IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.10.2015

CORAM:

THE HONOURABLE MR.JUSTICE **S.MANIKUMAR**
and
THE HONOURABLE MR.JUSTICE **M.VENUGOPAL**

C.M.A.No.1723 of 2015
and
M.P.No.1 of 2015

M/s.Iffco Tokio General Insurance Co. Ltd.,
Tulsi Chambers,
No.195, TV Samy Road (West),
R.S.Puram, Coimbatore – 2. .. Appellant

versus

1.D.Simon
2.S.Sindhu Priyadharsini
3.Shyam Vasanthakumar (minor)
(rep. by father and next friend R1)
4. Mr.Mahesh
5. K.Kathirvel .. Respondents

[Name of R2 amended vide order of Court dated 22.12.2014, made in M.P.No.3/14 in CMA No.1723 of 2014]

Prayer: Civil Miscellaneous Appeal is filed, against the judgment and decree in M.C.O.P.No.329 of 2013, dated 29.10.2013, on the file of the Motor Accident Claims Tribunal, [Chief Judicial Magistrate], Coimbatore.

For Appellant	:	Mr.M.B.Raghavan
For Respondents	:	Mr.K.Balaji (for R1 to R3)
		Mr.S.N.J.Hariharan (for R4 & R5) for M/s.V.Nicholas

JUDGMENT

(Judgment of the Court was made by **S.MANIKUMAR ,J.**)

Being aggrieved by the judgment and decree in MCOP No.329 of 2013 dated 29.10.2013 on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Coimbatore, by which a sum of Rs.17,97,000/-, has been awarded as compensation, with interest, at the rate of 7.5% per annum, from the date of claim, till the date of realisation, to the legal representatives of the deceased, M/s.Iffco Tokio General Insurance Company Limited, has preferred the present appeal.

2. Facts as deduced from the material on record and the impugned judgment are that on 25.03.2012, at 07.00 p.m., when the deceased Nirmala after procuring water, in a pot, was proceeding on the road from East to West Direction, a motorcycle viz., Hero Honda bearing Regn.No.TN37-BH-2367 and insured with the appellant-insurance company, which came in a high speed, in the same direction, hit her from behind. She fell down and sustained grievous injuries. Immediately, she was taken to the nearby Karpagam Hospital, Coimbatore, and treated as inpatient, till 02.04.2012, for the fracture of both bones of left leg below knee, with skin and tissue loss and multiple bodily injuries. According to the claimants, her nervous system was badly affected. Surgery was done and fixation was done. Thereafter, on 10.04.2012, she was admitted in K.G.Hospital and

underwent treatment upto 13.04.2012. According to the claimants, they have spent more than Rs.1.5 Lakhs. Finally, she was admitted in Coimbatore Medical College Hospital on 13.04.2012 and despite continuous effective treatment, she died on 19.04.2012. In this regard a criminal case in Cr.No.144/2012 has been registered against the motorcyclist on the file of the Mathukkarai Police Station. At the time of accident, the deceased was aged 42 years and was working as a teacher in CSI School at Kothagiri and getting Rs.19,000/-, as salary per month. Legal representatives of the deceased viz., husband, aged about 50 years, unmarried daughter, aged about 19 years and a minor son, aged about 8 years, have claimed compensation of Rs.25,00,000/- under various heads.

3. Before the claims tribunal, appellant-Insurance Company, has filed a counter affidavit and denied, the manner of accident. Without prejudice to the above, the company has also disputed the age, avocation and income of the deceased, and the quantum of compensation claimed under various heads.

4. Husband of the deceased examined herself as PW.1., and reiterated the averments made in the claim petition. One Mr.Arumugham, eye witness has been examined as PW2. Documents viz., Ex.P1 – First Information Report, Ex.P2, Certified copy of MVI Report, Ex.P3, Certified

