BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

C.M.A.(MD)No.1465 of 2013
& C.M.A.(MD)No.49 of 2014

C.M.A.(MD)No.1465 of 2013:

The Oriental Insurance Company Ltd.,
90-A, Thuraiyur Road,
Namakkal-637 002. .. Appellant/
2nd Respondent

-Vs-

1.Mariammal
2.Minor Vinoth Kumar
3.Minor Mari Selvam
4.Minor Muthukumar
5.Minor Kaveri
6.Minor Kanishka

(Minors 2 to 6 respondents rep.by their mother and guardian next friend,1st respondent Mariammal)

7.Antonyammal(Died) ... 1 to 7 Respondents/
1 - 7 Petitioners

8.P.Gopala Krishnan

(8th respondent remained ex-parte before the lower Court)

9.S.Manthiramoorthy ...9th Respondent/
3rd Respondent

10.Shriram General Insurance Company Limited,
E-8 RICO Industrial Area,
Sitapura, Jaipur,
Rajasthan-302 022 ...10th Respondent/4th Respondent

11.K.Raj
12.K.Vijayan
13.K.Mohan
14.Muruga Lakshmi
15.Seetha
16.R.Gowri ....Respondents 11 to 16/
Petitioners 11 to 16

(R11 to R16 are brought on record as LRs of the deceased R7 vide order dated 02.06.2014 made in M.P(MD)No.1 of 2014 in C.M.A(MD)No.1465 of 2013)

Prayer: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the Award of Rs.7,72,500/- passed in M.C.O.P.No.71 of 2012, dated 27.02.2013 on the file of the Motor Accidents Claims Tribunal- cum- Second Additional District Judge, Thoothukudi.

For Appellant :Mr.K.Baskaran

For Respondents :Mr.P.Pethu Rajesh
for R1 to R6 & R11 to R16
: R-7 Died - Steps taken
: No appearance for R 8 & R9
: Mr.P.Jayaraman for R10

C.M.A.(MD)No.49 of 2014
1.Mariammal
2.Minor Vinoth Kumar
3.Minor Mari Selvam
4.Minor Muthukumar
5.Minor Kaveri
6.Minor Kanishka
(Minors 2 to 6 appellants were rep.by their mother and guardian 1st appellant herein)

7.Antonyammal(Died) ... 1to 7 Respondents/
K.Raj 1 - 7 Petitioners

8.K.Vijayan
9.K.Mohan
10.Muruga Lakshmi
11.Seetha
12.R.Gowri ... Appellants 7 to 10/
LRs of the Deceased
7th Petitioner

-Vs-

1.P.Gopala Krishnan

2. The Oriental Insurance Company Ltd.,
90-A, Thuraiyur Road,
Namakkal-637 002.

3.S.Manthiramoorthy
4.The Shriram General Insurance Company Ltd.,
E-8 RIICO Industrial Area,
Sitapura, Jaipur,
Rajasthan-302 022 ...Respondents/Respondents

Prayer: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to enhance the compensation awarded in M.C.O.P.No.71 of 2012, dated 27.02.2013 on the file of the Motor Accidents Claims Tribunal- cum- Second Additional District Judge, Thoothukudi.

For Appellants :Mr.P.Pethu Rajesh

For Respondents :No appearance for R 1 & R3
:Mr.P.Jayaraman for R4
Mr.K.Bhaskaran for R-2

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COMMON JUDGMENT

Both the appeals arise out of the same award passed in the claim petitions filed by the respondents/claimants for the death of one Ranjan aged about 39 years, a driver -cum- cleaner of the lorry, allegedly earning about a sum of Rs.13,000/- in the accident occurred on 06.06.2011, when he was travelling as a cleaner in the cabin of the lorry, which was following the offending vehicle, which in turn suddenly turned right side and resultantly the vehicle which followed the offending vehicle dashed against the offending vehicle.

