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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 07.03.2017
CORAM:
THE HONOURABLE MS.JUSTICE V.M.VELUMANI
C.M.A.(MD)No.1326 of 2011
and
M.P(MD)No.2 of 2011
AND
Cross Objection (MD)No.55 of 2012

C.M.A(MD)No.1326 of 2011:

The Branch Manager,
The Oriental Insurance Company Ltd.,
Siva Complex 2nd Floor,
22-C, Saratha College Main Road,
Salem – 636 016. ... Appellant/
5th Respondent

Vs.

1.Vasantha
2.J.Ramesh Kannan
3.J.Mahesh ... Respondents 1 to 3/
Petitioners 1 to 3

4.Sebastian ... 4th Respondent/
1st Respondent

5.The Managing Director,
K.P.N. Travels India Limited,
B.23, Rajaji Street, Swornapuri,
Salem-4.
Salem. ... 5th Respondent/
2nd Respondent

6.K.P.Nadarajan ... 6th Respondent/
3rd Respondent

7.The Managing Director,
TamilNadu State Transport Corporation,
Division (3), Madurai
Post Box NO.74, Nesamony Nagar,
Ranithottam, Nagercoil,
Kaniyakumari District. ... 7th Respondent/
4th Respondent

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8.Marthal ... 8th Respondent/
6th Respondent

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PRAYER: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Order and decreetal order dated 23.12.2010 made in M.C.O.P.No.163 of 2007 by the Motor Accident Claims Tribunal - cum - District Judge, Kanyakumari at Nagerkoil.

For Appellant : Mr.K.Bhaskaran

For Respondents : Mr.R.Murugan for R.1 to R.3

Mr.Royce Emmanuel for R.7

* * * * *

Cross Objection (MD)No.55 of 2012:

1.Vasantha
2.J.Ramesh Kannan
3.J.Mahesh ... Cross Objectors

Vs.

1.Sebastian

2.The Managing Director,
K.P.N. Travels India Limited,
B.23, Rajaji Street, Swornapuri,
Salem-4.
Salem.

3.K.P.Nadarajan

4.The Managing Director,
TamilNadu State Transport Corporation,
Division (3), Madurai
Post Box NO.74, Nesamony Nagar,
Ranithottam, Nagercoil,
Kaniyakumari District.

5.Marthal

6.The Branch Manager,
The Oriental Insurance Company Ltd.,
Siva Complex 2nd Floor,
22-C, Saratha College Main Road,
Salem - 636 016. ... Respondents

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PRAYER: Cross Appeal filed under Order 41 Rule 22 of the Code of Civil Procedure, against the order and decreetal order of the Motor Accident Claims Tribunal (District Judge) Kanyakumari

District at Nagerkoil, dated 23.12.2010 and made in M.C.O.P.No.163 of 2007 and memo of grounds served on 08.12.2011. Whereas the cross objector is desirous of Preferring the above cross objection against the order and decreetal order dated 23.12.2010 of the Motor Accident Claims Tribunal (District Judge) Kanyakumari District at Nagerkoil in M.C.O.P.No163 of 2007 in so far as it is against the Cross Objectiors are concerned.

For Cross Objectors : Mr.R.Murugan

For Respondents : Mr.K.Bhaskaran for R.6

Mr.Royce Emmanuel for R.7

* * * * *

COMMON JUDGMENT

C.M.A(MD)No.1326 of 2011 has been filed by the appellant-Insurance Company against the award of Rs.13,75,000/- (Rupees Thirteen Lakhs and Seventy Five Thousand only) for the death of one Jeevananthom, aged 53 years, working as Deputy Manager, State Bank of Travancore at Tirunelveli, allegedly earning a sum of Rs.31,115/- (Rupees Thirty One Thousand One Hundred and Fifteen only) per month and a sum of Rs.5,000/- (Rupees Five Thousand only) per month from agricultural lands, in the accident occurred on 05.02.2007, when he was travelling in the bus bearing Registration No.TN-74-N-0800 belonging to the seventh respondent/Transport Corporation, the bus bearing Registration No.TN-28-M-9199 belonging to the fifth respondent driven by the fourth respondent in a rash and negligent manner, came in the opposite direction and dashed against the bus in which the deceased was travelling and caused the accident. Therefore, the claim petition is filed.

2. On contest, the Tribunal, based on the evidence of P.W.2 and R.W.1, found that the accident occurred only due to the rash and negligent driving of the fourth respondent herein/driver of the offending bus and awarded the compensation of Rs.13,75,000/- (Rupees Thirteen Lakhs and Seventy Five Thousand only) to the claimants. Aggrieved over the quantum of compensation, the claimants filed Cross Objection (MD)No.55 of 2012.

3. Heard Mr.K.Bhaskaran, learned Counsel for the appellant/ Insurance Company; Mr.R.Murugan, learned Counsel for the respondents 1 to 3/claimants and Mr.Royce Emmanuel, learned Counsel for the seventh respondent/Transport Corporation.

