



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.03.2017

CORAM:

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

C.M.A. (MD) No.1220 of 2015

and

M.P. (MD) No.1 of 2015

and

C.M.P. (MD) No.12342 of 2016

National Insurance Company Limited
through its Manager
Madurai Office at: First Floor
6 West Masi Street, Madurai-625 001 ... Appellant / 2nd
Respondent

-vs-

1.M.Chellathangam ... 1st Respondent / Petitioner

2.S.Ramanathan ... 2nd Respondent / 1st Respondent

PRAYER : Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree in M.C.O.P.No.379 of 2013, dated 06.04.2015, on the file of the Motor Accident Claims Tribunal, V Additional District Court, Madurai.

For Appellant : Mr.D.Sivaraman

For Respondents : Mr.N.V.Suresh Kumar for R1

J U D G M E N T

This civil miscellaneous appeal has been preferred by the appellant-Insurance Company against the award of Rs.7,16,000/- (Rupees seven lakhs and sixteen thousand only) passed by the Tribunal with regard to the death of one Prabhu, aged about 22 years, working as a Driver alleged to be earning a sum of Rs.8,000/- (Rupees eight thousand only) per month, in the accident occurred on 26.01.2012, when he was driving his Bolero Car from Othakadai to Mattuthavani, a Lorry belonged to the second respondent insured with the appellant-Insurance Company hit against the Bolero Car and caused the accident. Therefore, the claim petition.



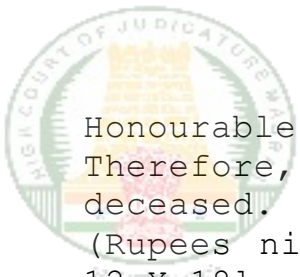
2. Heard Mr.D.Sivaraman, learned counsel for the appellant - Insurance Company and Mr.N.V.Suresh Kumar, learned counsel for the first respondent / claimant.

3. The Tribunal, based on the evidence of P.W.2 - eye-witness and also filing of Ex.P1 - F.I.R., against the driver of the Lorry, found that the accident occurred because of the rash and negligent driving of the Lorry and awarded a sum of Rs.7,16,000/- (Rupees seven lakhs and sixteen thousand only) as compensation and rejected the version of the appellant - Insurance Company that the deceased was under intoxication at the time of accident. In the absence of any proof to refuse the finding with regard to intoxication, the same cannot be set aside. Though an attempt has been made in the appeal that in Ex.P2 - Postmortem Certificate, it has been mentioned that alcohol was found in the stomach, however, a close scrutiny of Ex.P2 - Postmortem Certificate would reveal that it contains only 100 ml., brown colour liquor. Moreover, the accident was occurred on 26.01.2012 and after getting injured, the deceased was admitted in Hospital and in spite of treatment, he died in the Hospital on 29.01.2012 i.e., after three days. Therefore, the contention of the learned counsel for the first respondent - claimant that nothing could be found after three days in the stomach of the deceased is acceptable. Hence, this Court is in agreement with the findings of the Tribunal with regard to negligence and rejection of the version of the appellant - Insurance Company with regard to drunken driving by the deceased.

4. With regard to compensation, the Tribunal took the monthly income of the deceased at **Rs.6,000/-** (Rupees six thousand only) notionally in the absence of any proof. The fixation of monthly income of the deceased at Rs.6,000/- (Rupees six thousand only) is very reasonable. However, no amount towards future prospects was awarded by the Tribunal as per the judgment of the Honourable Supreme Court in **Rajesh and others v. Rajbir Singh and others** reported in **(2013) 9 Supreme Court Cases 54** and therefore, 50% has to be added as the deceased was aged about 22 years as per Ex.P2 - Postmortem Certificate and accordingly, the monthly income of the deceased would be **Rs.9,000/-** (Rupees nine thousand only) [Rs.6,000/- + Rs.3,000/-].

