



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.11.2017

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THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A. (MD) No.1071 of 2014

and

MP (MD) No.1 of 2014

The Oriental Insurance Company Limited,
Represented by its Branch Manager,
D.D.J.Centre, 1st Floor,
Opposite to Vadaseri Bus Stand,
Nagercoil.

...Appellant/3rd Respondent

/Vs./

1.Kalaisda Vinifer

2.Abinshan (Minor)

3.Abinsha (Minor)

(the second and third respondents are represented
by the mother / first respondent Kalaisda Vinifer)

4.Selvi

...Respondents 1 to 4 / Petitioners 1 to 4

5.Jenisten@Ajiston

...5th respondent / 1st respondent

6.F.Chrisrtu Raja

...6th respondent / 2nd respondent

7.The Bajaji Auto Finance

Represented by its Manager,

253/D1, Sri Vatsa Complex,

K.P.Road, Parvathipuram,

Nagercoil.

...7th respondent / 4th respondent(7th respondent remained Exparte before the lower Court)

8.Divya Motors, Represented by its Manager,

J.J.Plaza, Kurumpanai Road Junction,

Karungal Post.

... 8th Respondent/5th respondent

Prayer: Civil Miscellaneous Petition is filed under section 173 of the Motor Vehicles Act 1988, to set aside the award of Rs.14,69,530/- (Rupees Fourteen Lakhs Sixty Nine thousand Five Hundred and Thirty only) passed in M.C.O.P.No.60 of 2013, dated 30.06.2014, on the file of the Motor Accidents Claims Tribunal cum Chief Judicial Magistrate, Kanyakumari District, Nagercoil.

For Appellant

: Mr.K.Bhaskaran

For R-1 to R-4

: Mr.K.P.Narayana Kumar

For R-5 to R-8

: No appearance

**J U D G M E N T**

(Judgment of this court was made by **K.KALYANASUNDARAM, J**)

This appeal is directed against the judgment and decree passed in MCOP No.60 of 2013, dated 30.06.2014 by the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Kanyakumari District @ Nagercoil.

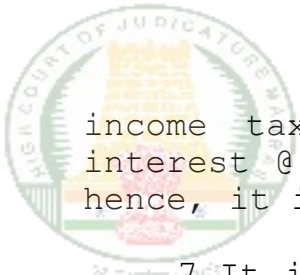
2.MCOP No.60 of 2013 came to be filed claiming compensation of Rs.1 Crore by the legal-heirs of the deceased Anthony Adimai. According to the claimants, on 09.07.2009 the deceased was proceeding by foot from east to west direction in Colachel Mandaicadu Road side at Kottilpad. At that time, a two wheeler came in a high speed and dashed against him. Despite treatment, he succumbed to the injuries on 14.07.2009.

3.The appellant resisted the claim petition contending that the offending vehicle was falsely implicated in this case and the claim is very excessive.

4.Heard Mr.K.Bhaskaran, learned counsel for the appellant and Mr.K.P.Narayana Kumar, learned counsel for the respondents 1 to 4 and perused the materials available on record.

5.The mother of the deceased as P.W.1 has deposed that her son died in the accident at the age of 26 years, due to the negligence of the driver of the offending vehicle. One Jerome was examined as an eye witness of the occurrence. The claimants have produced Ex.P1 First Information Report, Ex.P2 Mahazar, Ex.P3 Sketch and Ex.P4 Report of the Motor Vehicle Inspector in support of their case. On the side of the Insurance Company, one Baskaran was examined as R.W.1 and they have marked Ex.R.1-enquiry report and Ex.R.2-Insurance policy. The tribunal, on proper appreciation of the evidence, both oral and documentary, has rightly come to the conclusion that the first respondent caused the accident.

6.The claimants have averred that the deceased was earning Rs.35,000/- per month, but no documentary evidence was produced in support of the claim. Hence, the tribunal fixed the notional income at Rs.6,000/- per month. By adding 50% towards future prospects, arrived at Rs.9,000/- per month. After deducting 1/4th for his personal expenses, contribution to the family was taken as Rs.6,750/-. By applying multiplier of 17, the tribunal awarded Rs.13,77,000/- towards loss of dependency; Rs.25,000/- towards funeral expenses; Rs.15,000/- to the first claimant towards loss of consortium; Rs.75,000/- each to the claimants 2 and 3 towards loss of love and affection; Rs.25,000/- to the fourth claimant towards loss of love and affection, based on Ex.P.13-medical bills and Rs.40,810/- towards medical expenses. After deducting 10% towards



income tax, the tribunal has awarded **Rs.14,69,530/-** along with interest @ 7.5% p.a. The amount appears to be reasonable and fair, hence, it is confirmed.

7. It is the case of the appellant that the driver of the motor cycle did not have valid and effective driving licence at the time of accident. The tribunal, having found that the vehicle was used without proper registration and in violation of policy conditions, directed the Insurance Company to pay the award amount and recover the same from the owner of the vehicle. The amount shall be recovered from the owner of the vehicle as indicated by the Hon'ble Apex Court in **Nanjappan's Case [(2004) 13 SCC 224]**.

8. With the above direction, this Civil Miscellaneous Appeal is disposed of. It is represented that the appellant Insurance Company that already entire award amount has been deposited. Therefore, the major claimants are permitted to withdraw their share as per the ratio fixed by the tribunal, less the amount already withdrawn. The share of the minor claimants shall be deposited in any one of the nationalized bank in fixed deposit scheme, till they attain majority. The first claimant is permitted to withdraw the interest accrued in the fixed deposit once in three months for the welfare of the minors. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (C.O)

/True Copy/

Sub-Asisstant Registrar

To

1. The Motor Accidents Claims Tribunal
cum Chief Judicial Magistrate,
Kanyakumari District, Nagercoil.

2. The Record Keeper, (2 copies)

V.R. Section,

Madurai Bench of Madras High Court, Madurai.

+One cc to Mr. K. Bhaskaran, Advocate, SR.No.86125

+One cc to Mr. K. P. Narayana Kumar, Advocate, SR.No.86314

sm/er

RL/6C/3P/KK/SAR1/9/2/2018

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