



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.12.2017

CORAM :

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A. (MD) No.912 of 2016

1.R.Vasanth
2.Pappammal
3.Selvi Sundari
4.Minor.Sangeetha
5.Minor.Selvi
6.Minor.Muthu ... Appellants
(Minors 4 to 6 Petitioners through their mother
and guardian the 1st petitioner)

Vs.

1.Maha Nehru Raj
2.United India Insurance Company Limited,
First Floor, Post Box No.47, S.N.High Road,
Tirunelveli.
3.J.Thangapzham
4.United India Insurance Company Limited,
Tirunelveli-1. ... Respondents

Prayer: Appeal filed under Section 173 of Motor Vehicles Act, 1988,
to allow this appeal and enhance the award amount in M.C.O.P.No.207
of 1994, on the file of the Motor Accident Claims Tribunal,
(Principal District Judge), Thoothukudi, dated 14.01.2003.

For Appellants	: Mr.T.Selvakumaran
	For Mr.K.Kumaravel
For Respondents	: Mr.A.Ilango for R2 and R4
	: No Appearance for R1 and R3

JUDGMENT

Heard the learned counsel on either side.

2.One Radhakrishnan was travelling as a passenger in a motor vehicle belonging to Maha Nehru Raj on 25.01.1994. The said vehicle met with an accident involving another vehicle belonging to one Thangapazham. The said Radhakrishnan died. Crime No.95 of 1994, was registered, before the Sattankulam Police Station against the driver of the vehicle in which the deceased was travelling. Both the vehicles were insured with the United India Insurance Company Limited. The Tribunal fixed the entire negligence on the driver of the vehicle in which the deceased was travelling which belonged to the first respondent Maha Nehru Raj. Though, the Tribunal awarded a sum of Rs.1,32,600/- with interest at the rate of 9% interest, the entire liability was fastened on the owner of the offending vehicle namely the one in which the deceased was travelling. Contending



that the insurer must have been made liable, this appeal has been filed.

3. Coming to quantum of compensation, it is seen that the deceased was aged about 36 years at the time of the accident. Even if the monthly income available for the family after due deduction, is taken as Rs.2,000/-, the pecuniary loss for the family would be at Rs.3,84,000/- (Rs.2,000X16X12). A sum of Rs.1,60,000/- can be awarded towards loss of consortium and loss of love and affection. A sum of Rs.30,000/- can be awarded towards loss of estate and funeral expenses. Therefore, the compensation payable to the claimants is Rs.5,74,000/-

4. Considering the manner of accident, I am of the view that negligence can be evenly distributed between the drivers of both the vehicles. In this view of the matter, the insurer is directed to satisfy the impugned award. The appeal was filed with a long delay. The delay was condoned after waiver of interest. Therefore, the insurer namely, the United India Insurance Company Limited is directed to deposit the award amount of Rs.5,74,000/- with interest at the rate of 7% per annum after deducting the interest for the period of delay occasioned in filing this appeal.

5. Therefore, the award dated 14.01.2003 made in M.C.O.P.No.207 of 1994, on the file of the Motor Accident Claims Tribunal, the learned Principal District Judge, Thoothukudi, is modified accordingly.

6. The second respondent is directed to deposit the compensation amount of Rs.5,74,000/-- with interest at the rate of 7.5% per annum with costs, from the date of petition till the date of realization after deducting interest for the delay period within a period of eight weeks from the date of receipt of a copy of this judgment less the amount already deposited, if any. Since 50% negligence is fixed on the driver employed by the first respondent herein, the insurer is permitted to recover 50% of the paid amount from the first respondent by filing Execution Petition in the very proceedings. The principle of pay and recover is applied only in so far as 50% of the award amount. The award passed by the Tribunal is modified as regards apportionment also. The wife shall be entitled to a sum of Rs.3,00,000/- with interest. The remaining amount shall be divided in equal shares to the three minor daughters/appellants 4, 5 and 6. On such deposit, the appellant/claimants are entitled to withdraw the same, less the amount already withdrawn by them, if any, by filing proper application before the Tribunal. So far as the appellants 4, 5 and 6 are concerned, since they are minor at the time of filing claim petition and now, they would have attained majority, they are directed to file an application before the Tribunal to declare them as major and on filing of such application, the Tribunal is directed to pass appropriate orders declaring them as major and thereafter, permit them to withdraw their share, as apportioned by the Tribunal. The appellants are directed to pay the



Court fee for the enhanced amount of compensation, if not already paid, within four weeks before the Registry.

7. This Civil Miscellaneous Appeal is allowed accordingly. No costs.

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/True copy/

Sd/-

Assistant Registrar (CS-I)

Sub Assistant Registrar

To

1. The Principal District Judge,
The Motor Accident Claim Tribunal, Thoothukudi.
2. The Record Keeper, Vernacular Section,
Madurai Bench of Madras High Court, Madurai. **(2 COPIES)**
3. Maha Nehru Raj,
S/o. Dharmalinga Nadar,
Sankaran kudieruppu,
Thisayanvilai Post,
Tirunelveli District.
4. J. Thangapazham,
W/o. Joseph Nadar,
126, Pitchan Chettiya villai,
Arasur, Poochikadu, V.O.C. District.

+1cc to Mr. K. KUMARAVEL, Advocate, SR. 92915

C.M.A. (MD) No. 912 of 2016
13.12.2017

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