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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 27.03.2019

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THE HONOURABLE MR.JUSTICE **K.KALYANASUNDARAM**

AND

THE HONOURABLE MRS.JUSTICE **R.THARANI**

C.M.A.(MD)Nos.455 of 2016 and 173 of 2019

and

C.M.P(MD)No.5951 of 2016 in CMA(MD)No.455 of 2016

C.M.A.(MD)No.455 of 2016

The New India Assurance Company Ltd.,
rep. by through its
Branch Manager,
East Boulivard Road,
Opp. to Ibrahim Park,
Trichy.

.. Appellant

Vs.

- 1.Maragathavalli
- 2.Minor Leka Priyadharashini
- 3.Minor Deepthika Nandhini

(R2 and R3 are minors and they are
represented through their mother and
natural guardian, the first respondent
herein)

- 4.Sivaprakasam
- 5.T.Prabavathy
- 6.Manikandan
- 7.G.Rajkumar

- 8.Sriram General Insurance Company Ltd.,
No.10003, E-8, RIICO Industrial Area,
Sitapura - Jaipur,
Rajasthan - 302 022.

- 9.K.Karuppusamy

..Respondents

PRAYER: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the award and decree dated 21.07.2015 made in MCOP No.1511 of 2013 on the file of the Motor Accidents Claims Tribunal (Special District Court), Trichy.



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For Appellant : Mr.B.Vijay Karthikeyan

For Respondents : Mrs.P.Krishnaveni
Senior Counsel for
Mrs.Udaya P.S.Penon
(for R1 to R3)

Mr.D.Sivaraman (for R8)

No appearance (for R4 to R7 & R9)

C.M.A. (MD) No.173 of 2019

- 1.Maragathavalli
- 2.Leka Priyadharashini
- 3.Minor Deepthika Nandhini

(3rd appellant represented by her mother/
1st appellant herein)

T.Sivaprakasam (Died)

.. Appellants

Vs.

1.T.Prabavathy

2.The New India Assurance Company Ltd.,
East Boulevard Road,
Opp. to Ibrahim Park,
Trichy.

3.Manikandan

4.G.Rajkumar

5.Sriram General Insurance Company Ltd.,
No.10003, E-8, RIICO Industrial Area,
Sitapura - Jaipur,
Rajasthan - 302 022.

6.K.Karuppusamy

.. Respondents

PRAYER: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to enhance the Fair and Decreetal dated 21.07.2015 made in MCOP No.1511 of 2013 on the file of the Special District Judge for Motor Accidents Cases, Tiruchirappalli.



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For Appellants : Mrs.P.Krishnaveni
Senior Counsel for
Mrs.Udaya P.S.Penon

For Respondents : Mr.B.Vijay Karthikeyan
(for R2)

Mr.D.Sivaraman (for R5)

No appearance (for R1, R3, R4 & R6)

COMMON JUDGMENT

[Judgment of the Court was delivered by **K.KALYANASUNDARAM., J.**]

Aggrieved over the award of the Motor Accidents claims Tribunal (Special District Judge), Tiruchirappalli passed in MCOP No.1511 of 2013, the Insurance Company has preferred CMA(MD)No.455 of 2016 questioning the award of compensation in favour of the claimants.

2.Being dissatisfied with the quantum, the claimants have preferred the appeal in CMA(MD)No.173 of 2019.

3.Facts in brief:-

The deceased S.Muthukumar was travelling in a car bearing registration No.TN-45-AP-4043 from Meenampakkam to Trichy. When the car was proceeding near Vepur, it rammed a stationary lorry. In the impact, the deceased sustained multiple injuries. Immediately, he was taken to a private hospital in Trichy. Despite the best treatment, he lost his breath on 02.11.2010. The wife, minor children and the father of the deceased filed a petition seeking compensation of Rs.2,93,00,000/-. After analyzing the evidence, the Tribunal fixed negligence on the driver of the car and the driver of the lorry at the ratio of 80:20 and awarded Rs.50,49,360/- as compensation. Challenging the same, these appeals have been filed as stated *supra*.

4.As far as the negligence is concerned, the cleaner of the lorry gave evidence as R.W.3 stating that the lorry was parked in a mud road. Ex.R.4-Sketch shows that the lorry was parked on the left side of the road and it has not been specifically mentioned whether it was mud road.

5.The Tribunal, based on the evidence, in our view rightly fixed the negligence at the ratio of 80:20, which does not warrant interference by this Court.

