



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.08.2017

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

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C.M.A(MD)No.203 of 2013andM.P(MD)No.1 of 2013

The Oriental Insurance Company Limited,
Nagercoil,
rep. by its Branch Manager,
Situated at D.D.J Centre,
Opposite to Vadasery Christopher Bus-stand,
Nagercoil,
Kanyakumari District.

... Appellant/ 4th Respondent

Vs.

1.Lakshmi ... 1st Respondent/Petitioner No.12.A.Akshaya @ P.L.Gayathiry ... 2nd Respondent/Petitioner No.2

(Minor represented by her mother/
natural guardian the 1st Respondent)

3.Ayyappan Pillai ... 3rd Respondent/Respondent No.14.Kosalai ... 4th Respondent/Respondent No.25.A.Thangathurai ... 5th Respondent/Respondent No.3

6.United India Insurance
Company Limited, Nagercoil,
rep. by its Branch Manager,
Situated at Xavier Building,
Assisi Campus, P.W.D.Office Road,
Nagercoil Village, Agasteeswaram Taluk,
Kanyakumari District. ... 6th Respondent/Respondent No.5
(Respondent Nos.3 to 6 given up)

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree passed in in M.C.O.P.No.92/2009 dated 31.07.2012 on the file of the Motor Accident Claims Tribunal-cum-District Judge, Kanyakumari at Nagercoil.

For Appellant : Mr.C.Jawahar Ravindaran

For R-1 : Mr.R.Manimaran

**J U D G M E N T**

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company against the award, dated 31.07.2012 made in M.C.O.P.No.92 of 2009 by the Motor Accident Claims Tribunal Cum Additional District Judge, Kanyakumari.

2. It is a case of fatal accident, which took place on 08.03.2007 at about 1.45 p.m., at Nagercoil to Erachakulam road.

3. It is the case of the claimants before the Tribunal that the deceased Prabhakar was an Advocate and he was practicing at Nagercoil Bar Association and on the date of accident, he was proceeding to Boothapandy Court in his motorcycle bearing Registration No.TN74 J 5368 along with his friend Sahaya Parthipan and at that time, one Tempo bearing Registration No.TN 74 A 7511, which came from the opposite direction was driven by its driver rashly and negligently and therefore, the said vehicle hit the two-wheeler and in the said accident, the deceased sustained multiple injuries and thereafter, he succumbed to the injuries.

4. The claimants filed an application in M.C.O.P.No.92 of 2009, on the file of the Motor Accident Claims Tribunal Cum Additional District Judge, Kanyakumari.

5. Before the Tribunal, the claimants examined four witness as P.Ws.1 to P.W.4 and marked seven documents as Ex.P.1 to Ex.P.7. The appellant/Insurance Company did not let in any oral or documentary evidence, before the Tribunal.

6. The Tribunal, after considering the pleadings, oral and documentary evidence and the arguments advanced on either side and also appreciating the evidence on record, held that the accident occurred only due to the rash and negligent driving of the driver of the Tempo vehicle and therefore, held that the fifth respondent and the appellant herein are liable to pay the compensation of Rs.18,76,000/-.

7. Against which, the appellant/Insurance Company has filed this present appeal challenging the quantum awarded by the Tribunal.

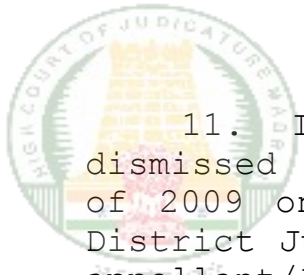
8. The learned counsel for the appellant/Insurance Company submitted that when there is no proof filed to prove the income of the deceased, the Tribunal erroneously fixed a sum of Rs.12,000/- as monthly income of the deceased and further, no proper deduction has been made towards personal expenses and therefore, compensation awarded by the Tribunal, warrants interference.



9. Per contra, the learned counsel for the first respondent submitted that after elaborate discussion only, the Tribunal has fixed the monthly income of the deceased as Rs.12,000/- and also considering the number of family members, the Tribunal has rightly deducted 1/4th amount towards personal expenses of the deceased and therefore, the award passed by the Tribunal does not warrant interference. In support of his submission, the learned counsel would draw the attention of this Court to Paragraph No.12 of the award passed by the Tribunal, wherein it has been rendered as follows:

"Further, in respect of the income of the deceased, the learned counsel for the petitioners' contention is that at the time of accident, the deceased was a leading advocate in his profession and also he was a panel lawyer in United India Insurance Company and Canara Bank and other private Institution. He was earning not less than Rs.20,000/- per month. Further, he has contended that the deceased was doing practice in his advocate profession. Regarding this aspect, this Court has gone through the case records it found that the petitioners have not produced any documentary evidence to prove the deceased monthly income. Further, the petitioners have not produced any documentary evidence to prove the monthly income, at the time of accident the deceased a panel advocate in two insurance company. Further, this Court has gone through the case records it found that the deceased was a well practicing advocate at Nagercoil Bar Association. The above said two aspects were not disputed by the respondents during the time of argument. This aspect is considered by this Court and come to the conclusion that being a panel advocate in two insurance company, definitely the advocate was engaged in two cases per company per month. In this aspect being the advocate both insurance company has engaged he deceased in four cases per month. Further he was engaged in civil and criminal practice. The above said aspects are considered by this Court and come to the conclusion that even though the petitioners have not produced any documentary evidence, this Court opinion is that at the time of accident and the nature and circumstances of the case, the deceased was earning not less than Rs.12,000/- per month. Accordingly, the annual income of the deceased is comes to Rs.1,44,000/-"

<https://hcservices.courts.gov.in/hcservices> of the above, this Court does not find any infirmity in the award passed by the Tribunal.



11. In the result, this Civil Miscellaneous Appeal is dismissed and the award dated 31.07.2012 passed in M.C.O.P.No.92 of 2009 on the file of the Motor Accident Claims Tribunal-cum-District Judge, Kanyakumari at Nagercoil, is hereby confirmed. The appellant/Insurance Company is directed to deposit the entire award amount with accrued interests and costs, within a period of eight weeks from the date of receipt of a copy of this order, if not already deposited and on such deposit being made, the major claimants are permitted to withdraw their respective shares as apportioned by the Tribunal, with proportionate interests and costs. The Tribunal is directed to deposit the share of the minor claimant in any one of the Nationalised Banks, in a Fixed Deposit scheme, till the minor attains majority. The guardian of the minor claimant, is permitted to withdraw the accrued interest once in three months directly from the bank, only for the welfare of the minor. No Costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

To,

- 1.The Tribunal of MACT cum District Judge,
Kanyakumari at Nagercoil
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court, Madurai.

+1cc to M/S.C.JAWAHAR RAVINDRAN, Advocate SR.No.72112
+1cc to M/S.R.MANIMARAN, Advocate SR.No.72066

pm
MAS/KK/SAR2:20.09.2017:4P-5C

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