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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.12.2016

CORAM:

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

C.M.A.(MD)No.1222 of 2011
& M.P(MD)No.1 of 2011
& C.M.P(MD)No. 11992 of 2016
& CROSS OBJECTION (MD)No.52 of 2012

C.M.A.(MD)No.1222 of 2011 :

The Branch Manager,
Bajaj Allianz General Insurance Company Ltd.,
City Auto Finance,
No.5, Municipal Complex,
Nataraja Theatre Road,
Karuvampalayam,
Tiruppur,
Coimbatore District. ... Appellant/Respondent No.2

Vs.

1.Thiyagarajan (Died)
2.Chellamuthu ... 2nd Respondent/1st Respondent

3.T.Saraswathi
4.T.Mathiyarasu
5.T.Sarabojirajan
6.Minor T.Poomadhina
Represented by the petitioner's mother
7.M.Marriyayi ...Respondents/Petitioners

(Respondents 3 to 7 impleaded vide order dated 19.12.2016 made in M.P(MD)No.11992/16.)

Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the fair and decreetal order dated 25.07.2011 made in M.C.O.P.No.119 of 2008 on the file of the Motor Accident Claims Tribunal (Additional District & Sessions Judge/Fast Track Court) Pudukkottai.

For Appellant : Mrs.K.R.Shiva Shankari
for Mr.S.Srinivasa Raghavan
For Respondents : Mr.P.Pethu Rajesh for R2 to R7
: R1-Died-Steps Taken

CROSS OBJECTION (MD)No.52 of 2012:

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1.Thiyagarajan(Died) ... Cross Objector/
1st Respondent/Petitioner

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2.T.Saraswathi
3.T.Mathiyarasu
4.T.Sarabojirajan
5.T.Poomadhina
6.M.Marriyayi ... Cross Objectors 2 to 6/ LRs., of the deceased Sole Cross Objector

(Cross Objectors 2 to 6 are brought on record as the LRs., of the deceased sole Cross Objector, vide order of this Court dated 19.12.2016 made in C.M.P(MD)No.11995 of 2016 in Cross Objection (MD)No.52 of 2012.)

-Vs-

1. M.Chellamuthu ... 1st Respondent/2nd Respondent/ 1st Respondent

2. The Branch Manager,
Bajaj Alliaz General Insurance Company Ltd.,
City Auto Finance,
No.5, Municipal Complex,
Nataraja Theatre Road,
Karuvampalayam,
Thiruppur,
Coimbatore District. ..2nd Respondent/Appellant/ 2nd Respondent

Prayer: Cross Objection Petition is filed under Order 41 Rule 1 of the Code of Civil Procedure,in C.M.A(MD)No.1222 of 2011 against the fair and decreetal order passed in M.C.O.P.No.119 of 2008 on the file of Motor Accident Claims Tribunal/Additional District and Sessions Judge/Fast Track Court, Pudukkottai, dated 25.07.2011 for enhancement insofar as against the disallowed portion of the compensation.

For Cross Objectors : Mr.P.Pethu Rajesh
For Respondents : Mrs.K.R.Shiva Shankari
for Mr.S.Srinivasa Raghavan for R2

COMMON JUDGMENT

This appeal has been preferred by the Insurance Company against the payment and recovery order of Rs.3,38,158-/- (Rupees Three Lakhs Thirty Eight Thousand One Hundred and Fifty Eight Only) by the Tribunal in respect of the accident which was occurred on 20.12.2006, in which one Thiyagarajan, sustained injuries resulting in loss of vision in his left eye and fracture in the Nasal bone.

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2. The accident occurred on 20.12.2006, when the said Thiyagarajan was travelling as a pillion rider in a motorcycle and

another motorcycle coming in the opposite side travelling in a rash and negligent manner dashing against the motor-cycle in which the said Thiyagarajan, resulting in fall and he sustained injuries. Immediately, he was taken to the hospital and he was operated in the eye in Aravind Eye Hospital, Madurai, in spite of that, he lost his vision. Therefore, the said Thiyagarajan filed a claim petition.

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3. On contest, the Tribunal found that the offending two wheeler vehicle, namely, Yamaha Motor-Cycle bearing Registration No.TN-39-Y-3909, which was driven by a person who did not have a licence and therefore, the Tribunal found that there was a violation of policy conditions and ordered pay and recovery. It is settled law now by the Honourable Supreme Court that the non-possession of effective valid licence is a violation of policy conditions and for violation of policy conditions, the insurer has to pay the money and recover from the owner. Therefore, the pay and recovery order passed by the Tribunal is confirmed.

4. With regard to the injuries, the Tribunal determined the disability at 30% even though PW.2 Doctor assessed the disability at 40%, taking into consideration the injuries sustained by the claimant in the left eye and now lost of vision in the left eye as 40%. Regarding the nasal bone fracture was determined at 30%, however the Tribunal determined the disability as 30% when the Doctor assessed the disability at 40% especially, the claimant lost his vision in the left eye. In the absence of any rebuttal evidence, the Tribunal should have gone by the determination made by the Doctor. Therefore, the determination of disability at 30% is enhanced to 40%.

5. Loss of vision in the eye is very painful and it is very difficult for the person to lead his normal life with a vision of one eye alone. Further, it will cause disfigurement and ugly look for the claimant. Therefore, the Tribunal has rightly applied the multiplier method to determine the loss of income.