2. The legal representatives of the deceased Ranjan filed a claim petition seeking compensation. The Insurance Company is referred to as Insurance Company. The case of the Insurance Company was that the lorry insured with the insurance company was parked on the left side of the road by lighting the danger light in red colour on the back side of the lorry as per traffic rules and the lorry, in which, the deceased travelled came behind and hit causing the accident and therefore, there is no negligence on the part of the driver of the lorry insured with the Insurance company. However, the Tribunal based on the filing of F.I.R- Ex.P1, against the driver of the lorry insured with the Insurance Company and based on the evidence of Manthiramoorthy, who was the driver of the victim vehicle, came to the conclusion that the accident occurred because of the rash and negligent of the driver of the lorry insured with the Insurance Company.

3. Mr.K.Baskaran, learned Counsel appearing for the Insurance Company would argue that the accident occurred due to the negligence of the driver of the vehicle, in which, the deceased travelled or at least contributory negligence has to be fixed on the part of the said driver. The tenth respondent- Shriram General Insurance Company, insurer of the lorry, would support the award of the Tribunal and oppose the contention regarding fixation of contributory negligence.

4. He further submits that the amount of Rs.6,000/- determined as monthly income of the deceased is on the higher side. He would submit that the driver cum- cleaner of the lorry in which the deceased travelled, in which PW.2 himself issued a Salary Certificate -Ex.P9 and therefore, the said document could not be relied upon for determining the monthly income. The Tribunal did not rely upon Ex.P9 - Salary Certificate stating that no cogent records were produced.

5. Taking note of Ex.P6 - a copy of the driving licence of the deceased, the Tribunal determined the monthly income at Rs.6,000/- as he would have acted as a driver.

6. The Tribunal based on Exs.P1 and P2 found that the accident occurred because of the negligence on the part of the driver of the lorry insured with the appellant Insurance Company. Whereas, even the lorry insured with the appellant Insurance Company suddenly turned or parked along the road, nothing prevented the driver of the lorry, in which, the deceased was travelling to go slowly and drive carefully, especially, when the head-lights are showing the presence of the lorry in front of it either parked or turn right and it should have applied and stopped the vehicle. A very fact that the said lorry came behind and hit the lorry insured with the insurance company would also denote that there was contributory negligence on the part of the driver of the lorry carrying the deceased. Hence, 25% contributory negligence is fixed on the driver of the lorry, in which, the deceased was travelling and 75% contribution is fixed on the driver of the lorry insured with the insurance company.

7. The said determination of the monthly income at Rs.6,000/- for a driver and that too in the year 2011 is on the lower side. At the same time, it cannot be Rs.13,000/- as claimed by the claimants. The Honourable Supreme Court in *Syed Sadiq and Others -Vs- The Divisional Manager, United India Insurance Company Limited,* reported in *(2014) 2 SCC 735* fixed the monthly income of a Vegetable vendor who sustained injuries in the accident occurred on 14.02.2008 at Rs.6,500/-. Whereas, in this case, the deceased was found to be a driver as per the Ex.P6-Driving Licence and therefore this Court fixed the monthly income of Rs.8,000/-(Rupees Eight Thousand only). Hence, sum of Rs.12,000/- is fixed as the monthly income of the deceased. [Rs.8,000.00 + 50% = Rs.12,000.00] The size of the family is six and therefore, 1/5th has to be deducted towards his personal expenses and after 1/5th deduction, his monthly contribution would be Rs.9,600.00.(Nine Thousand Six Hundred only).

8. As per the Ex.P-9-driving licence, it was proved that the age of the deceased was '39' and the appropriate multiplier is

'15' as per the *Sarla Verma(Smt) and others -Vs- Delhi Transport Corporation and another* reported in *(2009) 6 SCC 121.* Accordingly, the loss of income would be Rs.8,000.00 + 50% - 1/5th x 12 x 15 = Rs.17,28,000.00.

