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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED 30.11.2017
CORAM
THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
AND
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A(MD)No.1139 of 2015
and
MP(MD)No.1 of 2015

The Branch Manager,
New India Assurance Company Limited,
Chekkalai Road,
Karaikudi,
Thiruppathur Taluk,
Sivagangai District. : Appellant/2nd Respondent

Vs.

1.Padma
2.Minor Sarwinraja
3.R.Pitchai
(Minor 2nd respondent is represented by his mother and guardian of the 1st respondent) : R1 to R3/Petitioners
4.Vairavamoorthy
5.R.Somasundaram
6.The Oriental Insurance Company Ltd.,
rep. by its Divisional Manager,
Gopalram Library Building,
Town Hall Road,
Kumbakonam Munsif and Town. : R4 to R6/R1, R3 and R4

PRAYER: Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree dated 13.04.2015 made in M.C.O.P.No.309 of 2011 on the file of Motor Accident Claims Tribunal (III Additional District & Sessions Court), Thanjavur at Pattukkottai.

For Appellants : Mr.B.Vijay Karthikeyan

For R1 to R3 : Mr.D.R.Murugesan

For R4 & R5 : No appearance

For 6th Respondent : Mr.K.Baskaran

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J U D G M E N T

[Judgment of the Court was delivered by K.KALYANASUNDARAM, J]

The appellant Insurance Company has preferred this appeal against the judgment and decree passed by the Motor Accident Claims Tribunal (III Additional District Judge), Thanjavur @ Pattukkottai, in MCOP No.303 of 2011, dated 13.04.2015.

2.The facts in brief:-

The deceased Saravanan, who has completed M.Tech, was working as an Assistant Professor in Adhiparasakthi Engineering College at Melmaruvathur and earning Rs.26,264/- per month. When he was travelling as passenger in an Omni bus TN-63-L-8766 from Chennai to Trichy, the driver of the Omni bus drove it in a negligent manner and dashed against the stationary Van, which was parked on Chennai-Trichy National Highways Road near Perambalur. In the impact, the deceased fell on the road, another Omni bus TN-58-T-1928, which was following the offending Van hit behind the bus and by that force, the vehicle moved further and ran over the deceased, resulting instantaneous death. The Perambalur Police registered a case in crime No.324 of 2011 under Sections 279, 337, 338 and 304(A) IPC against the driver of the offending Omni Bus. The legal heirs of the deceased Saravanan filed a petition claiming compensation of Rs.1,50,00,000/- contending that they lost their only breadwinner due to the negligent driving of the Omni bus driver. The claim was lodged against the owner of the two Omni buses and their Insurers.

3.The appellant Insurance Company contested the claim stating that the driver of the first Omni bus stopped the vehicle, on seeing the stationary van, but at that time, the driver of the 2nd Omni bus came in a rash and negligent manner and dashed against the back portion of the bus. In that impact, the deceased was thrown away and ran over by back tyre. So, the negligence is to be fixed on the driver of the 2nd Omni Bus.

4.A perusal of the First Information report (Ex.P1) reveals that the driver of the Van Ganesan witnessed the accident, lodged the complaint stating that at 4.00 am, on 22.04.2011, when he was taking tea after parking the vehicle in front of tea shop, he saw the driver of the offending Omni bus TN-63-L-8766 came in a high speed and rammed the stationary Van. Immediately, the 2nd Omni bus hit against the offending bus.

5.The report of the Motor Vehicles Inspector, for both the Omni buses were marked as Exs.P6 and P8, would show that there was a minor damage to the 2nd Omni bus and the passengers, who were travelling in the 2nd Omni bus have suffered with only minor injuries. The tribunal, based on the documents referred above, fixed the entire negligence on the driver of the offending Omni Bus and awarded compensation of Rs.55,15,000/- together with interest @ 7.5% p.a. The said award is under challenge in the present appeal.

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6.Mr.B.Vijay Karthikeyan, learned counsel for the appellant submitted that the tribunal has failed to appreciate the material documents, while fixing the liability on the appellant Insurance company. It is contended that only after the 2nd Omni bus hit against the offending Omni bus, the deceased was thrown away and ran over by back side of the wheel. Even assuming that the offending Omni bus first hit against the stationary Van and the deceased was thrown away from the bus, admittedly, he was aware after hitting the vehicle by the 2nd Omni bus and therefore, the driver of the 2nd Omni bus is also responsible for the accident and that the tribunal without following the dictum laid by the Hon''ble Apex Court has awarded higher compensation and it has to be reduced.

