



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **17.02.2022**

CORAM:

**THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR**

C.M.A(MD)No.1381 of 2015

and

M.P(MD)No.1 of 2015 and C.M.P(MD)No.8255 of 2021

The Branch Manager,
Reliance Insurance Company Limited,
10/4/4, Thaha Plaza, South Bye Pass Road,
Vannarapettai,
Tirunelveli.

:Appellant/2nd Respondent

.vs.

1.Thangam
2.Kaleeswari @ Suhasini
3.Karuppasamy @ Barath
4.Madasamy

:Respondents 1 to 4/Petitioner

Minor R2 declared as major and the guardianship discharged as per order of this Court made in C.M.P(MD)No.1145 of 2018 in C.M.A(MD)No.1381 of 2015, dated 2.3.2018)

(Minor R3 declared as major and the guardianship of his mother (first respondent) discharged as per order of this Court made in C.M.P(MD)No.1832 of 2020 in C.M.A(MD)No.1381 of 2015, dated 02.09.2021)

5.Selvi

:Respondent/Ist Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988, praying this Court to set aside the judgment and decree made in M.C.O.P.No.233 of 2013, dated 13.3.2015, on the file of the Motor Accidents Claims Tribunal, IVth Additional District Court, Tirunelveli.

For Appellant

:Mr.K.Gokul

For Respondents

:Mr.V.Sasikumar

1 to 4

For Respondent-5

:No appearance



JUDGMENT

[Judgment of the Court was made by **R. SUBRAMANIAN, J.**]

Challenge in this appeal is to the award of Rs.32,24,000/-for the death of one Mariappan in a road accident that occurred on 28.02.2012. Claiming that the said Mariappan was working as Head Constable and was earning a sum of Rs.20,858/-p.m.The claimants who are his wife, minor children and father sought for compensation of Rs.60,77,104/- however, restricted the claim to Rs.60 lakhs.

2.The appellant Insurance Company resisted the claim contending that the accident did not occur in the manner stated by the claimants. It was further contended that the rider of the two wheeler did not have the valid driving licence at the time of accident and therefore, the Insurance Company cannot be made liable.

3.The Tribunal on the assessment of evidence that was produced before it, took the monthly income of the deceased at Rs.20,466/- and added 30% towards future prospects. Deducting one third towards personal expenses as well as 30% towards income tax, the Tribunal fixed the loss of income at 1,91,472/- and adopting multiplier of 16, it fixed the total loss of dependency at Rs.30,63,552/-. It also awarded a sum of Rs.10,000/- towards funeral expenses, Rs.25,000/- towards loss of love and affection and mental agony and Rs.50,000/- to the first claimant for loss of consortium and thus the total amount was arrived at Rs.32,24,000/-.

4.Having found that the rider of the motor-cycle was without valid driving licence at the time of accident, the Tribunal directed the appellant/Insurance Company to pay the compensation at the first instance and then to recover the same from the insured.

5.Mr.K.Gokul, learned counsel for the appellant would submit that the Tribunal having found that the rider of the vehicle is not having valid driving licence, is not correct in fastening the liability on the appellant Insurance Company, directing them to pay the compensation to the claimants at the first instance and then to recover the same from the insured.

6.On the quantum, the learned counsel for the appellant would submit that adoption of 30% towards future prospects is on higher side. We are unable to agree with his contentions on both counts. The employment of the deceased is not disputed. As per the judgment of the Honourable Apex Court in the **National Insurance Company .vs. Pranay Sethi repoted in 2017(2) TN MAC 609(SC)** future prospects for a person of 38 years should have been fixed at 50% and not at 30%. Therefore, we see no reason to interfere with the adoption of 30% for future prospects by the Tribunal.



7. On the question of liability also, we find that it is a case of no licence. Therefore, it is a violation of policy condition. Hence the Tribunal cannot be faulted for having directed the Appellant/Insurance Company to pay compensation to the claimants at the first instance with liberty to recover the same from the owner of the vehicle.

8. We see no merit in the appeal and thus the appeal fails and accordingly, the same stands dismissed. No costs. The other directions of the Tribunal are confirmed. Consequently, connected Miscellaneous Petitions are dismissed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

vsn

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

1. The IVth Additional District Judge,
The Motor Accidents Claims Tribunal, Tirunelveli.

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

+1 CC to M/s.V.SASIKUMAR, Advocate (SR-7192[F] dated 18/02/2022)

+1 CC to M/s.K.GOKUL, Advocate (SR-7568[F] dated 21/02/2022)

JUDGMENT MADE IN
C.M.A(MD)No.1381 of 2015
and
M.P(MD)No.1 of 2015 and
C.M.P(MD)No.8255 of 2021
17.02.2022

ss (CO)

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