



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 16.11.2017
CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A. (MD) No. 808 of 2017

The United India Insurance Company Ltd,
Ramakrishnapuram, Karur. ... Appellant/2nd Respondent

Vs.

1.R.Alagammal
2.A.Raju
3.R.Mohanambal

4.Minor R.Marudhupandian
5.Minor R.Gurusamy

6.A.Chellammal

(Minors 4 and 5 are rep.by
Mother & Natural Guardian 1st petitioner
R.Alagammal) ... Respondents/Petitioners

7.A.Palanisamy ... 7th Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree order dated 30.08.2016 made in MCOP.No.352 of 2015 on the file of the Motor Accidents Claims Tribunal, Sub-Judge, Kulithalai.

For Appellant	: Mr.R.Srinivasan
For Respondents	: Mr.R.Murugan for Mr.R.M.Sivakumar for 1 to 6 R7 - Exparte.

JUDGMENT

The Insurance Company has filed this appeal questioning the impugned award on the grounds of liability as well as quantum.

2.One Balu @ Balakrishnan travelled as a pillion rider in a two wheeler bearing Registration No.TN 45 Q 5653 on 11.06.2012 at about 05.00 P.M in Trichy - Madurai NH 47 B main road. The vehicle was ridden by one Subramani. Apart from the deceased Balu @ Balakrishnan, one Subbaiah was also travelling in the two wheeler. In other words, three persons rode on a two wheeler in a rash and negligent manner with high speed. When a sudden turn was taken, the deceased fell down from the motor cycle and sustained injuries all over the body and died on the way to the



hospital. The parents, sister and minor siblings filed MCOP.No.352 of 2015 on the file of Motor Accidents Claims Tribunal, Sub-Judge, Kulithalai claiming compensation. The appellant insurance company filed its counter opposing the claim. The Tribunal however passed an award dated 30.08.2016 granting a sum of Rs.21,50,500/- as compensation. Contending that such an award ought not to have been passed, this appeal has been filed by the insurance company.

3.Heard the learned counsel appearing for the appellant and Sri.R.Murugan, representing the learned counsel Mr.R.M.Sivakumar for the respondents / claimants.

4.The facts are not in dispute. The deceased had travelled in a two wheeler. He was the third person sitting on the two wheeler. The Division Bench of this Court in the decision rendered in **2003 (1) MLJ 489 (Managing Director, Tamil Nadu State Transport Corporation vs Abdul Salam, Jameela, Laila)** held that when three persons are travelling in a motor cycle, two as pillion riders, any unusual movement of the pillion riders would make the rider of the motor cycle to loose his control over the vehicle. Since such riding is contrary to statute, the conduct of the persons who travelled in such a manner will have to necessarily invite fastening of contributory negligence on them.

5.In such cases, this Court held that the deceased was liable for 50% of the contributory negligence. I am of the view that in this case 10% of contributory negligence can be fixed on the deceased. The deceased was a bachelor. Therefore, 50% deduction ought to have been made. Instead only one third deduction was made. The deceased was working as Barber in a foreign country. The claimants have given some proof to show that he was earning a sum of Rs.11,000/- per month. I am of the view that the same can be taken as such. There is no need for reducing it to Rs.9,000/-. He was a bachelor. After deducting 50% of the monthly income, the income available for the family would be Rs.5,500/-. Since the deceased was 24 years old, the multiplier 18 has to be adopted.

6.Adding future prospects at 40%, the pecuniary loss to the claimants would come to Rs.16,63,200/- (7,700x1812). The compensation under other conventional heads are reworked as follows :

Pecuniary loss	: Rs.16,63,200/-
Loss of love and affection	: Rs.90,000/-
(6 persons, each Rs.15,000/-	
Transportation charges	: Rs.5,000/-
Loss of estate	: Rs.15,000/-
Funeral expenses	: Rs.15,000/-

Total : Rs.17,88,200/-



7. Since the deceased has been fastened with 10% of negligence, a sum of Rs.1,78,820/- will have to be deducted from the total compensation. The claimants are entitled to a sum of Rs.16,09,380/-. The compensation amount payable to the claimants is reduced from Rs.21,50,500/- to Rs.16,09,380/-.

8. The award dated 30.08.2016 made in MCOP.No.352 of 2015 on the file of the Motor Accidents Claims Tribunal, Sub-Judge, Kulithalai is accordingly modified.

9. The appellant insurance company is directed to deposit the sum of Rs.16,09,380/- with interest at the rate of 7.5% per annum from the date of petition till the date of realization with costs, within a period of eight weeks from the date of receipt of a copy of this order, less the amount already deposited, if any. On such deposit, the parents/respondents 1 and 2, namely Alagammal and Raju are entitled to withdraw the same in equal shares with interest, less the amount already withdrawn by them, if any, by filing proper application before the Tribunal. The insurance company is permitted to withdraw the balance amount, if any.

10. This Civil Miscellaneous Appeal is partly allowed. No costs.

Sd/-

Assistant Registrar(AS)

/True Copy/

Sub Assistant Registrar

To

The Subordinate Judge,
Motor Accidents Claims Tribunal, Kulithalai.

Copy to:

The Record Keeper, VR Section,
Madurai Bench of Madras High Court, Madurai.

+ 1 cc TO Mr.R.Srinivasan , Advocate in SR No. 87652
+ 1 cc TO Mr.R.M.Sivakumar , Advocate in SR No. 87748

Skm

AE/SKN RSK/SAR2/15.12.2017/3P/5C

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