9. The Tribunal awarded a sum of Rs.15,000/-(Rupees Fifteen Thousand only) to the first respondent widow, which is enhanced to Rs.1,00,000/-(Rupees One Lakh only) as per the judgment in *Rajesh and others -Vs- Rajbir Sigh and others* reported in *2013 (2) TN MAC 55 (SC)*. A sum of Rs.35,000/-(Rupees Thirty Five Thousand only) awarded by the Tribunal toward love and affection and the same is enhanced to Rs.1,20,000/-(Rupees One Lakh Twenty Thousand only) together. A sum of Rs.2,500/- (Rupees Two Thousand Five Hundred only) towards funeral expenses is enhanced to Rs.25,000/- (Rupees Twenty Five Thousand only). Similarly, a sum of Rs.3,000/-(Rupees Three Thousand only) towards transportation awarded by the Tribunal is enhanced to Rs.10,000/-(Rupees Ten Thousand only). No amount was awarded by the Tribunal towards loss of estate and therefore, this Court awards a sum of Rs.20,000/-(Rupees Twenty Thousand only) under the said head.

10. The rate of interest at 7.5% awarded by the Tribunal remains unaltered.

11. Therefore, the award amount of Rs.7,72,500/- (Rupees Seven Lakhs Seventy Two Thousand Five Hundred) is enhanced to Rs.20,03,000/-(Rupees Twenty Lakhs Three Thousand only) and rounded off to Rs.20,00,000/-(Rupees Twenty Lakhs only) along with interest at the rate of 7.5% per annum from the date of petition till date of realisation and proportionate costs.

12. The first respondent/claimant is entitled to Rs.10,00,000/- (Rupees Ten Lakhs only). The respondents 2 to 6 are minors/children are entitled to each Rs.2,00,000/- (Rupees Two Lakhs only). During the pendency of the appeal the seventh respondent/claimant stated to have been died. Both the appellant-The Oriental Insurance Company and the tenth respondent-Shriram Insurance Company, Rajasthan, are directed to deposit the entire award amount along with interest and costs to the credit of M.C.O.P.No.71 of 2012 on the file of the Motor Accident Claims Tribunal -cum- Second Additional District Court, Thoothukudi, in the ratio of 75% : 25%, less the amount deposited already, if any, before the Tribunal within a period of six weeks from the date of receipt of a copy of this order.

13. On such deposit, the Tribunal shall transfer the respective shares of the first respondent/wife to her personal Savings Bank Account Number through RTGS/NEFT system within a period of two weeks thereafter.

14. The share of the minor respondents 2 to 6 is directed to be kept in an interest bearing Fixed Deposit in any one of the Nationalised Banks under the renewable scheme till they attains majority and the first respondent/first claimant - mother of the minor respondents 2 to 6 is permitted to withdraw the accrued interest once in three months.

15. The respondents/claimants are directed to pay the additional Court Fees, if any, within a period of two weeks from the date of receipt of a copy of this judgment.

16.In the result, the Civil Miscellaneous Appeal in C.M.A(MD) No.1465 of 2013 and the Civil Miscellaneous Appeal in C.M.A(MD) No.49 of 2014 are partly allowed. No costs.

Sd/-
Assistant Registrar(CSII)

/True Copy/

Sub-Assistant Registrar

To

1.The Second Additional District Judge,
The Motor Accidents Claims Tribunal-
Thoothukudi.

2.The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

+2ccs to Mr.K.Bhaskaran, Advocate, SR.Nos.7358 and 7359
+2ccs to Mr.P.Pethu Rajesh, Advocate, SR.Nos.7396 and 7397
+2ccs to Mr.K.Gokul, Advocate, SR.Nos.7567 and 7568

gsr
RL/9C/6P/RR/24.3.2017

C.M.A.(MD)No.1465 of 2013
& C.M.A.(MD)No.49 of 2014

09.02.2017