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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED ON :08.02.2017

ORDER PRONOUNCED ON:03.03.2017

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
and
THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A. (MD) No.129 of 2016

and

C.M.P. (MD) .Nos.2125 of 2016

The New India Insurance Co.Ltd,
City Branch III,
through its Branch Manager,
D.No.34, Alagarkoil Road, Tallakulam,
Madurai-2. : Appellant/Respondent-2

Vs.

1.Manonmani
2.Minor.Dinesh Kumar
3.Minor.Rajeevan
(Minor R.2&R.3 are rep.by their
mother/guardian, 1st respondent) : Respondents 1 to 3/Petitioners
4.Saravana Priya : 4th Respondent/Respondent 1

(4th respondent ex parte in Tribunal:
Notice dispensed with)

PRAYER: Appeal filed under Section 173 of Motor Vehicles Act,1988
against the judgment and decree dated 07.09.2015 in M.C.O.P.No.143
of 2012, on the file of the Motor Accident Claims Tribunal,
Subordinate Court, Aruppukkottai.

For Appellant : Mr.J.S.Murali

For R1 to 3 : M/S.Vijayakumari Natarajan

JUDGMENT

(Judgment of the Court was delivered by **J.NISHA BANU,J.)**

The present Civil Miscellaneous Appeal has been filed by
the Insurance Company against the judgment and decree dated
07.09.2015 in M.C.O.P.No.143 of 2012, on the file of the Motor
Accident Claims Tribunal, Subordinate Court, Aruppukkottai.

2. The parties are referred to as per the rank mentioned
in the Motor Accidents Claims Tribunal.

3. The short facts of the case as averred in the claim
petition is that the first petitioner is the wife of the deceased
and the second and the third petitioners are the children of the



deceased, namely Rajkumar. On 25.09.2012, at about 4.00 p.m, the deceased asked his wife to come to Arupukottai for purchase of dresses for her children. Accordingly, his wife came in Pajero car, bearing Reg.No.TN 67 AC 9299 and after purchase, the deceased was proceeding in his vehicle, namely, Vento Grill, bearing Reg.No.TN 67 AF 9299 and his wife was following in her vehicle. While so, at about 7.10 p.m, the first respondent vehicle bearing Registration JCB TN 59 AS 1737 was going ahead of the deceased vehicle and suddenly, the driver of the JCB applied the brake without any indication and on the right side, a lorry was proceeding towards southern side, due to which, the deceased car hit on the first respondent's vehicle and immediately, his wife stopped her vehicle and found that her husband had an injury on the forehead and fracture in his elbow and took the deceased to the hospital immediately. However, on the way to the hospital, he succumbed to his injuries.

4. As a result, a First Information Report came to be lodged at Pandhalkudi Police station in Crime No.148 of 2012. According to the petitioners, at the time of the accident, the deceased was earning a sum of Rs.2,00,000/- per month by doing real estate, auto finance as well as earth mover's business.

5. According to the petitioners, the accident occurred only due to the careless and negligent driving of the first respondent's driver. Since The 1st Respondent is the owner of the vehicle and the second Respondent has insured the 1st respondent's vehicle, they claimed compensation from both respondents jointly and severally. Therefore, they prayed before the Tribunal to pass an award for a sum of Rs.1,00,00,000/-/- in favour of the them.

6. The appellant/Insurance Company had filed the counter affidavit denying the manner and mode of accident and also took a stand that the driver of the offending vehicle carefully drove the vehicle in question and as such, they are liable to be exonerated from indemnifying the insured and also took a stand that the deceased had driven his car in a rash and negligent manner and contributed to the accident and hence, they are not entitled to any compensation. That apart, they also denied the nature of employment and the income generated out of the said employment.

7. During the course of enquiry, the first respondent herein/wife had examined herself as P.W.1 and the eyewitness to the accident, namely, Sankaranarayan, was examined as P.W.2 and Exs.P.1 to P.10 were marked.

8. On behalf of the respondents, two witnesses were examined as R.W.1 and R.W.2 and Exs.R.1 to R.4 were marked on the side of the respondents.

9. Though the second respondent/ M/s.United India Insurance Company Limited contested the claim by refuting the



allegations of the petitioners, the Tribunal, on appreciation of facts and circumstances of the case, has awarded a sum of Rs.21,24,000/- and hence, this appeal has been filed by the Insurance Company.

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10. Learned Counsel appearing for the appellant/insurance company would submit that the deceased drove the vehicle in question in a rash and negligent manner and hit behind the lorry insured with the appellant/insurance company and as the deceased himself is the tortfeasor, the appellant/insurance company is not liable to pay compensation. Even assuming for a moment that insurance company is liable to pay compensation, the contributory negligence should have been fixed between the offending driver and the deceased. However, it has not been done so. Further, he would submit that even though the First Information Report and the charge sheet were registered and laid against the offending driver, he was acquitted by the criminal court and the same was marked as Ex.B.4 before the claims tribunal. However, the same has not been taken into account by the tribunal. He would further contend that the tribunal has failed to consider the evidence of R.W.1 and Ex.B.3 and B4 in the proper perspective.

