



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.12.2017

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A. (MD) No.1155 of 2016

and

C.M.P. (MD) No.10358 of 2016

M/s. National Insurance Company Limited,
Tenkasi.

... Appellant/Respondent No.2

Vs.

1.Ayishal Begam
2.H.Mohammed Sheik Ali
3.Nisha
4.Akbar
5.Rahmathullah
6.Masoothu

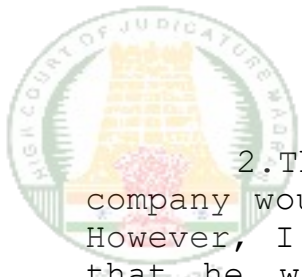
... Respondents/Petitioners

Prayer: Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the judgment and decree passed by the Principal Motor Accident Claims Tribunal, Principal Sub Court, Tenkasi in M.C.O.P. No.227 of 2012, dated 09.07.2015.

For Appellant : Mr.D.Sivaraman
For R1 to R5 : Mr.R.J.Karthick
For R6 : Mr.S.M.A.Jinnah

JUDGMENT

The insurer has filed this appeal, questioning the impugned award both on grounds of liability as well as quantum. One, Habibulla was the driver of the ill-fated taxi bearing Registration No. TN 76-H-4248, TATA Indica car. The said vehicle was hired. But the hirers murdered the said Habibulla and took away the vehicle. Since the murder happened in circumstances set out above, obviously the insurer would also be liable as per the terms of the insurance policy and also the decision of the Hon'ble Supreme Court laid down in **2000 (2) ACJ 801 (Dasarath Singh case)**. Therefore, the Tribunal rightly fastened the liability on the insurer. I do not want to interfere in the impugned award as regards the issue of liability.



2.The learned counsel appearing for the appellant insurance company would also contend that the deceased was not a paid driver. However, I am of the view that the evidence on record clearly shows that he was very much a paid driver of the offending vehicle. Therefore, no interference is called for in respect of the said issue also.

3.It is seen from the terms of the insurance policy that it carries endorsement IMT 40 and the necessary premium was also paid. Therefore, the legal heirs of the victim would be entitled to invoke not only the Workmen's Compensation Act, 1923 but also the Motor Vehicles Act, as well as invoke the common law remedy. Hence the Tribunal had the jurisdiction to entertain M.C.O.P.No.227 of 2012 filed by the claimants herein.

4.Coming to quantum, it is seen that the deceased was aged about 52 years. Therefore, the multiplier will be 11. The accident took place in the year 2011. Therefore, the monthly income of the deceased can be taken as Rs.6,500/-. By adding 10% future prospects, the monthly income would come to Rs.7150/-. Considering the number of the dependants of the deceased, one fourth deduction can be made. Therefore, the pecuniary loss for the family will be Rs.7,07,850. Further sum of Rs.81,000/- can be awarded towards loss of consortium, loss of love and affection and also for funeral expenses. The Tribunal awarded a sum of Rs.7,88,000/- alone. It cannot be said to be excessive. Therefore, there is no merit in this appeal.

5.The appellant insurance company is directed to deposit the award amount of Rs.7,88,000/- with interest at the rate of 7.5% per annum and costs from the date of petition till the date of realization, within a period of eight weeks from the date of receipt of a copy of this judgment, less the amount already deposited, if any. On such deposit, the claimants are entitled to withdraw the entire amount as apportioned by the Tribunal, less the amount already withdrawn by them, if any, by filing proper application before the Tribunal.

6.Therefore, the award dated 09.07.2015 made in M.C.O.P. No.227 of 2012 on the file of the Principal Motor Accident Claims Tribunal [Principal Sub Court] Tenkasi, is confirmed. This Civil Miscellaneous Appeal stands dismissed. No costs. Consequently, C.M.P.(MD)No.10358 of 2016 is closed.

Sd/-

Assistant Registrar (CS-I)

/True Copy/



To

The Principal Subordinate Judge,
Motor Accident Claims Tribunal,
Tenkasi.

Copy To:-

The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+ 1 CC TO Mr.R.J.KARTHICK, ADVOCATE IN SR No. 92537
+ 1 CC TO Mr.D.SIVARAMAN, ADVOCATE IN SR No. 92296

KMI

TE/SV-MMS/SAR-3 : 11/06/2018 : 3P/6C

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