copy of the final report, Ex.P4, Certified copy of Wound Certificate of Karpagam Hospital, Ex.P5, Certified copy of judgment, Ex.P6, Medical Bills, Ex.P7, Discharge summary of KG Hospital, Ex.P8, Medical Bills, Ex.P9, Admission Sheet issued by Government Hospital, Coimbatore, Ex.P10, x-ray, Ex.P11, Appointment order of the deceased Nirmala, Ex.P12, Fitness certificate issued to the deceased issued by the Medical Officer, at the time of joining duty, Ex.P13, Death certificate of deceased, Ex.P14, Legal Heir Certificate and Ex.P15, Cremation certificate of the deceased, have been marked on the side of the respondents/claimants. One Thiru.Senthilkumar, Executive Assistant of the appellant-Insurance Company, has been examined as RW1 and documents viz., Ex.R1, copy of Insurance policy of the motor cycle, Ex.R2, copy of notice sent to the respondent, Ex.R3, Acknowledgment card from the first respondent and Ex.R4, copy of letter received by the learned counsel of the respondent No.3, from the postal department, have been marked on their side.

5. On evaluation of pleadings and evidence, the Claims Tribunal, held that the accident occurred only due to rash and negligent act of the rider of the motorcycle viz., Hero Honda bearing Regn.No.TN37-BH-2367 and insured with the appellant-insurance company. Considering the age, avocation, income and other parameters, required to be taken into consideration, the Claims Tribunal, fixed the monthly income of the

deceased as Rs.8,000/- and added up 30% of the said income towards future prospects. Further, by applying multiplier '15', and after deducting 1/4 towards the personal and living expenses, computed the loss of dependency as Rs.14,04,000/-. Apart from that, the claims tribunal has awarded compensation of Rs.1,00,000/-, to the daughter and minor son of the deceased towards loss of care and guidance. Another sum of Rs.1,00,000/- has been awarded for loss of love and affection. A further sum of Rs.1,10,000/- has been awarded under the head, Medical expenses, Rs.50,000/- under the head, loss of consortium and a consolidated sum of Rs.33,000/- has been awarded under the head funeral expenses and transportation. In all, the claims tribunal has quantified the compensation at Rs.17,97,000/-, with interest, at the rate of 7.5% per annum, from the date of claim, till the date of realisation.

6. Assailing the findings of the Claims Tribunal, fixing negligence on the rider of the motorcycle bearing Regn.No.TN-37-BH-2367, Mr.M.B.Raghavan, learned counsel for the appellant submitted that the Claims Tribunal ought not to have fixed negligence on the rider of the motorcycle, solely on the basis of the criminal case registered against the motorcyclist. He further submitted that the tribunal ought to have accepted the evidence adduced on behalf of the appellant regarding the absence of Driving licence and exonerated the appellant-insurance company.

7. On the quantum of compensation, learned counsel for the appellant submitted that the Claims Tribunal has erred in awarding a huge compensation of Rs.17,97,000/-, towards loss of dependency, by deducting ¼ towards personal and living expenses instead of 1/3. He further submitted that the sum of Rs.1,00,000/- awarded under the head loss of care and guidance for daughter and minor son, in addition of Rs.1,00,000/- awarded under the head, loss of love and affection, is excessive.

8. Mr.K.Balaji, learned counsel appearing for the respondents/claimants, made submissions to sustain the award.

9. Heard the learned counsel appearing for both parties and perused the materials available on record.

10. Though, Mr.M.B.Raghavan, learned counsel for the appellant-Insurance company contended that the tribunal has erred in fastening liability on the insurer to pay a huge compensation of Rs.17,97,000/- with interest, at the rate of 7.5% per annum from the date of claim till deposit, this Court is not inclined to accept the said contention for the reason that the insurer has not adduced any acceptable evidence to prove that the rider of the offending vehicle, and insured with them did not possess any valid and

effective driving licence, at the time of accident. Nobody has been summoned from the Regional Transport Office nor any document has been marked. The said issue is no longer res integra in the light of the decision of the Hon'ble Apex Court in ***S.Iyyappan Vs. M/s. United India Insurance Company ltd., and another***, reported in **(2013) 7 SCC 62** and the Hon'ble Division Bench of this Court in ***Bajaj Alliance General Insurance Company Vs. P.Manimozhi and other***, reported in **2010 (2) TNMAC 542 (DB).**

11. In the light of the above discussion and decisions, the contention that the Insurance Company should be absolved of their liability cannot be accepted. Tribunal has not committed any error in fastening liability on the insurance company. Hence, going through the impugned judgment, we do not find any perversity or illegality, warranting interference.

