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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

AND

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A(MD)No.625 of 2021

and

C.M.P. (MD)No.6059 of 2021

The Branch Manager,
National Insurance Co.Ltd.,
S.N.High Road, Tirunelveli. ... Appellant / Respondent No.3

-Vs-

1.Subalakshmi
2.Minor Mithilesh Ram
3.Minor Lakshmi Karthikeyan
(Minor respondents 2 and 3 are rep.by their mother & guardian
Subalakshmi, the 1st respondent)

4.Selvapakkiam ... Respondent Nos.1 to 4 /
Petitioners
5.Selvarasu ... Respondent No.5/ Respondent No.1
6.M.Vasantha ... Respondent No.6 / Respondent No.2
7.Balasubramanian ... Respondent No.7 / Respondent No.4
8.The Branch Manager,
The New India Assurance Company Limited,
Sharon Building, 16A, East Veli Street,
Madurai. ... Respondent No.8 / Respondent No.5

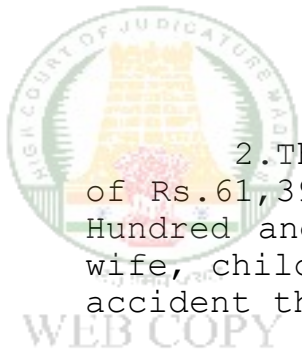
PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988, praying this Court to set aside the judgment and decree passed in M.C.O.P.No.596/2016 dated 17.03.2020 on the file of the Motor Accident Claims Tribunal Cum Special Sub Court, dealing with MCOP Cases, Tirunelveli.

For Appellant : Mr.R.Rajamani
For R1 to R4 : Mr.S.Kumar
For R5 & R6 : No Appearance
For R7 : Mr.T.Selvakumaran
For R8 : Mr.J.S.Murali

JUDGMENT

R.SUBRAMANIAN, J.
AND
N.SATHISH KUMAR, J.

By consent of both parties, this Civil Miscellaneous Appeal
itself is taken up for final hearing.



2.The appellant Insurance Company challenges the award of sum of Rs.61,39,952/- (Rupees Sixty One Lakhs Thirty Nine Thousand Nine Hundred and Fifty Two Only) awarded to the claimants, who are the wife, children and mother of one Lakshmi Kanthan, who died in a road accident that occurred on 02.08.2015 at 05.30 a.m.

3.According to the claimants, the deceased was riding as a pillion rider in a two wheeler bearing Registration No.TN 69 AL 9842, driven by one Balasubramanian / 7th respondent herein. When they were going from Theni to Chinnamanur on the Kambam to Theni road, a lorry bearing Registration No.TN 52 D 2577, which was driven by the 5th respondent herein in a rash and negligent manner, dashed against the two wheeler and as a result of the impact, the pillion rider was thrown off the vehicle, he suffered grievous injuries and died on the spot.

4.Contending that the accident occurred due to rash and negligent driving of the lorry and the deceased was earning a sum of Rs.29,987.50/- (Rupees Twenty Nine Thousand Nine Hundred and Eighty Seven and Fifty Paise Only) as monthly income, the claimants sought for compensation of Rs.95,00,000/- (Rupees Ninety Five Lakhs Only).

5.The claim was resisted by the Insurance Company, contending that there was a negligence on the part of the rider of the two wheeler. It was also claimed that the compensation claimed at Rs.95,00,000/- is excessive.

6.At trial before the Tribunal, the first claimant Subalakshmi was examined as P.W.1, one Balasubramanian was examined as P.W.2 and one Ravikumar was examined as P.W.3. P.W.2 is the rider of the motor cycle. Ex.P.1 to Ex.P.17 were marked on the side of the claimants. Neither the owner of the lorry nor the appellant Insurance Company chose to let in any evidence.

7.On the consideration of the evidence of P.W.2 and contents of the First Information Report, Observation Mahazar and Charge Sheet, which were marked as Exs.P.1, P.5 and P.6 respectively, the Tribunal concluded that the accident was caused due to the rash and negligent driving of the driver of the lorry.

8.On the quantum, the Tribunal accepted the claim of the claimants that the deceased was earning a sum of Rs.29,987.50/- per month, based on the salary certificate, which was marked as Ex.P.7 through P.W.3. The Tribunal added 50% towards future prospects, deducted $\frac{1}{4}$, as there were four dependents, applied multiplier 16 and arrived at loss of dependency at Rs.60,69,952/-. The Tribunal awarded a sum of Rs.15,000/- for loss of estate, Rs.15,000/- for funeral expenses and Rs.40,000/- for loss of consortium. Thus, total award was fixed at Rs.61,39,952/-.



9.We have heard Mr.R.Rajamani, learned counsel for the appellant / Insurance Company, Mr.S.Kumar, learned counsel for the respondents 1 to 4 / claimants, Mr.T.Selvakumaran, learned counsel for the 7th respondent and Mr.J.S.Murali, learned counsel for the 8th respondent.

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10.Mr.R.Rajamani, learned counsel appearing for the appellant Insurance Company in an attempt to prove that there was a negligence on the part of the rider of the two wheeler drew our attention to rough sketch, which has been included as a document in the typed set of papers. However, to our dismay, we find that the appellant Insurance Company has not attempted to let in any evidence before the Tribunal. P.W2 rider of the two wheeler has been examined. He has spoken to the manner in which the accident had occurred. There is no contra evidence. In the absence of any contra evidence, we do not think that we can entertain the argument on the contributory negligence by the appellant Insurance Company. Contributory negligence is not a matter of presumption. It is to be proved by letting proper evidence.

11.On the quantum also, we do not find any cause to interfere. The income of the deceased has been proved by examining P.W.3. The deceased was working in the Tamil Nadu Mercantile Bank. Therefore, the Tribunal was justify in taking income as evidence by the salary certificate. The Tribunal has also adopted proper multiplier and deductions. The grant of non-conventional damages is also as per the judgment of the Hon'ble Supreme Court of India in the case of **National Insurance Company Limited Vs. Pranay Sethi and others** reported in **2017 (2) TNMAC 609**.

12.Therefore, we do not see any ground to interfere with the award of the Tribunal. Hence, this Civil Miscellaneous Appeal fails and accordingly, is dismissed. The appellant Insurance Company is directed to deposit the award amount, awarded by the Tribunal, within a period of eight (8) weeks from today (25.03.2022). The apportionment made by the Tribunal is also confirmed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

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/ /2022

Sub Assistant Registrar(CS)

Myr



To

1.The Motor Accident Claims Tribunal Cum
Special Sub Court dealing with MCOP Cases,
Tirunelveli.

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

+1 CC to M/s.J.S.MURALI, Advocate (SR-14760[F] dated 28/03/2022)

+1 CC to M/s.R.RAJAMANI, Advocate (SR-14765[F] dated 28/03/2022)

+1 CC to M/s.S.KUMAR, Advocate (SR-15040[F] dated 29/03/2022)

C.M.A. (MD) No. 625 of 2021
25.03.2022

RK(08/04/2022) 4P 7C