BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.03.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A(MD)No.481 of 2016

1.S.Murugan
2.M.Lakshmi ... Appellants/Petitioners

Vs.

1.P.Paraman
2.P.Maruthapandi

3.The Branch Manager,
National Insurance Company Limited,
Opp. District Court,
5-A, Sub Collector Office Road,
Dindigul. ... Respondents/Respondents

PRAYER: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree made in M.C.O.P.No.446 of 2013 dated 31.08.2015 on the file of the on the file of the Motor Accident Claims Tribunal - Principal District Court/FAC, Dindigul.

For Appellants : Mr.A.Saravanan

For Respondents : Mr.J.S.Murali for R.3
No appearance for R.1 & R.2

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JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellants/claimants against the award of Rs.3,75,000/- (Rupees Three Lakhs and Seventy Five Thousand only), for the death of one Krishnan, aged 19 years, doing Pig rearing business, allegedly earning a sum of Rs.15,000/- (Rupees Fifteen Thousand only) per month, in the accident occurred on 12.01.2013, when he was travelling in an Auto bearing Registration No.TN-57-Q-5166 insured with the third respondent, the second respondent/owner-cum-driver of the offending vehicle drove the same on Dindigul - Madurai Road in a rash and negligent manner and caused the accident, resulting in the death of the deceased. Therefore, the claim petition was filed.

2. On contest, the Tribunal, based on the evidence of P.W.2 - eyewitness and filing of Ex.P.1 - F.I.R and Ex.P.5 - final report against the driver of the offending vehicle, found that the accident occurred only due to the rash and negligent driving of the second respondent/owner-cum-driver of the offending vehicle and further held that he did not possess a "Valid Driving Licence" as he had only a driving licence to drive a Light Motor Vehicle and not a Public Service Vehicle and therefore, directed the third respondent-Insurance Company to pay the compensation to the appellants/claimants and recover the same from the second respondent/owner-cum-driver of the offending vehicle and awarded the compensation of Rs.3,75,000/- (Rupees Three Lakhs and Seventy Five Thousand only). Aggrieved over the quantum of compensation, the appellants/claimants have come before this Court with the present appeal.

3. Heard the learned Counsel for the appellants/claimants and the learned Counsel for the third respondent and perused the materials available on record. Despite notice served on the respondents 1 and 2, there is no representation on behalf of them.

4. The Tribunal, based on the evidence of P.W.2 - eyewitness and filing of Ex.P.1 - F.I.R and Ex.P.5 - final report against the driver of the offending vehicle, rightly came to the conclusion that the accident occurred only due to the rash and negligent driving of the second respondent and held that the second respondent/owner-cum-driver of the offending vehicle did not possess a "Valid Driving Licence" as he had only a driving licence to drive a Light Motor Vehicle and not a Public Service Vehicle and by following the judgment of the Honourable Supreme Court in ***Kusum Lata and others v. Satbir and others*** reported in ***2011 (1) TN MAC 334 (SC)*** and the judgment of this Court in ***New India Assurance Co. Ltd., Tirunelveli v. Kaliyammal and others*** reported in ***2014 (1) TN MAC 28,*** directed the third respondent-Insurance Company to pay the compensation to the appellants/claimants and recover the same from the second respondent/owner-cum-driver of the offending vehicle.

5. Further, in ***Oriental Insurance Co. Ltd., vs. Nanjappan and others reported in (2004) 13 Supreme Court Cases 224***, the Honourable Supreme Court has held as follows:

> “8. Therefore, while setting aside the judgment of the High Court we direct in terms of what has been stated in Baljit Kaur's case (supra) that the insurer shall pay the quantum of compensation fixed by the Tribunal, about which there was no dispute raised, to the respondent-claimants within three months from today. For the purpose of recovering the same from the insured, the insurer shall not be required to file a suit. It may initiate a proceeding before the concerned Executing

> Court as if the dispute between the insurer and the owner was the subject matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer. Before release of the amount to the insured, owner of the vehicle shall be issued a notice and he shall be required to furnish security for the entire amount, which the insurer will pay to the claimants. The offending vehicle shall be attached, as a part of the security. If necessity arises the Executing court shall, take assistance of the concerned Regional Transport authority. The Executing Court shall pass appropriate orders in accordance with law as to the manner in which the insured, owner of the vehicle shall make payment to the insurer. In case there is any default it shall be open to the Executing court to direct realization by disposal of the securities to be furnished or from any other property or properties of the owner of the vehicle, the insured. The appeal is disposed of in the aforesaid terms, with no order as to costs."