7.Mr.K.Bhaskaran, learned counsel for the 6th respondent supported the finding of the tribunal stating the tribunal has rightly followed the dictum of the Hon'ble Apex Court, while fixing the income of the deceased and prays for dismissal of the appeal.

8.We have heard both sides and perused the materials available on record.

9.In the instant case, the First Information Report shows that a criminal case was registered against the driver of the offending Omni bus. The driver of the Van has categorically stated in the complaint that the bus came in a high speed and dashed against the stationary Van and the deceased was thrown away from the bus and fell on the road. The report of the Motor Vehicle Inspector shows that there was no huge damage to the front side of the 2nd Omni Bus and the passengers in that bus also sustained minor injuries.

10.From the perusal of the documents, it is evident that the driver of the offending Omni bus has caused the accident and the tribunal has rightly fixed the entire negligence on the driver of the offending Omni bus. So, the contention of the learned counsel for the appellant that the offending Omni bus run over the deceased and only after, he was hit by the 2nd Omni bus and the driver was also responsible cannot be countenanced.

11.As regards quantum, the deceased died at the aged about 30, was established by the claimants through Ex.P17 transfer certificate of the deceased. Ex.P13 is the Decree Certificate and Ex.P10 is the salary certificate, Ex.P11 is the service records and Ex.P12 is the decree certificate. Ex.P10 shows that the deceased was receiving Rs.26,264/- towards salary in March 2011. The tribunal added 50% towards future prospectus and arrived at Rs.39,375/- as salary. After deducting 1/3rd towards his personal and living expenses, has awarded compensation of Rs.53,55,000/- by applying multiplier 17.

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12.The salary of Rs.26,264/- was rounded off to Rs.26,000/-. As per the Constitution Bench of the Hon'ble Supreme Court reported in

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2017 ACJ 2700 *(National Insurance Company Ltd., vs. Pranay Sethi and others)*, the claimants would be entitled to 40% towards future prospectus and by adding so, the income of the deceased comes to Rs.36,400/- (Rs.26,000/- + Rs.10,400/-) and 1/3rd has to be deducted therefrom towards personal and living expenses. By doing so, the contribution to the family works out to Rs.24,300/-. As per the decision of Sarla Verma, the multiplier for the age group between 41 and 50 is 16, but the tribunal has applied multiplier 17. Hence, by applying proper multiplier 16, the loss of dependency is worked out to Rs.46,65,600/- (Rs.24,300/- x 12 x 16).

13. Following the decision of the the Hon'ble Supreme court in the case of Pranay Sethi, the wife is entitled to Rs.40,000/- towards loss of consortium; Rs.15,000/- towards loss of estate and Rs.15,000/- towards transportation and funeral expenses. In addition, Rs.1,50,000/- awarded by the tribunal under the head of loss of love and affection is confirmed. The total amount comes to Rs.48,85,600/-. As per the latest decision of the Hon'ble Apex Court, 20% has to be deducted towards Income Tax. After deducting income tax, the claimants would be entitled to Rs.39,08,480/- along with interest @ 7.5% p.a.

14.In the result, the appeal is partly allowed. The award of the tribunal is reduced to Rs.39,08,480/-. The appellant Insurance Company is directed to deposit the modified award amount, less the amount already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such compliance, the 1st claimant is entitled to withdraw Rs.16,08,480/- and the 3rd claimant is entitled to withdraw Rs.5,00,000/-. Insofar as the minor claimant is concerned, the Tribunal is directed to deposit his share of Rs.18,00,000/- in any one of the Nationalised Banks, in fixed deposit scheme, initially for a period of three years renewable thereafter, till he attain majority. The first claimant/mother, being the guardian of minor claimant, is permitted to withdraw the accrued interest, once in three months, directly from the Bank and utilize the same for the welfare of the minor child. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/
Assistant Registrar(T&P)

/True copy/

Sub Assistant Registrar(CS-I)

To

1.The Motor Accident Claims Tribunal/
III Additional District and Sessions Judge,
Thanjavur at Pattukkottai.

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+1cc to Mr.B.VIJAY KARTHIKEYAN, Advocate, SR.No. 90732

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