



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 17.11.2017

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A. (MD) No.640 of 2016

and

C.M.P. (MD) .No.6840 of 2016

The Branch Manager,
The New India Assurance Company Limited,
Nagercoil Branch,
Opposite to Anna Stadium,
Nagercoil and Village,
Agasteeswaran Taluk,
Kanyakumari District.

... Appellant/3rd Respondent
Vs.

1.Sesaiya
2.Sahaya Mary
3.Immanuel
4.Rajendraprasath
5.Mohamed Hanifa
6.Pushpam

... Respondents/1st & 2nd Petitioner
... Respondents/1st & 2nd Respondents

7. The Branch Manager,
Oriental Insurance Company Limited,
Nagercoil Branch,
The Divisional Office,
T.T.J. Center First Floor,
Opposite to Vadaseri Bus Stand,
Nagercoil, Kanyakumari District.

... Respondents/4th to 6th
Respondent

(No relief sought against the respondents
3 to 6. Hence, notice to the respondents
R3 to R6 may be given up).

Prayer: Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the judgment and decree dated 04.09.2015 made in M.C.O.P.No.33 of 2014, on the file of the Motor Accidents Claims Tribunal (Chief Judicial Magistrate), Kanyakumari, at Nagercoil.

For Appellant : Mr.G.Prabhu Rajadurai
For R1 & R2 : Mr.K.Vamanan
For R3 to R6 : Mr.C.Jawahar Ravindran
Given Up vide in EB

JUDGMENT

Heard the learned counsel on either side.

2.The deceased in this case is a fisher man by avocation. He was aged 21 years at the time of the accident. He was riding a

motor bike on 02.07.2013. A Mini bus insured with the appellant herein and another mini bus insured with the seventh respondent herein collided with each other and in the resulting accident, the deceased fell down and suffered injuries. He succumbed later. The parents of the deceased filed M.C.O.P.No.33 of 2014, dated 04.09.2015, on the file of the Motor Accidents Claims Tribunal (Chief Judicial Magistrate), Kanyakumari, claiming compensation. The Tribunal awarded a sum of Rs.17,47,000/- as compensation. Since negligence was equally apportioned on the bus drivers, liability was equally fastened on the appellant Insurance Company and the seventh respondent herein.

3.It appears that the seventh respondent herein has not filed any appeal questioning the award. Therefore, liability imposed on the seventh respondent herein has become final. It is made clear that since the seventh respondent herein has not filed any appeal, they have to satisfy the award. In other words, liability of the seventh respondent to satisfy the impugned award as regards 50% of the liability shall hold good, notwithstanding the order to be passed in this appeal.

4.The learned counsel appearing for the appellant contended that even though no income proof was filed, the Tribunal took his monthly income at Rs.15,000/-. Considering the facts and circumstances of this case, I am of the view that the monthly income can be taken as Rs.10,000/- and adding 40% future prospects his monthly income shall be taken as Rs.14,000/-. In that event, the pecuniary loss would come to Rs.15,12,000/-. (Rs.14,000X12X18X1/2)). For transportation charges a sum of Rs.5,000/- can be awarded. For damages to articles a sum of Rs.2,000/- can be awarded. For funeral expenses a sum of Rs.15,000/- can be awarded. For loss of love and affection a sum of Rs.1,00,000/- can be awarded. Therefore, the compensation payable to the claimants will have to be reworked as under:-

Sl.No.	Heads	Amounts in Rupees
1.	For pecuniary loss	Rs. 15,12,000/-.
2.	For transportation charges	Rs. 5,000/-
3.	For damages to articles	Rs. 2,000/-
4.	For funeral expenses	Rs. 15,000/-
5.	For loss of love and affection	Rs. 1,00,000/-
	Total	Rs.16,34,000/-

5.The compensation payable to the claimants will have to be reduced from Rs.17,47,000/- to Rs.16,34,000/-. The appellant Insurance company will have to pay 50% of the said amount with interest at the rate of 7.5% per annum. It is submitted by the



learned counsel for the appellant that the entire award amount was deposited. The claimants are permitted to withdraw the amount now quantified by applying the proper application before the Tribunal. The award dated 04.09.2015, made in M.C.O.P.No.33 of 2014, on the file of the Motor Accidents Claims Tribunal (Chief Judicial Magistrate), Kanyakumari, at Nagercoil, is modified accordingly.

6.The appellant is directed to deposit the compensation amount of Rs.8,17,000/- with interest at the rate of 7.5% per annum with costs, from the date of petition till the date of realization, within a period of eight weeks from the date of receipt of a copy of this order, less the amount already deposited, if any. The appellant Insurance Company is permitted to recover the same from the third and fourth respondents in these proceedings by filing execution petition. The appellant Insurance Company is permitted to withdraw the balance amount, if any. On such deposit, the first and second respondents are entitled to withdraw the same, as apportioned by the Tribunal, less the amount already withdrawn by them, if any, by filing proper application before the Tribunal.

7.This Civil Miscellaneous Appeal is partly allowed. No costs. consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

The Chief Judicial Magistrate,
Motor Accident Claims Tribunal
Kanyakumari, Nagercoil.

Copy to

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

+1cc to Mr.G.Prabhu Rajadurai, Advocate Sr.No.88092
+1cc to Mr.K.Vamanan, Advocate Sr.No.88466
+1cc to Mr.C.Jawahar Ravindran, Advocate Sr.No.88350

TSG

VB/MR/KKR/SAR2/21/12/2017/3P/6C

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and**

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