BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.11.2019

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THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.M.A(MD)No.1353 of 2013

The Branch Manager,
United India Insurance Company Limited,
Office at Neel Complex, 37,
Mattappa Street,
Tenkasi – 627 811. ... Appellant / 2nd Respondent

Vs.

1.A.Francis Rajan

2.A.Punitha Sahayarani

3.A.Charles Antonyraj ...Respondents 1 to 3 / Petitioners

4.M.Sahul Hameed ...4th respondent / 1st respondent

(R4 Exparte in Tribunal notice Dispensed with)

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the fair and decreetal order dated 04.06.2012 made in M.A.C.O.P.No.1333 of 2011 on the file of the Motor Accidents Claims Tribunal, IV Additional District Court, Tirunelveli.

For Appellant : Mr.J.S.Murali

For R-1 to R-3 : No Appearance

J U D G M E N T

In the present Civil Miscellaneous Appeal challenge is made against the order dated 04.06.2012 passed in M.A.C.O.P.No.1333 of 2011 by the learned IV Additional District Judge, Motor Accidents Claims Tribunal, Tirunelveli.

2. The appellant / Insurance Company has filed this appeal mainly challenging the quantum of compensation awarded by the Tribunal on the ground that the Court below has taken the pension of the deceased as a sum of Rs.15,685/- p.m. and the family pension due

to the death of the deceased wife, the deceased was receiving a sum of Rs.6,463/-. According to the appellants, these amounts, the deceased was receiving for two months. Therefore, he submitted that the Court below has taken the two months pension as one month pension, which is not correct and hence, the same is liable to be set aside.

3.According to the learned counsel for the claimants, these amount is received as pension of the deceased and also family pension due to the death of his wife for one month only. In this regard, he referred Ex.P6-bank passbook. On perusal of Ex.P6, it appears that the deceased was receiving a sum of Rs.15,685/- as pension for the months of May 2011 to July 201. Further, he also received Rs.6,463/- as family pension due to the death of his wife from May 2011 to July 2011 for every month.

4.On perusal of Ex.P6, it appears that the deceased was receiving a sum of Rs.15,685/- per month as pension from May 2011 to July 2011. Further, the deceased also received a sum of Rs.6,463/- as family pension starting from May 2011 to July 2011. Therefore, this court is of the opinion that there is no merit in the contention of the appellant and hence, the same is rejected.

5.Secondly, the learned counsel for the appellant submitted that all the claimants are more than forty years and they are well settled and they are not the dependants of the deceased. Therefore, according to the appellant, the claimants are not entitled for any compensation as awarded by the Tribunal.

6. On the other hand, the learned counsel for the claimants would contend that after deducting the personal expenses of the deceased, the balance amount left will be made available for the legal representatives. Therefore, the claimants, who are the legal representatives of the deceased, are entitled for the balance amount, which is available after the deduction of the personal expenses of the deceased.

7. It appears that there is force in the submission of the learned counsel for the claimants. After the deduction towards personal expenses, for the remaining amount left, the legal representatives are entitled. Ofcourse, during the life time, there is a chance for the deceased to decide about the entitlement of the excess amount of over and above his personal expenses. But after the death, the legal representatives are certainly entitled for the amounts and therefore, the contention of the appellant that the legal representatives are not entitled for compensation, since because, they are all well settled down and they are all earning persons, sans no merit.

8. Thirdly, the learned counsel for the appellant / Insurance Company made objections with regard to availability of the family pension to the legal heirs of the deceased. According to the appellant, the family pension received by the father is made available only to the spouse and the same will not available to the children. Since both the spouse passed away, the same will not made available to any of the legal heirs. Therefore, the learned counsel strongly opposed to take the family pension amount for the purpose of calculating the income of the deceased.

9. On the other hand, the learned counsel for the claimants would contend that in the present case along with the family pension, the deceased was drawing a sum of Rs.22,148/-. After deducting the amounts towards personal expenses, the remaining amount will be made available for the benefit of the legal representatives.

