



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 16.03.2018

Coram :-

THE HON'BLE DR.JUSTICE S.VIMALA

and

THE HON'BLE MRS.JUSTICE T.KRISHNAVALLI**C.M.A. (MD) Nos.926 and 927 of 2015****CMA No.926 of 2015**

National Insurance Company Limited,
176-A. Great Cotton Road,
Tuticorin-1.

... Appellant/2nd Respondent

-vs-

1.K.Rahmath
2.Minor Mahdhum Riyaz
3.S.Kadhija

... Respondents 1 to 3 / Petitioners 1 to 3

4. Thamacin V.Rayan

... 4th Respondent / 1st Respondent

Prayer: Civil Miscellaneous Appeal under Section 173 of M.V.Act, 1988 is filed praying to set aside the judgment and decree passed by the Motor Accident Claims Tribunal, II Additional District Court, Tirunelveli in MCOP No.830 of 2011 dated 27.11.2013 and pass such further or other orders as this Hon'ble Court may deem fit and thus render justice.

For Appellant : Mr.D.Sivaraman

For R1 & R2 : Mr.P.Samuel Gunasingh

For R3 & R4 : No Appearance

CMA No.927 of 2015

National Insurance Company Limited,
176-A. Great Cotton Road,
Tuticorin-1.

... Appellant/2nd Respondent

-vs-

1.K.Rahmath
2.Minor Mahdhum Riyaz
3. S.Rahmath Nisha
4. Thamacin V.Rayan

... Respondents 1 to 3 / Petitioners 1 to 3

... 4th Respondent / 1st Respondent



Prayer: Civil Miscellaneous Appeal under Section 173 of M.V.Act, 1988 is filed praying to set aside the judgment and decree passed by the Motor Accident Claims Tribunal, II Additional District Court, Tirunelveli in MCOP No.831 of 2011 dated 27.11.2013 and pass such further or other orders as this Hon'ble Court may deem fit and thus render justice.

(1st respondent in both appeals declared as major by order dated 19.10.2016)

For Appellant : Mr.D.Sivaraman

For R1 & R2 : Mr.P.Samuel Gunasingh

For R3 & R4 : No Appearance

C O M M O N J U D G M E N T

(Order of the Court was made by S.Vimala,J.,)

These appeals arise out of the Common Award passed in M.C.O.P. Nos.830 of 2011 and 831 of 2011.

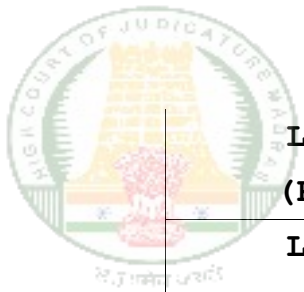
Brief Facts in M.C.O.P.830/2011:

2. In respect of death of one Mytheen Pathu @ Mytheen Meeral, a claim petition was filed in M.C.O.P.830 of 2011, claiming compensation of Rs.15,00,000/- (though estimated at Rs.42,26,000/-).

2.1. The claimants are the children of the deceased, who are represented by the grandfather. The deceased, who was aged 37, doing cloth business and earning a sum of Rs.6,000/- per month, died in an accident on 23.09.2010.

2.2. The Tribunal, as against the claim of Rs.15,00,000/- had awarded a sum of Rs.5,79,000/- (rounded to Rs.5,80,000/-) as compensation to the claimants. The break-up details are as under:

Heads	Amount awarded by Tribunal
Loss of Dependency (Taking the monthly income of Rs.4,500/- deducting 1/3 rd as personal expenses, adopting multiplier of 14)	Rs.5,04,000/-



Loss of Love and Affection (R1 & R2 herein / children)	Rs.40,000/- (Rs.20,000/- each)
Loss of Love and Affection (R3 herein / mother)	Rs.10,000/-
Funeral and Travel expenses	Rs.25,000/-
Total	Rs.5,79,000/-
Rounded to	Rs.5,80,000/-

Brief Facts in M.C.O.P.831/2011:

3. The claim petition in **M.C.O.P.No.831** of 2011 was filed by the Claimants 1 to 3 (R1 & R2 herein / children and R3 / mother of the deceased) in respect of death of Kalliloor Rahman. The deceased, who was aged about 40, a Graduate Teacher, earning a sum of Rs.23,741/-, died in an accident. Though the compensation is estimated at Rs.95,91,056/-, the claim is restricted to Rs.75,00,000/-.