11. The learned Counsel for the appellant/Insurance Company, on the issue of quantum, would point out that no documents have been produced by the claimants that the deceased was earning a sum of Rs.15,000/- (Rupees Fifteen Thousand only) per month. However, the tribunal has fixed the monthly income of the deceased as Rs.15,000/-. It has also awarded a further sum of Rs.2,00,000/- towards loss of love and affection and further, the interest is on the higher side and therefore, the quantum awarded by the Tribunal requires reduction and the counsel for the appellant/insurance company, therefore, prayed for appropriate orders.

12. *Per contra*, the learned Counsel for the respondents 1 to 3/claimants would contend that the Tribunal, on a thorough appreciation of oral and documentary evidence, had rightly reached the conclusion to award the compensation and in the facts and circumstances of the case, it is a fair and reasonable compensation and therefore, the impugned award and decree cannot be interfered with and prayed for the dismissal of this appeal.

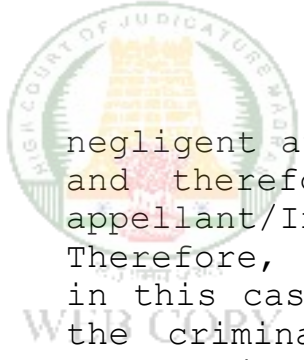
13. The questions that arise for consideration are,

- (i) Whether the Tribunal is justified in fixing the liability on the appellant/Insurance Company?
- (ii) Whether the compensation awarded is just and fair one?

14. This Court paid it's best attention to the rival submissions and also perused the materials placed on record.

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15. The Tribunal after taking note of the evidence of R.W.1 and R.W.2, found that the offending vehicle was not parked in the service road or in the parking place and because of the



negligent attitude of the offending driver, the accident took place and therefore, the tribunal came to the conclusion that the appellant/Insurance Company is liable to indemnify the insured. Therefore, the question of contributory negligence does not arise in this case at all. Furthermore, the acquittal of the tribunal in the criminal case will not improve the case of the insurance company in any way.

16. In the considered opinion of this Court, the said finding has been recorded by the Tribunal based on appreciation of relevant oral and documentary evidence and therefore, it cannot be interfered with. Therefore, we answer that the insurance company is liable to pay compensation.

17. Insofar as the quantum is concerned, the Tribunal on a fair assessment, found that the claimants did not produce any document to show as to the income earned by the deceased, but taking into consideration the circumstances, in which the family of the deceased is placed, has applied the provisions of the Act and fixed the monthly income of the deceased as Rs.15,000/-. At the time of the accident, the deceased was aged 38 years and after deducting 1/3rd amount towards his personal expenses and applying multiplier 15 as per the much celebrated judgment in the case of **Sarla Sarla Verma Vs Delhi Transport Corporation, 2009(2) TNMAC 1 (SC)**, has rightly arrived at a sum of Rs.18,00,000/- (Rupees Eighteen Lakhs only) towards loss of income. As such, there cannot be no quarrel over the income arrived at by the tribunal. Further, the tribunal has also granted Rs.1,00,000/- to the wife of the deceased and another one lakh each for the children of the deceased by relying on the Apex Court judgment reported in **2015 (1) TNMAC 465 (Supreme Court), Asha Verman and others Vs. Maharaj Singh and others**. The said amount is absolutely reasonable, for the simple reason that at the young age the first claimant became widow, so also the minor children lost their beloved father at their young age. Since the said amount is well within the law laid down by the Apex Court, it cannot be considered to be on the higher side. The other award amount namely for funeral expenses Rs.20,000/- and Rs.2,000/- for the damaged clothes and Rs.2,000/- towards transport expenses for taking the deceased to the hospital are also very reasonable and does not warrant interference from this Court. Hence, we confirm the said awards also. The disturbing feature in this case is that unfortunately, the Tribunal has not awarded any amount towards loss of consortium to the wife of the deceased. She became widow at her young age. Further, the tribunal has also not considered the future prospectus of the deceased. Therefore, looking at from any angle, the order of the Court below does not suffer from any legal infirmity.

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18. In the considered opinion of this Court, the reasons assigned by the Tribunal are based upon proper consideration and appreciation of evidence as made available before it and also in tune with the above cited decisions of the Honourable Supreme



Court. There is no error apparent or infirmity in the impugned award and therefore, this appeal is liable to be dismissed. Accordingly, the Question No.(ii) is answered.

19. In fine, we confirm the order of the Tribunal dated 07.09.2015 in M.C.O.P.No.143 of 2012, on the file of the Motor Accident Claims Tribunal, Arupukkottai and dismiss the present appeal preferred by the Insurance Company. While doing so, the claimants are permitted to withdraw their respective share from the award amount, as apportioned by the tribunal. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-II)

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Sub Assistant Registrar

To

(1)The Subordinate Judge,
The Motor Accident Claims Tribunal,
Aruppukkottai.

+1 cc to M/R.J.S.MURALI, Advocate, SR.NO:12182

+2 cc to M/R.VIJAYAKUMARI NATARAJAN,Advocate, SR.NOs:7305,12379

SSM

SVA/PM/PN/17.03.2017/5P/5C

Pre-delivery judgment made in
C.M.A. (MD)No.129 of 2016
and
C.M.P. (MD) .Nos.2125 of 2016

03.03.2017