6.According to the claimants, the deceased was 42 years old and he was working in Qatar and he was earning Rs.2,40,000/- per month (Ors 20,000/- Qatari riyals). The claimants have also marked the passbooks of the deceased to establish the fact that the



amounts was transferred from the foreign country to his account in India. It is not in dispute that the deceased was a Mechanical Engineer and he was employed in Neyveli Lignite Corporation and he resigned the job on 10.07.2007 and thereafter, he got employment in abroad.

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7.Mr.B.Vijaykarthikeyan, learned counsel for the Insurance Company would state that the employment in a foreign country is not a permanent job and there is no proof to establish that this amount has been sent by the deceased from the foreign country. Mere marking pass books of the deceased would not amount to proof and examination of the managers of the bank is the requirement of law.

8.Per contra, Mrs.P.Krishnaveni, learned Senior Counsel for the claimants would state that the deceased was a Mechanical Engineer and he got employment in foreign country, are not in dispute and the Passports of the deceased and appointment order given by the foreign country would show that the deceased was earning Rs.2,40,000/- per month. According to the learned Senior Counsel, he may get better employment in abroad and earn more amount in future.

9.A perusal of the passbooks would reveal that considerable amount have been deposited in the accounts of the deceased and there is no fixed amount for a particular period. P.W.2 deposed before the tribunal stated that in the year 2010 the deceased was working as Project Engineer and earned 20,000 qatary riyals. Ex.P.35 is the order of appointment. The Manager of Indian Overseas Bank, Thillai Nagar Branch, Trichy, stated that an amount of Rs.62,26,242/- has come to the account of the deceased from foreign countries. Evidence of P.W.4, the Manager of State Bank of India corroborates the case of the claimants.

10.However, the tribunal having held that no material was produced to show that the deceased was working in abroad on the date of accident fixed the monthly income at Rs.40,000/-. Considering the qualification and the evidence adduced by the claimants, in our considered opinion, it would appropriate to fix the income of the deceased at Rs.75,000/- per month. Since the claimants are 4 in number, $\frac{1}{4}$ deduction have to be made towards the personal expenses and 25% has to be added towards the future prospects and therefore, the income is taken as Rs.75,000/-. The age of the deceased was 48, hence by applying multiplier '13'. The loss of income of the deceased is arrived at Rs.1,17,00,000/- (75000 x 12 x 13). As per the decision of the **Pranay Sethi**, Rs.70,000/- could be awarded as conventional damages. Exs.P.10 and 11 would show that the claimants have spent Rs.1,17,700/- towards medical expenses. Therefore, this Court awards compensation of Rs.1,18,87,700/-, which is rounded off to Rs.1,18,88,000/-, 30% should be deducted towards income tax. Therefore, after deducting Rs.35,66,100/- towards income tax, the claimants are entitled to Rs.83,21,900/-.



11. In the result, the appeal in CMA(MD)No.455 of 2016 filed by the Insurance Company is dismissed and the appeal in CMA(MD)No.173 of 2019 filed by the claimants is partly allowed as indicated above. In fine, the claimants would be entitled for compensation of Rs.83,21,900/- along with interest @ 7.5% p.a., out of the said amount, the claimants 1 and 2 are entitled to Rs.30,00,000/- each and the 3rd claimant is entitled to Rs.23,21,900/-.

12. It is represented that 50% of award amount has already been deposited by the Insurance Company. The Insurance Company is directed to deposit the balance award amount with interest within a period of eight weeks from the date of receipt of a copy of this Judgment. On such deposit is being made, the major claimants are permitted to withdraw their share and the share of the minor shall be deposited in the Indian Bank, Madurai High Court Branch, in a Fixed Deposit scheme, till she attains majority. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (T & P)

// True Copy //

Sub Assistant Registrar (CS)

skn

To

1. The Motor Accidents Claims Tribunal/
(Special District Court), Tiruchirappalli.

2. V.R. Section,

Madurai Bench of Madras High Court,
Madurai. (2 copies)

+2CC TO MR.D.SENTHIL, Advocate Sr. No.57279 & 57280
+1CC TO MR.B.VIJAY KARTHIKEYAN, Advocate Sr. No.57310
+1CC TO MR.D.SIVARAMAN, Advocate Sr. No.57483

C.M.A. (MD) Nos.455 of 2016 and 173 of 2019

and

C.M.P (MD) No.5951 of 2016

27.03.2019

SE (CO)

TR (22.05.2019) 5P 8C