BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 05.12.2017
CORAM:
THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
and
THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

C.M.A(MD)No.941 of 2015

1. Thangam
2. Minor.Jasmine
(Minor rep. By natural guardian
Mother Thangam the 1st appellant)
:Appellants/Petitioners 1 & 2

Vs.

1. Samuel Raj,
2. The Managing Director,
TATA AIG Insurance Company Ltd.,
No.5, “AA” Towers,
3rd Floor, North Block,
By Pass Road,
Madurai-16
3.Jebasingh : R1 to R3/R1 to R3
4.Ponnian : R4/ 3rd Petitioner

PRAYER: Civil Miscellaneous Appeal has been filed under Section 173 of M.V. Act, against the judgment and decree made in MCOP No.65 of 2013 on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate Court), Kanyakumari at Nagercoil, dated 10.12.2014.

For Appellants	:	Mr.C.Sankar Prakash
For R1	:	Mr.G.Venugopal
For R2	:	Mr.S.Srinivasa Raghavan
For R3 & R4	:	No appearance

JUDGMENT

[Judgment of this Court was made by K.KALYANASUNDARAM,J.]

Being dis-satisfied with the award of compensation passed in MCOP No.65 of 2013 by the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Kanyakumari at Nagercoil, dated 10.12.2014, the claimants have preferred this appeal seeking enhancement.

2.The case of the claimants is that on 21.10.2010 at 04.15 pm, when the deceased Johnson was riding the Hero Honda Passion Plus H.R.01.-V-9524, a TVS JIVE vehicle TN-75-C-5257 came in the opposite direction in a high speed dashed against the deceased. Due to the accident, the deceased sustained multiple injuries and later died. A claim was made for Rs.50,00,000/-.

3.The Tribunal, after analyzing the evidence adduced by the parties, awarded compensation of Rs.13,25,000/-. Chellenging the same, the claimants are before this Court.

4.Heard the learned counsel for the appellants/claimants 1 & 2 and the learned counsel appearing for the respondents 1 and 2 and perused the materials available on record.

5.The learned counsel appearing for the appellants would submit that the deceased was working as a Driver in Southi Arabia and he was earning Rs.19,000/- per month, but without adding any future prospects, the tribunal has awarded lessor compensation. It is further contended that the claimants are third parties, the Tribunal having found the violation of policy condition has exonerate the Insurance Company. According to the learned counsel for the appellants, the Tribunal ought to have directed the Insurance Company to pay and recover from the owner of the vehicle.

6.Per contra, the learned counsel for the first respondent submitted that admittedly the policy was in force on the date of accident and therefore, it is a fit case for applying the theory of pay and recover.

7.The learned counsel appearing for the second respondent argued in support of the finding of the Tribunal.

8.According to the claimants, the deceased was working in abroad and he was earning Rs.19,000/- per month. In support of their case, Ex.P.11 Passport, Ex.P12 Passbook of the deceased, Ex.P.13 driving licence and Ex.P14 Employment card, were produced.

9.It is settled law that the employment in foreign country is not a permanent and the Tribunal, by following the decisions of this Court, has fixed monthly income of the deceased at Rs.9,000/-. However, no addition has been made towards future prospects. Admittedly, the deceased died at the age of 45 years and as per the Judgment of Supreme Court in Pranay Sethi (2017(6) CTC 493), claimants are entitled for addition of 25% towards future prospects and after adding 25%, the income comes Rs.11,250/-. 1/3rd is to be deducted towards his personal expenses, so contribution to the family would be Rs.7,500/-. By applying multiplier '14', Rs.12,60,000/- (Rs.7,500/- x 14 x 12) is arrived at towards loss of dependency. Taking note of the facts of this case, it would be appropriate to award Rs.40,000/- towards consortium; Rs.15,000/- towards loss of estate; Rs.15,000/- towards funeral expenses; Rs.80,000/- towards loss of love and affection; Rs.5,000/- for transportation and Rs.1,200/- towards damage to the articles. In total, the claimants would be entitled to Rs.14,16,200/- together with interest @ 7.5% p.a.

10. In the instant case, it is not in dispute that the offending vehicle had a coverage on the date of accident and the claimants are third parties.

11. It is settled position of law that in the case of claim made by the third party, even if there is any violation of the policy conditions, the Insurance Company has to pay the award amount to the claimants and thereafter, recover the same from the owner of the vehicle.

12.In (2004)13 SCC 224 in the case of Oriental Insurance Co. Ltd., vs. Nanjappan and others, the Hon'ble Apex Court held as follows:-

> "(7) ....For the purpose of recovering the compensation amount 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 insured was the subject matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer. A notice shall be issued to the insured to furnish security for the entire amount. 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 realisation by disposal of the securities to be furnished or from any other property of the insured."

13.Keeping in view of the above, the second respondent Insurance Company is directed to pay the modified award amount to the claimants at the first instance and then, recover the same from the owner of the vehicle, as per the mode incorporated in Nanjappan's case referred above.

14.Accordingly, this Civil Miscellaneous Appeal is partly allowed. The award is enhanced to Rs.14,16,200/- from Rs.13,25,000/-. The second respondent/Insurance Company is directed to deposit the modified amount, less the amount already deposited, within a period of eight weeks from the date of receipt of the judgment copy. A memo, dated 05.12.2017 has been filed stating that the fourth respondent/third claimant namely Ponnaian has passed away during the pendency of the appeal i.e., on 15.08.2015. The said memo is recorded. Taking note of the above fact, the first claimant is entitled to Rs.7,16,200/- and the second claimant is entitled to

Rs.7,00,000/-. The major claimant is permitted to withdraw her share along with proportionate interest and insofar as the minor claimant is concerned, the Tribunal is directed to deposit her share in any one of the Nationalised Banks, in fixed deposit scheme, initially for a period of three years renewable thereafter, till she attain majority. No costs.

Sd/-
Assistant Registrar(T&P)

/True Copy/

Sub Assistant Registrar(CS-IV)

To

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

2. The Record Keeper,
   V.R. Section,
   Madurai Bench of Madras High Court,
   Madurai.**(2 Copies)**

+1CC to Mr.S.Srinivasa Raghavan, Advocate, SR.No.91032
+1CC to Mr.P.Senthil, Advocate, SR.No.91065
+1CC to Mr.C.Sankar Prakash, Advocate, SR.No. 91058

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AM/ER
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