5. The Tribunal rightly deducted 50% towards personal expenses as the deceased was bachelor. Accordingly, after deducting 50% of the amount towards personal expenses of the deceased, the contribution to the family would be **Rs.4,500/-** (Rupees four thousand and five hundred only) [Rs.9,000/- - Rs.4,500/-].

6. As already stated, the age of the deceased was 22 years as per Ex.P2 - Postmortem Certificate and as per the Judgment of the



Honourable Supreme Court, the multiplier to be adopted is "18". Therefore, this Court adopts multiplier "18" as per the age of the deceased. Accordingly, the loss of income would be **Rs.9,72,000/-** (Rupees nine lakhs and seventy two thousand only) [Rs.4,500/- X 12 X 18].

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7. A sum of **Rs.5,000/-** (Rupees five thousand only) awarded towards transportation, a sum of **Rs.5,000/-** (Rupees five thousand only) towards extra nourishment, **Rs.3,000/-** (Rupees three thousand only) awarded towards cost of attender, **Rs.25,000/-** (Rupees twenty five thousand only) awarded towards funeral expenses and **Rs.30,000/-** (Rupees thirty thousand only) awarded towards loss of love and affection by the Tribunal are all reasonable and they are confirmed.

8. No amount was awarded by the Tribunal towards loss of estate and hence, this Court awards a sum of **Rs.10,000/-** (Rupees ten thousand only) towards loss of estate.

9. The rate of interest awarded by the Tribunal at **7.5%** per annum is very reasonable and therefore, the same is also confirmed.

10. Accordingly, the first respondent / claimant is entitled to a sum of **Rs.10,50,000/-** (Rupees ten lakhs and fifty thousand only) along with interest at the rate of **7.5%** per annum from the date of petition till date of realisation and proportionate costs.

11. Even though this appeal has been preferred by the appellant - Insurance Company against the award of Rs.7,16,000/- (Rupees seven lakhs and sixteen thousand only) awarded by the Tribunal, this Court, on re-appreciating the evidence and applying the current proposition of law, *suo motu* enhances the compensation to **Rs.10,50,000/-** (Rupees ten lakhs and fifty thousand only) even in the absence of any appeal / cross appeal invoking Order XLI Rule 33 of the Code of Civil Procedure and Article 227 of the Constitution of India, for which, this Court has got power and jurisdiction as declared by the Honourable Supreme Court in **Nagappa v. Gurudayal Singh and others** reported in **2004 (2) TNMAC 398 (SC) : 2003 (2) SCC 274**.

12. In the result,

(i) This civil miscellaneous appeal is dismissed enhancing the award amount from **Rs.7,16,000/-** (Rupees seven lakhs and sixteen thousand only) to **Rs.10,50,000/-** (Rupees ten lakhs and fifty thousand only) along with interest at the rate of **7.5%** per annum from the date of petition till date of realisation and proportionate costs;

(ii) The appellant - Insurance Company is directed to deposit the entire award amount to the credit of M.C.O.P.No.379 of 2013, on the file of the Motor Accident Claims Tribunal - cum - V



Additional District Court, Madurai, along with accrued interest and costs, within a period of four weeks from the date of receipt of a copy of this judgment;

(iii) On such deposit, the Tribunal is directed to transfer the award amount of the first respondent / claimant directly to her Personal Savings Bank Account Number, through RTGS/NEFT system, after getting her Account Details within a period of **two weeks thereafter**;

(iv) In the facts and circumstances of the case, there shall be no order as to costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-II)

/True Copy/

Sub-Assistant Registrar

To:

1.The V Additional District Judge,
Motor Accident Claims Tribunal,
Madurai.

2.The Record Keeper,
V.R.Section,Madurai Bench of Madras High Court,
Madurai.

+1 CC TO MR.D.SIVARAMAN,ADVOCATE,SR NO.11671

+1 CC TO MR.N.V.SURESH KUMAR,ADVOCATE,SR NO.12055

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MAS/RR:27.03.2017:4P-5C

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