6. In the light of the ratio laid down by the Honourable Supreme Court in the above decision, this Court finds that the Tribunal rightly held that the second respondent/owner-cum-driver of the offending vehicle did not possess a "Valid Driving Licence" to drive the said vehicle at the time of the accident and the second respondent/owner of the offending vehicle is liable to pay the compensation and further held that the third respondent-Insurance Company is liable to indemnify the second respondent/owner-cum-driver of the offending vehicle. Hence, the said finding of the Tribunal based on evidence, cannot be interfered with.

7. With regard to the compensation, the Tribunal, in the absence of any materials to prove the income of the deceased, determined the monthly income of the deceased at Rs.4,000/- (Rupees Four Thousand only) and deducted 50% towards his personal expenses, a sum of Rs.2,000/- (Rupees Two Thousand only) was fixed towards his monthly contribution and applied multiplier 15 and accordingly, the loss income was arrived at Rs.3,60,000/- (Rupees Three Lakhs and Sixty Thousand only) [Rs.2,000/- X 12 X 15].

8. However, this Court, considering the facts and circumstances of the case, determines the monthly income of the deceased at Rs.6,000/- (Rupees Six Thousand only) and since the age of the deceased was aged 19 years and he was a bachelor at the time of the accident, 50% has to be deducted towards his personal expenses and accordingly, the monthly contribution would come to Rs.3,000/- (Rupees Three Thousand only).

9. Since the age of the deceased was 19 years at the time of

the accident, the appropriate multiplier to be adopted is 18 as per the judgment of the Honourable Supreme Court in ***Sarla Verma v. Delhi Transport Corporation*** reported in ***2009 (2) TN MAC 1 (SC)***. Accordingly, the loss of income would be **Rs.6,48,000/-** (Rupees Six Lakhs and Forty Eight Thousand only) [Rs.3,000/- X 12 X 18].

10. The Tribunal awarded only a sum of Rs.10,000/- (Rupees Ten Thousand only) towards loss of love and affection to the appellants/claimants and therefore, this Court enhances the same to a sum of **Rs.50,000/-** (Rupees Fifty Thousand only) **each** to the appellants/claimants.

11. A sum of **Rs.5,000/-** (Rupees Five Thousand only) awarded by the Tribunal towards funeral expenses, is confirmed.

12. The rate of interest awarded by the Tribunal at 7.5% per annum remains unaltered.

13. Accordingly, the appellants/claimants are entitled to a sum of **Rs.7,53,000/-** (Rupees Seven Lakhs and Fifty Three 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.

14. In the result,

(i) This Civil Miscellaneous Appeal is allowed, enhancing the award of the Tribunal from Rs.3,75,000/- (Rupees Three Lakhs and Seventy Five Thousand only) to a sum of **Rs.7,53,000/-** (Rupees Seven Lakhs and Fifty Three 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 appellants/claimants are entitled to the above compensation along with accrued interest and costs at the ratio of **50 : 50**;

(iii) The appellants/claimants are directed to submit their Savings Bank Account Details along with the copies of their passbooks to the Tribunal **forthwith**;

(iv) The third respondent-Insurance Company is directed to deposit the entire award amount along with accrued interest and costs, less the amount deposited, if any, to the credit of M.C.O.P.No.446 of 2013 on the file of the Motor Accident Claims Tribunal - Principal District Court/FAC, Dindigul, within a period of **twelve weeks** from the date of receipt of a copy of this judgment;

(v) On such payment of additional Court Fees, if any, by the appellants/claimants, the Tribunal is directed to transfer the respective share amounts of the appellants/claimants to their Personal Savings Bank Account Numbers, through RTGS/NEFT system, within a period of **two weeks thereafter**;

(vi) The third respondent-Insurance Company is at liberty to recover the award amount along with accrued interest and costs from the insured, namely, the second respondent/owner-cum-driver of the offending vehicle, as per the law laid down by the Honourable Supreme Court in ***Nanjappan's case*** (cited supra).

(vii) In the facts and circumstances of the case, there shall be no order as to costs.

Sd/-
Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

To

1.The Motor Accident Claims Tribunal - cum – Principal District Court/Fast Track Court, Dindigul.

+1cc to M/s. A.SARAVANAN Advocate in SR. No.17200
+1cc to M/s. J.S.MURALI Advocate in SR. No.17526

RSB
JS/MR/22.05.2017/5P-4C

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