



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.08.2017

CORAM :

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A. (MD) Nos.1264 of 2013 and 285 of 2014
and
M.P (MD) .No.1 of 2013 in CMA (MD) No.1264/13

C.M.A. (MD) Nos.1264 of 2013

The Branch Manager,
Oriental Insurance Company Limited,
Maliyakkal Galaxy,
Kerala State.

... Appellant/2nd Respondent

Vs.

1.Mariyam Beevi

2.Minor J.Mohammed Aspan

3.Minor Amar Khan

... 1 to 3 Respondents/Claimants

(Minor 2nd and 3rd respondents
are represented by their Mother
and next friend, 1st respondent
Mariyam Beevi)

4.Majina

5.Jamal Mydeen

6.Sulthan Beevi

7.Sithima

... 4 to 7 Respondents/
1st, 3 to 5th Respondent

PRAYER : Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the award of Rs.33,92,124/- (Rupees Thiry Three Lakhs Ninety Two Thousand One Hundred and Twenty Four Only) passed in M.C.O.P.No.398 of 2012, dated 20.11.2012, on the file of the Motor Accidents Claims Tribunal cum Additional District Judge, Pudukkottai.



For Appellant

: Mr.K.Bhaskaran

For Respondents 1 to 3

: Ms.Lakshmi Gopinathan
for M/s.Polax Legal Solutions

C.M.A.(MD)N.285 of 2014

1.Mariyam Beevi

2.Minor J.Mohammed Aspan

3.Minor Amar Khan

(Minor 2nd and 3rd appellants
are represented by their Mother
and next friend, 1st appellant
Mariyam Beevi)

... Appellants/Claimants

Vs.

1.Majina

2.The Branch Manager,
Oriental Insurance Company Limited,
Maliyakkal Galaxy,Kayankulam
Kerala State.

3.Jamal Mydeen

4.Sulthan Beevi

5.Sithima

... Respondents/Respondent

PRAYER : Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to allow the appeal to the effect that so as to Enhance the compensation to the tune of Rs.27,13,699/- in addition to compensation awarded by the Tribunal by modifying the Judgment and decreetal order made in MCOP.No.398 of 2012 dated 20.11.2012 by the Motor Accident Claims Tribunal, (Additional District Court), Pudukkottai.

For Appellants

: Mrs.Lakshmi Gopinathan

For Respondent- 2

: Mr.K.Bhaskaran

COMMON JUDGMENT

[Judgment of the Court was delivered by G.R.SWAMINATHAN, J.]

The Oriental Insurance Company Limited is on appeal challenging the award made in MCOP.No. 398 of 2012, on the file of the Motor Accident Claims Tribunal cum Additional District Court, Pudukkottai. The claimants have also filed an appeal.

2.One Mr.Jagubar Ali alias Jaboor Ali met with an accident on 16.01.2010 and passed away. He was aged about 39 years and was employed at Brunei. Since the offending vehicle namely the lorry was insured with the Oriental Insurance Company Limited, the wife and sons of the deceased filed MCOP.No. 398 of 2012, on the file of the Motor Accident Claims Tribunal cum Additional District Court, Pudukkottai. The respondents 3 to 5 were shown as respondents, since they did not co-operate with the claimants.

3.According to the claimants, the deceased was employed in a Beverage Company in Brunei and was earning Rs.40,000/- per month. Hence, they claimed compensation to the tune of Rs.50,00,000/-. The claim was opposed by the insurance company. The income figure earned by the deceased was disputed. The insurance company took a stand that the deceased was equally negligent and contributed to the extent. The Claims Tribunal after fullfledged enquiry passed an award dated 20.11.2012 arriving at the figure of Rs.67,84,248/- as the compensation amount.

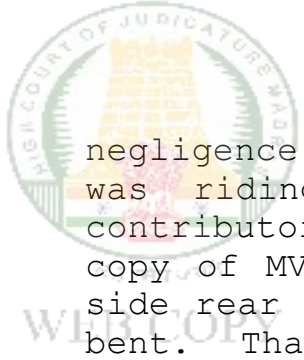
4.Since the deceased was negligent and had contributed to the accident, only 50% of the liability was fastened on the insurance company. Since contributory negligence was fixed 50:50, the compensation amount payable was fixed at Rs.33,92,194/-. The said amount was directed to be paid with interest at 7.5 per annum.

5.Aggrieved by the same both insurance company as well as the claimants have filed these appeals.

6.Heard the learned counsel for the insurance company as well as the claimants.

7.The learned counsel for the insurance company would contend that the Tribunal erroneously fixed the income earned by the deceased at Rs.52,416/-. It is admitted by the insurance company that the deceased was working in a Beverage Company at Brunei. Therefore, it is certainly possible that the deceased was earning Rs.40,000/- per month and taking into account future prospectus, the figure of Rs.52,416/- arrived at by the Tribunal appears to be correct.

8.The Tribunal had adopted the correct multiplier of 16. The deductions were also rightly made. Similarly, contributory



negligence was also rightly fastened on the deceased. The deceased was riding a motorcycle and the conclusion as regards the contributory negligence of the deceased was inferred from Ex.P.4 - copy of MVI Report for lorry. The said report reveals that right side rear wheel front portion of the mud guard alone was slightly bent. That is how the contention that the deceased also contributed by his negligence for the accident stood established.

9.The award passed by the Claims Tribunal does not suffer from any infirmity. We find no merit in these appeals filed by the insurance company as well as the claimants.

10. Accordingly, both Civil Miscellaneous Appeals stand dismissed. No Cost. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(Crl.Side)

/True Copy/

Sub-Assistant Registrar

To

The Additional District Judge,
Motor Accidents Claims Tribunal,
Pudukkottai

+One cc to M/s.Polax Legal Solutions, Advocate, SR.No.71563

+2ccs to Mr.K.Bhaskaran, Advocate, SR.Nos.71428 and 71429

+One cc to Mr.K.Gokul, Advocate, SR.No.71885

dsk

RL/6C/4P/KP/SAR1/15/9/2017

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