BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.12.2017

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
and
THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

C.M.A(MD)No.1349 of 2016
and
C.M.P(MD)No.11302 of 2016

The National Insurance Company Limited,
through its Manager,
1st Floor 2-A, Thirummakkulam North Street,
Tallakulam, Madurai-625 002. : Appellant/2nd Respondent

Vs.

1.Jeyalakshmi
2.Minor Gowtham
3.Minor Pagalavan : R1 to R3/Petitioners
(Minor respondents 2 & 3 are represented through their mother, the 1st respondent Jeyalakshmi)

4.C.Murugan : R4/1st Respondent

PRAYER: Civil Miscellaneous Appeal has been filed under Section 173 of M.V. Act, against the Judgment and decree in MCOP No.1848 of 2014, dated 06.01.2016 on the file of the Motor Accident Claims Tribunal (VI Additional District Court), Madurai.

For Appellant : Mr.J.S.Murali

For R1 to R3 : Mr.N.Tamil Mani

JUDGMENT

[Judgment of this Court was made by K.KALYANASUNDARAM,J.]

The appellant has preferred this appeal aggrieved over the award passed in MCOP No.1848 of 2014 by the Motor Accident Claims Tribunal (VI Additional District Judge), Madurai.

2.The wife and minor children of the deceased Arumugam approached the Tribunal seeking compensation of Rs.30,00,000/- on the ground that when the deceased was walking on Othakadai to Thirumokur road, a share auto TN-59-AS-0894 hit against him. Immediately, he was taken to Government Rajaji Hospital, Madurai, but was declared brought dead. The Inspector of Police, attached to

Othakadai Police Station registered a case in Crime No.409 of 2014 under sections 279, 337 and 304(A) of IPC against the driver of the Auto. According to the claimants, due to the rash and negligent driving of the Auto driver, they lost their only breadwinner.

3.The appellant filed a counter refuting the allegations made in the claim petition and further stated that the deceased was responsible for the accident occurred. The Tribunal, upon consideration of the oral and documentary evidence, has awarded compensation of Rs.39,61,240/- together with interest @ 7.5% p.a. Challenging the award, the present appeal is filed.

4.We have heard Mr.J.S.Murali, learned counsel for the appellant and Mr.N.Tamil Mani, learned counsel for the respondents 1 to 3 and perused the matrials available on records.

5.Learned counsel appearing for the appellant would submit that the deceased was a Government Servant and died at the age of 49 years, however, the Tribunal instead of applying split multiplier, had adopted the multiplier '13' to determine compensation.

6. Per contra, the learned counsel for the respondents 1 to 3/claimants argued in support of the finding of the Tribunal.

7.In the case on hand, it is not in dispute that the deceased was working as a Junior Bailiff in the District Munsif Court, Melur and earned Rs.27,450/- per month, which is evident from Ex.P4 Salary Certificate and the evidence of PW3. The Tribunal, by adding 30% towards future prospects, fixed total income as Rs.35,685/-. After deducting 1/3rd towards personal expenses and by applying multiplier '13' awarded Rs.37,11,240/- towards loss of income.

8.It is also not in dispute that the deceased was having 9 years left over service and no materials have been produced to establish after his retirement, he will be receiving the same salary. Admittedly, he would get 50% of his salary as pension. Following the decisions reported in *2014(1) TNMAC 334 (DB) (Branch Manager vs. M.Arulmozhi) and 2013(2) MWN (Civil) 729 (R.Leelavathy vs. Sheik Dawood and another) and 2014(1) TNMAC 651 (DB)* (*Uma Shankar vs. Revathy Vadivel)*, it is appropriate to adopt split multiplier in this case. While arriving the loss of dependency, this Court awards Rs.25,70,400/- (23,800 x 12 x 9) before his retirement and for the remaining period of four years, Rs.5,71,200/- is awarded. In total, this Court awards Rs.31,41,600/- towards loss of income. In addition, Rs.40,000/- is awarded towards loss of consortium; Rs.15,000/- towards funeral expenses and Rs.15,000/- towards loss of estate.

9. Taking note of the facts of the case, the award of Rs.5,000/- under the head of transportation is increased to Rs.10,000/- and the award of Rs.1,50,000/- under the head of loss of love and affection is reduced to Rs.1,00,000/- and Rs.20,000/- awarded by the tribunal under the head of loss of happiness is set aside. In fine, the claimants would be entitled to Rs.33,21,600/- (rounded off to Rs.33,20,000/-)together with interest @ 7.5% p.a.

10.It is to be noted that tribunal having found that there was a violation of policy condition, has directed the appellant Insurance Company to pay the award amount and thereafter, recover the same from the owner of the vehicle. The said finding is confirmed.

11.Accordingly, the appeal is partly allowed. Out of the modified award amount of Rs.33,20,000/-, the first claimant is entitled to Rs.13,20,000/-, the second and third claimants are entitled to Rs.10,00,000/- each. Insofar as the share of the minor claimants is concerned, the Tribunal is directed to deposit their share in any one of the Nationalised Bank, in a fixed deposit scheme initially for a period of three years renewable thereafter, till they attain majority. The first claimant/being the mother and guardian of minors is permitted to withdraw the accrued interest once in three months directly from the Bank for the welfare of the minor children. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/
Assistant Registrar(CO)

/True copy/

Sub Assistant Registrar (CS-IV)

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

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

+1cc to Mr.J.S.MURALI, Advocate, SR.No.92924
+1cc to Mr.N.TAMILMANI, Advocate, SR.No.92751

C.M.A(MD)No.1349 of 2016
14.12.2017

AM
KK/RSK/SAR-4/24.09.2018/3P-6C