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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 18.03.2021

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THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

C.M.A(MD)Nos.804 of 2016 and 353 of 2017
and
CMP(MD)No.7718 of 2016

(1)CMA(MD)No.804 of 2016:-

The Oriental Insurance Company Limited
through its Divisional Manager,
Office at Ground Floor,
Magnet House (Opp NTC House),
N.M.Marge Ballard Estate,
Mumbai,
Maharashtra. : Appellant/2nd respondent

Vs.

1.Tmt.Madathi
2.Minor Esakkimuthu
3.Ena Konar
4.Esakkiammal : R1 to R4/Petitioners 1 to 4
(Minor R2 represented
through his mother and
next guardian 1st Respondent)

5.Francis Dhanaraj : 5th Respondent/1st Respondent

PRAYER:- Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988 against the award passed by the Motor Accident Claims Tribunal-cum-Special Court, Tirunelveli, in MCOP No.664 of 2014, dated 08.12.2015.

For Appellant : Mr.C.Jawahar Ravindran
For R1 to R4 : Mr.T.Selvakumaran
For 5th Respondent : Given up

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(2)CMA(MD)No.353 of 2017:-

1.Tmt.Madathi
2.Minor Esakkimuthu
3.Ena Konar
4.Esakkiammal : Appellants/Petitioners
(Minor R2 represented through his mother and next guardian 1st Respondent)

Vs.

1.Francis Dhanaraj

2.The Oriental Insurance Company Limited
through its Divisional Manager,
Office at Ground Floor,
Magnet House (Opp NTC House),
N.M.Marge Ballard Estate,
Mumbai,
Maharashtra. : Respondents/Respondents

PRAYER:- Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988 against the award passed by the Motor Accident Claims Tribunal-cum-Special Court, Tirunelveli, in MCOP No.664 of 2014, dated 08.12.2015.

For Appellants : Mr.T.Selvakumaran
For 1st Respondent : Given up
For 2nd Respondent : Mr.C.Jawahar Ravindran

COMMON JUDGMENT

These Civil Miscellaneous Appeals have been filed by the Insurance Company as well as the claimants, challenging award passed by the Motor Accident Claims Tribunal-cum-Special Court, Tirunelveli, in MCOP No.664 of 2014, dated 08.12.2015, respectively.

2.The short facts of the case is that on 10.07.2014 at about 9.00 pm, the deceased Kannan was riding his motor cycle TN-72-AM-3829 from Palamadai to Keelanatham and when he approaching Four-ways in between Madurai-Nagerkoil, unfortunately, an Indica Car TN-61-D-8314 came from west to east and the driver of the Car attempted to overtake a lorry on the extreme left land on the left side of the road and at that time, the Car run behind its lane and hit the motor cycle and due to it, the deceased was thrown out of the motor cycle and sustained injuries and immediately, he was taken to TVMC Hospital, Palayamkottai, where he declared as dead. The legal heirs

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of the deceased filed a claim petition seeking compensation of Rs.20,00,000/- for the death of the deceased Kannan.

3.The claimants have stated that the deceased was 34 years at the time of accident and he was doing Plumber and Electrician work, thereby he was earning Rs.20,000/- per month. It is alleged that the said Kannan died only due to the negligence on the part of the driver of the offending vehicle.

4.In the counter filed by the Oriental Insurance Company, they disputed the manner of accident and their liability to pay compensation.

5.Before the tribunal, on the side of the claimants, 2 witnesses were examined and marked 7 documents. On the side of the Insurance Company, 2 witnesses were examined and 3 documents were marked.

6.The Tribunal, on consideration of oral and documentary evidence adduced by the parties, came to the conclusion that the driver of the offending vehicle caused the accident and awarded compensation of Rs.14,40,000/- together with interest @ 9% pa. Challenging the award of the tribunal, the Insurance Company has filed CMA(MD)No.804 of 2016, whereas seeking enhancement of compensation, the claimants have filed CMA(MD)No.353 of 2017.

7.Heard both sides and perused the materials available on record.

8.The learned counsel appearing for the Insurance Company argued that the tribunal has failed to note that only the two wheeler rider Kannan drove the two wheeler in a rash and negligent manner and suddenly crossed the road from south to north and dashed against the Car, which was coming from west to east and the tribunal has failed to consider the evidence of the Car Driver, who was examined as RW1 and even as per FIR, it is proved that only the rider of the two wheeler, crossed the four way road from south to north and dashed against the Car and the tribunal failed to consider the rough sketch (Ex.R1) and the tribunal failed to fix contributory negligence on the part of the rider of the two wheeler. It is further submitted that the award of the tribunal is excessive and without any basis and prays that the CMA(MD)No.804 of 2016 has to be allowed.