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4. The Tribunal, based on the evidence of P.W.2 - eyewitness and R.W.1, rightly came to the conclusion that the accident

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occurred only due to the rash and negligent driving of the fourth respondent/driver of the offending vehicle and therefore, fastened the liability on the respondents 4 to 6 and the appellant/Insurance Company. Hence, the said finding based on evidence cannot be interfered with.

5. With regard to the compensation, the Tribunal, based on Ex.P.12 - salary slip of the deceased, rightly determined the monthly income of the deceased at Rs.21,000/- (Rupees Twenty One Thousand only) per month. Since the size of the family is 3, the Tribunal is correct in deducting 1/3rd amount as per the judgment of the Honourable Supreme Court in *Sarla Verma v. Delhi Transport Corporation* reported in *2009 (2) TN MAC 1 (SC).* After deducting 1/3rd amount, the Tribunal took the monthly contribution of the deceased at Rs.14,000/- (Rupees Fourteen Thousand only) [Rs.21,000/- - Rs.7,000/-].

6. Though the age of the deceased was 55 years as per Ex.P.11 - S.S.L.C. Book of the deceased, the Tribunal erroneously adopted the multiplier '8' and according to the age of the deceased, the appropriate multiplier to be adopted is '11' as per the judgment of the Honourable Supreme Court in *Sarla Verma v. Delhi Transport Corporation* reported in *2009 (2) TN MAC 1 (SC)* and accordingly, the loss of income would be Rs.18,48,000/- (Rupees Eighteen Lakhs and Forty Eight Thousand only) [Rs.14,000/- X 12 X 11].

7. The Tribunal awarded only a sum of Rs.10,000/- (Rupees Ten Thousand only) towards loss of consortium to the first respondent/wife of the deceased, which is on the lower side and hence, the same is enhanced to a sum of Rs.50,000/- (Rupees Fifty Thousand only).

8. Similarly, a sum of Rs.10,000/- (Rupees Ten Thousand only) each awarded to the respondents 2, 3 and 8 towards loss of love and affection is very meagre and therefore, this Court awards a sum of Rs.50,000/- (Rupees Fifty Thousand only) each to the respondents 2, 3 and 8 towards loss of love and affection.

9. The amounts awarded by the Tribunal under the other heads, viz., a sum of Rs.2,000/- (Rupees Two Thousand only) towards transportation charges; a sum of Rs.5,000/- (Rupees Five Thousand only) towards shock and mental agony; a sum of Rs.1,000/- (Rupees One Thousand only) towards damage to clothings and a sum of Rs.3,000/- (Rupees Three Thousand only) towards funeral expenses, are very reasonable and they are confirmed.

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

11. Accordingly, the respondents 1 to 3 and 8 are entitled to a sum of Rs.20,59,000/- (Rupees Twenty Lakhs and Fifty Nine Thousand only) along with interest at the rate of 7.5% per annum from the date of petition till date of realisation and proportionate costs.

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12. In the result,

(i) C.M.A(MD)No.1326 of 2011 is dismissed, however, enhancing the award of the Tribunal from Rs.13,75,000/- (Rupees Thirteen Lakhs and Seventy Five Thousand only) to a sum of Rs.20,59,000/- (Rupees Twenty Lakhs and Fifty Nine Thousand only) along with interest at the rate of 7.5% per annum from the date of petition till date of realisation and proportionate costs. No costs;

(ii) Cross Objection (MD)No.55 of 2012 is partly allowed. No costs;

(iii) The respondents 1 to 3 and 8 are entitled to the said compensation as per the apportionment made by the Tribunal;

(iv) The respondents 1 to 3 and 8 are directed to submit their Savings Bank Account Details along with the copies of their passbooks to the Tribunal forthwith;

(v) The appellant-Insurance Company is directed to deposit the entire award amount along with accrued interest and costs, less the amount deposited, if any, to the credit of M.C.O.P.No.163 of 2007 before the Motor Accident Claims Tribunal - cum - District Judge/Tribunal Judge, Kanyakumari at Nagerkoil, within a period of six weeks from the date of receipt of a copy of this judgment;

(vi) On such deposit, the Tribunal is directed to transfer the respective share amounts of the respondents 1 to 3 and 8 directly to their Personal Savings Bank Account Numbers, through RTGS/NEFT system, after getting their Account Details, within a period of two weeks thereafter; and

(vii) The respondents 1 to 3 and 8 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.

Sd/-
Assistant Registrar(RTI)

/True Copy/

Sub-Assistant Registrar

To

1.The District Judge, Motor Accident Claims Tribunal,
Kanyakumari at Nagerkoil.

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

+2 cc to Mr.K.Bhaskaran, Advocate, SR.Nos.12960 and 12959

+One cc to Mr.R.Murugan, Advocate, SR.No.13005

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RL/6C/5P/SKN/RSK/24.3.2017

C.M.A.(MD)No.1326 of 2011
and
M.P(MD)No.2 of 2011
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