10. When such being case, denying the right stating that the family pension will not be made available after the death of the family member cannot be maintainable. The issue here is if the deceased is alive, after deducting the amount towards his personal expenses, the balance benefit will go certainly to the legal representatives of the deceased. On that expectation only, the compensation is awarded. Therefore, the submission of the appellant / Insurance Company do not have any merit.

11. As submitted by the learned counsel for the respondents / claimants in the present case, if the deceased is alive after deducting the personal expenses, the balance will be made available to the legal representatives. After the death, in fact, they are losing atleast for five years and the multiplier is applied as 5. On that basis only, the compensation is awarded. Therefore, there is no merit on the submission of the learned counsel for the appellant / Insurance Company.

12. Fourthly, the learned counsel for the appellant / Insurance Company submitted that in the present case, the Court below deducted 1/3 towards personal expenses of the deceased, which is too low. Therefore, he submitted that since the age of the deceased was 77 years, he has to engage an assistance and therefore, he submitted that 50% to be deducted. However, he suggested that atleast Rs.8,500/- may be deducted, for which, the learned counsel for the respondents has no objection.

13. Considering the submissions made by both the counsels, this Court is inclined to deduct a sum of Rs.8,500/- towards personal expenses of the deceased. Accordingly, the loss of income of the deceased would come to Rs.13,648 (Rs.22,148 – Rs.8,500/) x 12 x 5 = **Rs.8,18,880/-.**

14.The Tribunal has awarded a sum of Rs.10,000/- towards funeral expenses, which is too low and hence, the same is enhanced to **Rs.15,000/-** and no amount was awarded towards loss of estate and therefore, a sum of **Rs.15,000/-** is hereby awarded, as per the decision of the Hon'ble Supreme Court in ***NATIONAL INSURANCE CO. LTD., v. PRANAY SETHI***, reported in ***2017 (2) TN MAC 609 (SC).*** The Tribunal has awarded a sum of **Rs.30,000/-** towards loss of love and affection and the same is confirmed. Therefore the claimants are entitled to the enhanced compensation in the manner stated below:-

Heads	Amount
For Loss of income	Rs. 8,18,880/-
For Funeral Expenses	Rs. 15,000/-
For loss of estate	Rs. 15,000/-
For Love and affection	Rs. 30,000/-
Total	**Rs. 8,78,880/-**

15.In the result,

(i).This Civil Miscellaneous Appeal is partly allowed, reducing the award of the Tribunal from **Rs.9,26,000/-** (Rupees Nine Lakhs Twenty Six Thousand only) to a sum of **Rs.8,78,880/-** (Rupees Eight Lakhs Seventy Eight Thousand Eight Hundred and Eighty only) along with interest at the rate of 8% per annum from the date of petition till the date of realisation with proportionate cost;

(ii).The appellant/Insurance Company is directed to deposit the entire award amount along with accrued interest and costs, less the amount already deposited, if any, to the credit of M.C.O.P.No.1333 of 2011 on the file of the Motor Accidents Claims Tribunal, IV Additional District Court, Tirunelveli, within a period of **Three weeks** from the date of receipt of a copy of this judgment;

(iii).On Such deposit, the Tribunal is directed to transfer the entire award amount namely **Rs.8,78,880/-** along with accrued interest and costs directly to the Personal Savings Bank Account Number of the appellants/claimants through RTGS/NEFT system, after getting their Account Details, within a period of **two weeks thereafter**; and

(iv).In the facts and circumstances of the case, there shall be no order as to costs.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar(CS)

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To,

1.The Motor Accidents Claims Tribunal,
IV Additional District Court, Tirunelveli.

2. The Record Keeper,(2 COPIES)
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to MR.T.SELVAKUMARAN, Advocate (SR-98460[F]dated 15/11/2019)

+1 CC to MR.J.S.MURALI, Advocate (SR-98760[F] dated 15/11/2019)

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VB(31.12.2019) 5P 6C