing for the respondents 1 to 5/claimants.

7. On perusal of the averments made in the claim petition, it is revealed that on 07.10.2008 at about 11.00 a.m., when the deceased Anandan was proceeding in his motor cycle (TVS super XL) on Pudukkottai to Aranthangi road near Erichi bus stop opposite to Solaimalai building, the lorry bearing Registration No.TN 55 J 8647 driven by its driver in a rash and negligent manner from the opposite direction had dashed against the motor cycle ridden by the deceased Anandan. On account of this reason, the deceased had sustained grievous injuries over his head, shoulder, right leg, left face and all over his body. Immediately, he was taken to Pudukkottai Government Hospital in an ambulance, where he had succumbed to injuries at 12.20 p.m.

8. The deceased Anandan was aged about 42 years and was working as steel fitter in Dubai in a company under the name and style of ACD & Co., and earned a sum of Rs.15,000/- per month. The appellant/Insurance Company had contended in their counter statement that the deceased himself had invited the accident while he had suddenly crossed the road without minding the on coming vehicle. Three issues were formulated by the Tribunal:-

> "(i) Whether the driver of the first respondent is responsible for the accident?
> (ii) Whether the respondents are liable to pay compensation to the petitioners?
> (iii) What is the quantum of compensation that the petitioners are entitled to get?"

9. On appreciation of the evidences, the claims Tribunal had answered the first issue saying that the driver of the lorry as well as the deceased had contributed their negligence for the accident at the ratio of 75:25. Since the offending lorry was insured with the appellant/Insurance Company at the relevant period, the owner of the vehicle being the sixth respondent was held liable to pay 75% of the compensation which may be awarded.

10. Insofar as the second point is concerned, the Tribunal had found that since the driver of the lorry as well as the deceased had contributed their negligence at the ratio of 75:25, the appellant/Insurance Company was held liable to pay compensation to the extent of 75%, which is equivalent to the negligence fashioned with the driver of the lorry to the extent of 75%.

11. With regard to the third issue, the Tribunal had determined the age of the deceased 42 years at the time of accident and based on Ex.P.10-Bank pass book of the first petitioner. The Tribunal had at first determined the monthly income of the deceased at Rs.10,000/-, however, deducting the travel expenses extra, ultimately, the Tribunal had fixed the monthly income of the deceased at Rs.6,000/-. Apart from this, since he was aged about 42 years at the time of his death, his future prospects at the rate of 30% had been given credit to. Accordingly, 30% of future prospects had been calculated at Rs.1,800/- and therefore, his monthly income along with 30% of future prospects was determined at Rs.7,800/- p.m (Rs.6,000 + Rs.1,800 (30% of the future prospects)).

12. On the basis of this arithmetic calculation, his annual income was calculated at Rs.93,600/-. As the age of the deceased was determined at 42 years, as per the second schedule to Section 163(A) of the Motor Vehicles Act, 1988, the multiplier of '15' was selected. Accordingly, the loss of dependency of the family was

calculated at Rs.14,04,000/- and since there are five dependents, as per the judicial pronouncement of the Apex Court in ***Sarla Verma and Others Vs. Delhi Transport Corporation and another*** reported in ***2009 ACJ 1298***, 1/4 of deduction (Rs.3,51,000/-) was given. Deducting this amount, the remaining balance amount would be Rs.10,53,000/-. Besides this, the Tribunal had also awarded compensation in favour of the claimants under the following heads:-

Sl.No.	Heads of the award	Amount awarded
1.	Loss of dependency of the family	Rs.10,53,000/-
2.	Funeral expenses	Rs. 5,000/-
3.	For loss of estate	Rs. 10,000/-
4.	Loss of consortium to the first claimant	Rs. 10,000/-
5.	Loss of love and affection for the claimants	Rs. 50,000/-
	Total	Rs.11,28,000/-

13. Deducting 25% (Rs.2,82,000/-) towards the negligence attached to the deceased, the remaining balance would be Rs.8,46,000/-. This amount was awarded to the claimants, which according to this Court, is lesser when comparing with the nature of the case. However, there is no cross-objection or appeal filed by the claimants challenging this award. Therefore, there is no other go for this Court excepting to confirm this award of Rs.8,46,000/-.

14. Accordingly, the Civil Miscellaneous Appeal is dismissed. The appellant/Insurance Company is directed to pay this amount along with proportionate interest and costs at the rate of 7.5% per annum within a period of four weeks from the date of receipt of a copy of this order, if not deposited earlier. On such deposit being made, the claimants are entitled to get this amount at the ratio fixed by the Tribunal. The claimants 1 and 5, who are the major claimants, are entitled to withdraw their respective shares at the ratio fixed by the Tribunal, with proportionate accrued interest and costs without filing any formal petition seeking permission. The Tribunal is directed to deposit the shares of the minors (second, third and fourth respondents) in any one of the Nationalised Banks, in a Fixed Deposit scheme, till they attain majority. The first respondent, mother and guardian of the minor claimants is permitted to withdraw the accrued interest from the above said minors' deposit once in three months directly from the

bank, for the maintenance of the minor children as directed by the Tribunal. No costs. Consequently, connected Miscellaneous Petitions are also closed.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

To
The Motor Accident Claims Tribunal,
(Additional District Court),
Pudukkottai.

+1cc to Mr.K.Bhaskaran,Advocate Sr.No.2805
+1cc to Mr.N.balakrishnan, Advocate Sr.No.3056
ps
AA/JGB-DP/SAR-I/01.04.2016/5p-4c

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and
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