6. The accident occurred on 20.12.2006. The claimant claims a sum of Rs.4,500/- as monthly income however, the Tribunal took Rs.4,000/-. In the absence of any material evidence Rs.4,500/- claimed by the claimant is very reasonable and the same is lesser than the amount determined by the Honourable Supreme Court in **Syed Sadiq, etc -Vs- Divisional Manager, United India Insurance Co. Ltd., reported in 2014 (1) TN MAC 459 (SC)** as Rs..6,500/-. The appropriate multiplier according to the age of claimant is '14' and the loss of income would be Rs.3,02,400/- (Rupees Three Lakhs Two Thousand Four Hundred only). [Rs.4,500 x 12 x 14 x 40/100]. A sum of **Rs.24,000**/- (Rupees Twenty Four Thousand only) awarded by the Tribunal towards pain and suffering is reasonable and the same is confirmed. A sum of Rs.10,000/-(Rupees Ten Thousand only) towards loss of expectation awarded by the Tribunal is deleted. A sum of Rs.3,000/- towards transportation awarded by the Tribunal is enhanced to **Rs.10,000/- (**Rupees Ten Thousand only). This Court

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awards a sum of **Rs.10,000/-** (Rupees Ten Thousand only) towards attendant charges during the treatment period.

7. A sum of Rs.3,000/- awarded by the Tribunal towards extra nourishment is enhanced by this Court to Rs.**25,000/-** (Rupees Twenty Five Thousand only). A sum of **Rs.10,358/-** (Rupees Ten Thousand Three Hundred and Fifty Eight only) towards Medical Bills as per Ex.P8 awarded by the Tribunal is confirmed. A sum of **Rs.10,000/-** (Rupees Ten Thousand only) awarded by the Tribunal towards loss of amenities is confirmed. A sum of Rs,12,000/- towards loss of income during the treatment period is enhanced to Rs.**13,500/-** (Rupees Thirteen Thousand Five Hundred only) (Rs.4,500/- x 3) totalling Rs.4,05,258/- and the same is rounded off to Rs.4,00,000/- (Rupees Four Lakhs only). The total award amount is arrived at as under:-

Sl. No.	Heads	Amount awarded by Tribunal (Rs.)	Amount reduced/ enhanced by this Court (Rs.)	Total (Rs.)
1.	For loss of income	2,44,800.00	(+)57,600.00	3,02,400.00
2.	Pain & Sufferings	24,000.00	Nil	24,000.00
3.	Transport	3,000.00	(+)7,000.00	10,000.00
4.	Attender charges	Nil	(+)10,000.00	10,000.00
5.	Extra Nourishment	3.000.00	(+)22,000.00	25,000.00
6.	Medical Bill	10,358.00	Nil	10,358.00
7.	Loss of amenities	10,000.00	Nil	10,000.00
8.	Loss of income during treatment period	12,000.00	(+)1,500.00	13500
			Grand Total	**4,05,258.00**
			Rounded off	**4,00,000.00**

8. The Tribunal awarded the interest at the rate of 7.5% per annum and the same is confirmed. The award of the Tribunal in other respects, remains unaltered.

9. Though the appeal is preferred by the Insurance Company against the award, in the facts and circumstances of the case and evidence made available before this Court, this Court enhances the compensation and accordingly, this Civil Miscellaneous Appeal is **dismissed**, however, enhancing the award amount from Rs.3,38,158/- (Rupees Three Lakhs Thirty Eight Thousand One Hundred and Fifty Eight only) to a sum of Rs.4,00,000/- (Rupees Four Lakhs only), along with interest at the rate of 7.5% per annum from the date of petition till date of realisation and proportionate costs. The appellant-Insurance Company is directed to deposit the entire award amount along with accrued interest and costs, less the amount already deposited, if any, to the credit of M.C.O.P.No.119 of 2008

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on the file of the Motor Accident Claims Tribunal (Additional District & Sessions Judge/Fast Track Court) Pudukkottai, within a period of **six weeks** from the date of receipt of a copy of this judgment. On such deposit, the Tribunal shall transfer the respective shares of the claimants to their respective Personal Savings Account Numbers through RTGS/NEFT system, after getting their Account Details, as per the apportionment made by this Court, within a period of **two weeks** thereafter. No costs. Consequently, the connected Miscellaneous petitions are also dismissed.

10. In view of the dismissal of the appeal, the cross objection petition is partly allowed. Since the injured died pending appeal the legal representatives of the deceased have been brought on record. The third respondent/wife is entitled to **Rs.2,00,000/-** (Rupees Two Lakhs only) and the respondents 4 to 7 are entitled to **Rs.50,000/-** (Rupees Fifty Thousand only) each. The share of the minor 6th respondent is directed to be kept in an interest bearing fixed deposit in any one of the nationalized banks under the renewable scheme till she attains majority. The third respondent/mother of the minor 6th respondent, is permitted to withdraw the accrued interest therein once in every three months for the welfare of the minor. No costs.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

TO

The Motor Accident Claims Tribunal
(Additional District & Sessions Judge/Fast Track Court)
Pudukkottai.

+ 1 CC TO Mr.S.SRINIVASA RAGHAVAN, ADVOCATE IN SR No. 83380
+ 2 CC TO Mr.P.PETHU RAJESH, ADVOCATE IN SR Nos. 83295, 83296

GSR
TE/SV-MMS/SAR-II : 06/04/2017 : 5P/5C

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