



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.10.2018

CORAM:

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THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. (MD) No.477 of 2014

1. Anantha Selvi

2. Minor I. Asha

3. Minor I. Ruban

(Minor Appellants 2 & 3 are
Represented through their
guardian Mother

Anantha Selvi, the 1st appellant)

... Appellants/Petitioners

Vs.

1. M/s. Prakash Exports,
A firm represented by its partner,
No.4/101, Mela Koottudankadu,
Pudukottai Post,
Tuticorin District.

2. National Insurance Company Ltd.,
Through its Branch Manager,
No.92, Devarpuram Road,
Thoothukudi-628 003.

... Respondents/Respondents

PRAYER: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award passed in M.C.O.P.No.129 of 2013, on the file of the Motor Accident Claims Tribunal (2nd Additional District Judge), Thoothukudi, dated 11.11.2013.

For Appellants	: Mr.G.Venugopal
For R1	: Mr.S.Siva Thilakar
For R2	: Mr.D.Sivaraman

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellants-claimants against the award, dated 11.11.2013, made in M.C.O.P.No.129 of 2013, passed by the Motor Accident Claims Tribunal (II Additional District Judge), Thoothukudi.

2. The appellants/claimants filed a claim petition in M.C.O.P.No.129 of 2013, before the Motor Accident Claims Tribunal (II Additional District Judge), Thoothukudi, claiming a sum of Rs.30,00,000/- (Rupees Thirty Lakhs only) as compensation, for the



death of one Innasi @ Innasimuthu, husband of the first appellant and father of the appellants 2 & 3 in the accident that occurred on 25.07.2012.

3.The Tribunal, considering the pleadings, oral and documentary evidence held that the accident occurred due to rash and negligent driving by driver of the first respondent. The Tribunal held that the driver of the first respondent did not have badge for driving the commercial vehicle and exonerated the second respondent from its liability and awarded compensation directing the first respondent to pay the compensation to the appellants.

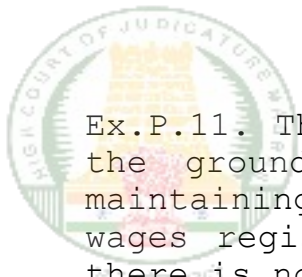
4.Aggrrieved by the said award exonerating the second respondent Insurance Company and for enhancement of compensation, the appellants have come out with the present appeal.

5.The contention of the learned counsel appearing for the appellants that the Tribunal erred in exonerating the second respondent Insurance Company on the ground that the driver of the first respondent was not possessing valid driving licence i.e., endorsement for driving the commercial vehicles. The driver of the first respondent had valid driving licence for driving the light motor vehicle. In view of the same, it cannot be said that there is a violation of policy condition and the second respondent is not liable to pay compensation. This contention has considerable force.

6.The learned counsel appearing for the second respondent contended that not having the valid driving licence by the driver at the time of accident is a violation of policy condition and in view of such violation, the second respondent is not liable to pay compensation. The said contention is without merits. Now, it is well settled that when a person possessing valid driving licence to drive the particular type of vehicle and not obtaining endorsement for driving commercial type of vehicle will not exonerate the Insurance Company from its liability.

7.In view of the Judgment of the Hon'ble Apex Court reported in **2017(2) TNMAC 145 (SC) (Mukund Dewangan Vs. Oriental Insurance Company Limited)**, the award of the Tribunal exonerating the second respondent is liable to be set aside and is hereby set aside. This Court is of the considered view that both the respondents are liable to pay compensation to the appellants.

8.As far as the contention of the learned counsel appearing for the appellants with regard to quantum of compensation is that the appellants have proved that the deceased was working as a Heavy Vehicle driver and was getting monthly salary of Rs.15,000/- apart from Batta and the appellants proved the same by examining the P.W.3 and marked Ex.P11 salary certificate to substantiate their case, is not acceptable. P.W.3 has stated that there are 50 drivers working in their organisation, but there is no register to show that the appellant was working as heavy vehicle driver as mentioned in the



Ex.P.11. The Tribunal rejected the evidence of P.W.3 and Ex.P.11 on the ground that an organisation employing 50 persons would be maintaining the attendance register, employees register, payment of wages register etc., The reasoning of the Tribunal is valid and there is no reason to interfere with the said findings.

