BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : **18.10.2019**
CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE Mrs.JUSTICE R.THARANI

C.M.A.(MD).No.158 of 2017
and
C.M.P(MD).No.1671 of 2017

Iffco Tokyo General Insurance
Company Ltd.,
Preetham Plaza
1st Floor Chandrakandhi Nagar
Ponmeni, By Pass Road,
Madurai-625 010. ... Appellant/2nd Respondent

Vs.

1.M.Murugeshwari
2.M.Ajith Kumar
3.Minor M.Priya
4.Mariammal ... Respondents 1to 4/Petitioners 1to 4

(Minor third respondent
rep through her mother, first
respondent M.Murugeshwari)

5.Nelliyan.K.V.E ... 5th Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988, against the fair and decreetal order dated 14.03.2016 made in MCOP No.476 of 2013 on the file of the Motor Accident Claims Tribunal (VI Additional District Judge), Madurai.

For Appellant : Mrs.K.R.Shivashankari
For R1 to R4 : Mr.A.Theethar
For R5 : No appearance

JUDGMENT

[Judgment of this Court was delivered by **T.S.SIVAGNANAM, J.**]

This appeal filed by the Insurance Company, is directed against the judgment and decree passed in M.C.O.P.No.476 of 2013.

2.We have heard Mrs.K.R.Shivashankari, learned counsel appearing for the appellant and Mr.A.Theethar, learned counsel appearing for the respondents 1 to 4.

3.The respondent/claimant filed a claim petition before the Tribunal claiming a total amount of Rs.50 lakhs, as compensation payable under Section 140 of the Motor Vehicles Act, as amended, for the death of the husband of the first respondent and the father of the respondents 2 and 3. The Tribunal, by the impugned judgment and decree, awarded a total compensation of Rs.32,05,185/- together with interest at 7.5% p.a., from 31.01.2003 and also ordered apportionment of the compensation taking into consideration that on the said date, the third respondent was a minor.

4.The appellant/Insurance Company is before us raising two contentions viz., with regard to the quantum of compensation fixed by and that the Tribunal had erred in computing the income of the deceased, erroneously by accepting the salary certificate without noting the fact that the bonus will be a fluctuating claim.

(ii)Secondly, it is contended that the deceased had also contributory to the accident by driving his vehicle in a slow manner and crossing a auto-rickshaw thereby invited the accident and therefore, contributory negligence should have been fixed on the deceased. With regard to the salary of the deceased, the said issue was considered by the Tribunal as point No.3. To establish the salary of the deceased, the salary certificate was marked as Ex.P.6, Bonus and Educational allowance Certificate was marked as Ex.P.7 and Service Records were marked as Ex.P.8. These documents were marked through P.W.3, who was working as Senior Officer, Human Resources and Administration in Sakthi Sugar Unit No.II, Padamathur, Sivagangai District. The deceased was working as an Operator in Turbine Engineering Department at Sakthi Sugars Ltd., Sivagangai. Considering these records, which were marked through the Officer of the employer of the deceased, the Tribunal computed the income of the deceased.

5.It is the submission of Mrs.K.R.Shivashankari, that the bonus is a fluctuating claim and without taking into consideration, the Tribunal mechanically adopted the said documents. Admittedly, the veracity of the documents were not disputed by the appellant/Insurance Company. Apart from that, the documents were marked by the employer of the deceased P.W.3, was working as a Senior Officer in the Human Resource and Administration Department of the company. In fact, there is no such suggestion put on the said witness, during the course of cross examination before the Tribunal. Therefore, we find that there is no error in determining the salary of the deceased.

6.The second aspect is with regard to whether the deceased had contributory to the accident. In fact, an identical plea was raised before the Tribunal and the Tribunal has considered the same. It is pointed out that Ex.P.1 is the First Information Report, registered by Poovanthi Police Station, against the driver of

Mahindra-XUV in Crime No.179 of 2012 for the offences under Sections 279, 337 and 304(A) IPC. The evidence of P.W.1 was considered by the Tribunal and found to be clear and unambiguous and also reflected in the F.I.R. However, the Tribunal noted that the driver of the vehicle owned by the first respondent did not file any police complaint, with a view to establish that he is not a reason for the accident. Further, the Tribunal noted that the second respondent/Insurance Company did not examine the Investigating Officer. Further, the Tribunal noted that Ex.R.2 rough sketch prepared by the Police, could not have been relied on without the examination of the Investigating Officer.

7.More importantly, the Tribunal noted that the appellant/Insurance Company did not take any steps to examine the driver of the first respondent vehicle to prove that the deceased had also contributed to the accident. Therefore, the said ground raised before us also does not merit consideration. With regard to the compensation awarded under the other heads, we find there is no error in the award of the Tribunal.

8.Thus, for the above reasons, this Civil Miscellaneous Appeal fails and stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

9.In view of the dismissal of the appeal, the appellant/Insurance Company, is directed to deposit the entire award amount to the credit of MCOP No.476 of 2013, within a period of eight weeks, from the date of receipt of a copy of this order, less the amount already deposited. On such deposit being made, the major claimants are permitted to withdraw their share amount as apportioned by the Tribunal, less the amount already withdrawn by the claimants, without filing any permission petition before the Tribunal.

10.In respect of the minor claimant is concerned, her share amount shall be deposited in a Fixed Deposit in the Indian Bank, Madurai Bench of Madras High Court, Madurai, to the credit of CMA (MD).No158 of 2017, till she attains majority. The first respondent/Mother, who is the guardian of the minor claimant, is permitted to withdraw the accrued interest, once in three months directly from the Bank and utilize the same for her welfare.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar(CS)

Ns

To:

The VI Additional District Judge,
The Motor Accident Claims Tribunal,
(VI Additional District Court),
Madurai.

Copy to:

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

2. The Branch Manager,
   Indian Bank,
   Madurai Bench of Madras High Court,
   Madurai

+1 CC to Mr.S.SRINIVASA RAGHAVAN, Advocate (SR-93205[F] dated 21/10/2019)
+1 CC to Mr.N.SUDHAGAR NAGARAJ, Advocate (SR-93418[F] dated 21/10/2019)

C.M.A.(MD).No.158 of 2017
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MK (26.12.2019) 4P 7C