



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.01.2017

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN**C.M.A. (MD) No.1475 of 2016****and****C.M.P (MD) No.12362 of 2016**

Iffco Tokyo General Insurance
Company Limited,
represented by its
Manager,
3 Block, K.S.C.M.F.Building,
No.8, Cunning Road,
Bangalore.

... Appellant/
3rd Respondent

Vs.

1.Raymond
2.Anthoniammal
3.John Kennedy
4.Jackulin

... Respondents 1 to 4/
Petitioners 1 to 4

5.Rani
6.Amalraj

... Respondents 5 & 6/
Petitioners 5 & 6

7.T.Subramanian
8.Sundar Singh

... Respondents 7 & 8/
Respondents 1 & 2

PRAYER: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 01.03.2010, made in M.C.O.P.No.69 of 2009, by the Motor Accident Claims Tribunal - cum - II Additional Sub Court, Nagercoil.

For Appellant

: Mrs.K.R.Shiva Sankari
for Mr.S.Srinivasa Raghavan

For Respondents

: Mr.S.Subbiah for R.1 to R.6

JUDGMENT

This Civil Miscellaneous Appeal has been preferred by the appellant-Insurance Company against the award of Rs.1,38,000/- (Rupees One Lakh and Thirty Eight Thousand only) for the death of one Gregory, aged about 65 years, who was doing fishing, in the accident occurred on 27.10.2006.

<https://hcservices.courts.gov.in/hcservices/>

2. Heard Mrs.K.R.Shiva Sankari, learned Counsel appearing on

behalf of Mr.S.Srinivasa Raghavan, learned Counsel for the appellant-Insurance Company and Mr.S.Subbiah, learned Counsel for the respondents 1 to 6/claimants.

3. Since the quantum alone is in question, the liability has not been gone into. In any event, the negligence aspect is confirmed as the Tribunal, based on evidence, rightly fixed the negligence on the part of the driver of the Tempo belonging to the eighth respondent and insured with the appellant-Insurance Company.

4. Mrs.K.R.Shiva Sankari, learned Counsel appearing for the appellant-Insurance Company would submit that the respondents 1 to 6/claimants are all majors and they are all aged above 30 years and therefore, there is no dependency of the respondents 1 to 6/claimants on the deceased. Therefore, she would submit that a sum of Rs.1,20,000/- (Rupees One Lakh and Twenty Thousand only) awarded by the Tribunal towards loss of income, taking a sum of Rs.36,000/- (Rupees Thirty Six Thousand only) as annual income of the deceased and applying the multiplier '8' and deducting 1/4th amount towards his personal expenses, is liable to be set aside.

5. However, the learned Counsel for the respondents 1 to 6/claimants would support the award.

6. Admittedly, the deceased was aged about 65 years and the respondents 1 to 5/claimants 1 to 5 are all above 30 years and only the sixth respondent/sixth claimant is aged 28 years and therefore, the claimants could not have depended upon the income of the deceased. Therefore, the award of Rs.1,20,000/- (Rupees One Lakh and Twenty Thousand only) awarded by the Tribunal towards loss of income due to the death of the deceased is set aside.

7. However, a sum of Rs.13,000/- (Rupees Thirteen Thousand only) awarded towards loss of love and affection is very negligible. Whether the children are aged or not, they remain as children of the deceased and certainly, there is loss of love and affection from the father to the claimants. Therefore, a sum of Rs.20,000/- (Rupees Twenty Thousand only) each is awarded to the respondents 1 to 6/claimants and accordingly, a sum of Rs.1,20,000/- (Rupees One Lakh and Twenty Thousand only) is awarded towards loss of love and affection to the respondents 1 to 6/claimants.

8. A sum of Rs.5,000/- (Rupees Five Thousand only) awarded towards funeral expenses is very low and therefore, a sum of Rs.15,000/- (Rupees Fifteen Thousand only) is awarded by this Court.

9. No amount is awarded under the head 'transportation charges' and therefore, this Court awards a sum of Rs.3,000/- (Rupees Three Thousand only) under the said head.

10. Accordingly, the respondents 1 to 6/claimants are entitled

to get the following compensation:

Sl. No.	Heads	Amount awarded by Tribunal (Rs.)	Amount reduced/enhanced by this Court (Rs.)	Total (Rs.)
1.	Loss of Income	1,20,000.00	(-) 1,20,000.00	Nil
2.	Loss of Love and Affection	13,000.00	(+) 1,07,000.00	1,20,000.00
3.	Funeral Expenses	5,000.00	(+) 10,000.00	15,000.00
4.	Transportation Charges	Nil	(+) 3,000.00	3,000.00
Grand Total				1,38,000.00

The rate of interest awarded by the Tribunal at 9% per annum is confirmed.

11. Accordingly, the contention of the learned Counsel for the appellant-Insurance Company is sustained and this Civil Miscellaneous Appeal is disposed of. However, the award of Rs.1,38,000/- (Rupees One Lakh and Thirty Eight Thousand only) along with interest at the rate of 9% per annum from the date of petition till date of realisation, is confirmed, in a different formula. The appellant-Insurance Company is directed to transfer the entire compensation amount to the respective Personal Savings Bank Account Numbers of the respondents 1 to 6/claimants through RTGS/NEFT, within a period of six weeks from the date of receipt of a copy of this judgment, as per the apportionment made by the Tribunal. However, in the facts and circumstances of the case, there shall be no order as to costs. Consequently, the connected civil miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

/True copy/

Sub Assistant Registrar

To

1. The II Additional Sub Judge,

The Motor Accident Claims Tribunal, Nagercoil.

2. The Record Keeper, V.R. Section,

Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.S.SRINIVASARAGHAVAN, Advocate, SR No. 653

RSB

PSM/SKN/09.02.2017/3P/4C

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and

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