12. In so far as the quantum of compensation is concerned, the tribunal has awarded a sum of Rs.17,97,000/- by computing the loss of dependency at Rs.14,04,000/-. As rightly pointed out by the learned counsel for the appellant-Insurance company, 1/3 deduction ought to have been made instead of ¼, since the legal representatives of the deceased were the husband, daughter and minor son, respectively. Accordingly, 1/3 deduction is made and loss of dependency, is computed as hereunder:

Income	: Rs.8,000/-
Future prospects	: Rs.2,400/-

(30% of income)
Income : Rs.10,400/- ; 1/3 deduction = Rs.3,467/-

Contribution to family : Rs.10,400/- - Rs.3,467/- = Rs.6,933/-
rounded off: Rs.7,000/-

Multiplier : 15
Loss of dependency : Rs.7,000/- x 12 x 15 = Rs.12,60,000/-.

13. Further, award of Rs.1,00,000/- for loss of love and affection to unmarried daughter aged 19 years and minor son aged 8 years, is less, and considering the fact that the children have lost the love and affection of their mother, at a very young age, compensation of Rs.1,00,000/- awarded, under the head loss of care and guidance for daughter and minor son, is added to the head loss of love and affection and accordingly, Rs.1,00,000/- each is awarded to the unmarried daughter and minor son, respectively, under the said head. Similarly, an award of Rs.50,000/- towards loss of consortium is less and in the light of **Rajesh v. Rajbir Singh**, reported in **2013 (3) CTC 883 (SC),** it is enhanced to Rs.1,00,000/-. There is no award towards Damages to clothes and articles. Hence, sum of Rs.1,000/-, is awarded towards damages to clothes and articles. Award under other heads viz., Medical expenses, transportation and funeral expenses and the rate of interest is reasonable and hence, sustained.

14. In the light of the above discussion and reworking, the compensation due and payable to the husband and children of the deceased

works out to Rs.17,04,000/-, with interest, at the rate of 7.5% per annum from the date of claim till deposit. The award of the tribunal is modified and there shall be a reduction of compensation by Rs.93,000/-. The compensation now modified is apportioned hereunder:

Loss of Dependency	: Rs.12,60,000/-
Loss of Love and Affection to son and daughter @ Rs.1,00,000/- each	: Rs. 2,00,000/-
Loss of consortium	: Rs. 1,00,000/-
Transportation and Funeral Expenses	: Rs. 25,000/-
Medical Expenses	: Rs. 1,10,000/-
Damages to clothes	: Rs. 1,000/-
Total	: Rs.17,04,000/-

Sum of Rs.93,000/- now reduced, is deducted from the share of the 1st respondent/husband.

15. Learned counsel for the appellant-Insurance Company submitted that pursuant to the orders of this Court dated 01.07.2014 in M.P.No.1 of 2014 in CMA No.1723 of 2014, the Insurance company has already deposited the entire award amount with accrued interest and costs to the credit of MCOP No.329 of 2013, on the file of MACT [Chief Judicial Magistrate], Coimbatore.

16. In view of the above submission, except the minor's share, others

viz., respondents 1 and 2 are permitted to withdraw their shares, as apportioned now, with proportionate accrued interest and costs, by making necessary applications. The share of the minor/3rd respondent shall be deposited in any one of the Nationalised Banks in fixed deposit under the reinvestment scheme initially for a period of three years. The interest accruing on the share of the minor/3rd respondent shall be paid to the father of the minor, Mr.D.Simon, once in three months, till he attains majority. Consequent to reduction in quantum, the claims tribunal is directed to refund the excess money, to the appellant-Insurance company. The claims tribunal is further directed to ascertain as to whether, Court fee has been paid, before disbursement. The Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

(S.M.K., J) (M.V., J.)
26.10.2015

Index: Yes/No.
Internet: Yes/No.
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To

The Motor Accident Claims Tribunal,
(Chief Judicial Magistrate), Coimbatore.

S. MANIKUMAR, J.
AND
M.VENUGOPAL, J.

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C.M.A.No.1723 of 2015

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