9.On the other hand, the learned counsel appearing for the claimants submitted that the award of the tribunal is on the lower side and hence, fair compensation has to be awarded by fixing the notional income of the deceased at Rs.12,000/- and prays that CMA (MD)No.353 of 2017 has to be allowed by enhancing the compensation.

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10.It is not in dispute that the deceased Kannan was Plumber and Electrician. It is not in dispute that the deceased died at the age of 36 years. Since no reliable document has been filed on the side of the claimants to prove the income of the deceased, the tribunal has fixed the monthly income of the deceased at Rs.6,000/-. By applying multiplier '15' and by adding 50% towards future prospects and after deducting 1/4th from the income of the deceased for his personal expenses, the tribunal has awarded Rs.12,15,000/- towards loss of income. Further, the tribunal has awarded Rs.1,00,000/- towards loss of love and affection and Rs.1,00,000/- towards loss of consortium to the 1st claimant and Rs.25,000/- towards funeral expenses. In total, the tribunal has awarded Rs.14,40,000/- to the claimants along with interest @ 9% pa.

11.Perusal of the records would reveal that the deceased Kannan was doing Pluming and Electrical work and he was earning Rs.20,000/- per month, but no proof was filed on the side of the claimants. Considering the facts and circumstances of this case, this court fixed the notional income of the deceased at Rs.7,500/- per month.

12.It is not in dispute that at the time of accident the deceased was 36 years. It is settled law that in case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. But in this case, the tribunal has added 50% towards future prospects. Hence, this court is of the considered view that 40% has to be added towards future prospects to calculate the income of the deceased, as per the decision of the Hon'ble Supreme Court reported in **2017(6) CTC 493 *(National Insurance Company Limited vs. Pranay Sethi and others)*.** By doing so, the monthly loss of income of the deceased is calculated at Rs.10,500/- (Rs.7,500/- + Rs.3,000/-). Since the number of dependents is 4, 1/4th has to be deducted towards his personal and living expenses and thereby the monthly income is arrived at Rs.7,875/- (Rs.10,500/- - Rs.2,625/-). By applying proper multipler 15, this court awards **Rs.14,17,500/-** (Rs.7,875/- x 12 x 15) towards loss of income. In addition to that, under the conventional heads, as per the decisions in **Pranay Sethi's case and Magma General Insurance's case**, this Court awards Rs.40,000/- towards loss consotrium to the 1st claimant, and Rs.40,000/- each towards filial consortium to the claimant 2 to 4; Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses. In total, the claimants would be entitled for **Rs.16,07,500/-.** In respect of interest, it is modified into 7.5% pa.

13.On perusal of the records, it is seen that the the deceased drove the two wheeler and he suddenly crossed the road. Hence, the contributory negligence is fixed on the part of the rider of the motor cycle at the ratio of 20%. Therefore, this court fixed the negligence at 80% on the part of the driver of the Car and 20%

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fixed on the part of the deceased. Hence, this court finds that the claimants are entitled to Rs.12,86,000/- together with interest at the rate of 7.5% p.a from the date of filing claim petition till the date of deposit.

14.In the result, these Civil Miscellaneous Appeals are partly allowed as indicated above. The negligence is fixed at 80% on the part of the Car Driver and 20% on the part of the deceased. The award of the tribunal is modified into Rs.12,86,000/- from Rs.14,40,000/-. The Insurance Company is directed to deposit the modified award amount together with interest @ 7.5% p.a from the date of claim petition till the date of deposit, less the amount already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such compliance, the major claimants are entitled to withdraw their share with accrued interest and costs, as per the apportionment of the tribunal, without filing any petition. The share of the minor claimant shall be deposited in any one of the Nationalized Bank on a fixed deposit scheme, till he attained majority. The 1st claimant, being the mother and guardian of the minor is entitled to withdraw the interest accrued on the fixed deposit once in three months for the welfare of the minor. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CO)

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/ /2021

Sub Assistant Registrar(CS)

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Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To,

The Motor Accident Claims Tribunal/
The Special Sub Judge, Tirunelveli.

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Copy to

The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

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KMK(CO)
LR (05.08.2021) 6P 4C

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