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9. The Tribunal has fixed the notional income of the deceased at Rs.10,000/- per month but failed to grant any amount towards future prospects. The deceased was aged 31 years at the time of accident and the appellants are entitled to 40% enhancement in addition to the notional income fixed as per judgment of the Hon'ble Apex Court reported in **2017(2) TNMAC 609 (SC) [National Insurance Co. Ltd., v. Pranay Sethi]**. In view of the same, the amount awarded towards loss of income is modified as follows:-

The notional income of the deceased is Rs.10,000/- after adding 40% towards future prospects the amount comes to Rs.10,000 + 4,000=14,000/- and after deducting 1/3 and applying the multiplier '16', the loss of income would be Rs.17,92,000/- (14,000 x 12 x 16 x 2/3).

10. Similarly, a sum of Rs.25,000/- (Rupees Twenty Five Thousand Only) was awarded towards consortium and this Court finds that the same is very meagre and therefore, a sum of **Rs.40,000/-** (Rupees Forty Thousand Only) is awarded by this Court. A sum of Rs.10,000/- towards loss of estate and a sum of Rs.5,000/- towards funeral expenses awarded by the Tribunal are very meagre and the same are enhanced to Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses. In all other aspects, the award of the Tribunal is confirmed.

11. In view of the settled position of law, this Court modifies the award of the Tribunal by enhancing the compensation, as under:-

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	For loss of income	12,80,000	17,92,000	enhanced
2.	For loss of consortium to the first claimant	25,000	40,000	enhanced
3.	For loss of estate	10,000	15,000	enhanced



4.	For loss of love and affection to the claimants 2 & 3	20,000	20,000	confirmed
5.	For funeral expenses	5,000	15,000	enhanced
	Total	Rs.13,40,000	Rs.18,82,000	By enhancing a sum of Rs.5,42,000/-

12. In the result,

(i) This Civil Miscellaneous Appeal is partly allowed, enhancing the award of the Tribunal from Rs.13,40,000/- (Rupees Thirteen Lakhs Forty Thousand only) to a sum of **Rs.18,82,000/-** (Rupees Eighteen Lakhs Eighty Two 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;

(ii) The respondents 1 & 2 are directed to deposit the award amount, less the amount already deposited, if any, along with accrued interest and costs to the credit of M.C.O.P.No.129 of 2013, on the file of the Motor Accident Claims Tribunal (II Additional District Judge), Thoothukudi, within a period of **eight weeks** from the date of receipt of copy of this judgment;

(iii) The appellants-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;

(iv) On such deposit being made, the first appellant is entitled to get a sum of Rs.6,82,000/- (Rupees Six Lakhs Eighty Two Thousand only) with interest by making necessary application before the Tribunal. The appellants 2 & 3 are entitled to a sum of Rs.6,00,000/- (Rupees Six Lakhs only) each and the Tribunal shall deposit the said amount in any one of the Nationalized bank in a Fixed Deposit initially for a period of three years and renewable thereafter, till the minors attains majority. The mother of the appellants 2 & 3 is permitted to withdraw the accrued interest once in three months directly from the bank. No costs.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar (CS-I)



To

1. The Motor Accident Claims Tribunal
(II Additional District Judge),
Thoothukudi.

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

+ 1 CC TO Mr.M.P.SENTHIL, ADVOCATE IN SR No. 88492
+ 1 CC TO Mr.S.SIVA THILAKAR, ADVOCATE IN SR No. 88717
+ 1 CC TO Mr.D.SIVARAMAN, ADVOCATE IN SR No. 88628

AM

TE/BK/SAR-1 : 04/02/2019 : 5P/7C

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