3.1. The Tribunal, as against the claim of Rs.75,00,000/- had awarded a sum of Rs.32,48,338/- (rounded to Rs.32,50,000/-) as compensation to the claimants. The break-up details are as under:

Heads	Amount awarded by Tribunal
Loss of Dependency (Based on the date of birth certificate, age is taken as 41; 30% considered for future prospects, deducting Rs.30,000/- towards Income Tax; Annual income of the deceased calculated at Rs.3,40,356/- (rounded to Rs.3,40,000/-); 1/3 rd deducted towards personal expenses; Annual Income Rs.2,26,667/- and adopting multiplier of 14)	Rs.31,73,338/-
Loss of Love and Affection (R1 & R2 herein / children)	Rs.40,000/- (Rs.20,000/- each)
Loss of Love and Affection (R3 herein / mother)	Rs.10,000/-
Funeral and Travel expenses	Rs.25,000/-
Total	Rs.32,48,338/-
Rounded to	Rs.32,50,000/-

4. Learned counsel for the Insurance Company would submit that the Tribunal has awarded the compensation by fixing the rate of interest at 8% and therefore, the rate of interest awarded is



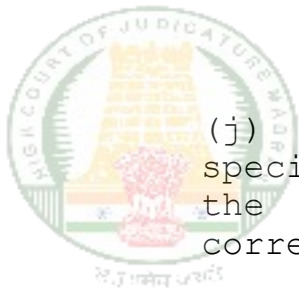
excessive and it must be awarded at the uniform rate of 7.5% per annum. Considering the fact that accident is of the year 2011, the rate of interest awarded is modified to 7.5% per annum, as has been awarded in comparable cases of that year.

5. So far as quantum of compensation is concerned, it cannot be said that the award passed by the Tribunal is excessive, because it is a case where the children have lost both the parents at the same time. Even the Tribunal did not consider the value of household services in the case of the mother. In the case of the father, the deduction towards personal expenses should not have been $1/3^{\text{rd}}$ especially dependants are minor children. The award under loss of love and affection is extremely low, considering the fact that the claimants are minor children, who would be physically, morally, emotionally and psychologically dependents upon their parents.

6. So far as the liability of the appellant is concerned, it is contended that driver did not have badge at the time of accident and therefore, the insurance company is not liable for payment of compensation. Even if the Insurance company is liable, liberty must be granted to the Insurance company to pay the amount and then recover the same from the owner of the vehicle.

7. It is pertinent to refer to the judgment of the Hon'ble Apex Court in the case of **Mukund Dewangan vs. Oriental Insurance Co. Ltd.**, reported in **2017 (2) TN MAC 145 (SC)**, wherein it has been held that there is no necessity for a holder of Light Motor Vehicle driving licence to obtain specific endorsement to drive transport vehicle and on that ground, the Insurance Company cannot repudiate their liability to pay the compensation amount. The relevant portion of the said judgment is extracted as under:

"36. In our considered opinion Prabhu Lal's (supra) question has not decided correctly. The intendment and definition of the light motor vehicle which was clearly interpreted in Ashok Gangadhar Maratha (supra) in para 10 have not been taken into consideration in the correct perspective. Interpretation of Form 6 was also not correctly made. Even assuming that Ashok Gangadhar Maratha (supra) did not lay down that the driver holding licence to drive a light motor vehicle need not have an endorsement to drive a transport vehicle, but what emerges from the aforesaid discussion made by us it is clear that there is no necessity of such an endorsement for driving a transport vehicle of the category of light motor vehicle, which is not statutorily enjoined or provided for. The intendment of section 3 has also not been correctly appreciated. It has to be read along with Section 10(2)(d) and (e) and those classes of vehicles which are included in a category 10(2)(a) to



(j) can be driven by a person without any further specific endorsement to drive a particular vehicle. Thus, the decision in Prabhu Lal (supra) does not lay down correct proposition of law and is hereby overruled."

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8. In view of the authoritative pronouncement of the Hon'ble Apex Court, the contention of the learned counsel appearing for the appellant/Insurance Company, that on the date of accident, the driver of the vehicle did not possess a valid badge, thereby there is a violation of the conditions of the Insurance Policy and as such, the Insurance Company is not liable to pay the compensation, cannot be accepted. Thus, we are of the view that there was no breach of any condition of insurance policy, in the present case, entitling the Insurance Company to recovery rights and we do not find any force in the submission made by the learned counsel for the appellant/Insurance Company in this regard.

In the result, both the appeals lack merit-acceptance and no acceptable ground has been made out warranting interference by this Court. Accordingly, both the Civil Miscellaneous Appeals are disposed of, with the modification in the rate of interest alone. No costs.

Sd/-

Assistant Registrar(writ)

/True Copy/

Sub Assistant Registrar

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To:

1.The II Additional District Judge,
Motor Accident Claims Tribunal,
Tirunelveli.

2.The Section Officer (2 COPIES)
VR Section
Madurai Bench of Madras High Court, Madurai

+2 CC TO Mr. D.SIVARAMAN , Advocate, Sr.Nos.55881,55882
+2 CC TO Mr. P.SAMUEL GUNASINGH , Advocate, Sr.Nos. 56377,56379

JAM/05/06/2018/CSL / SAR 2 / 5P-8C