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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.1382 of 2015

AND

MP(MD)No.2 of 2015

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

:Appellant/2nd Respondent

.vs.

1.Tamilarasi,
2.Subbulakshmi @ Sudha
3.Usha Devi
4.Uma Maheswari
5.Jeyapakya
6.Selvi

: Respondents 1 to 5/Petitioners
: Respondent/1st Respondent

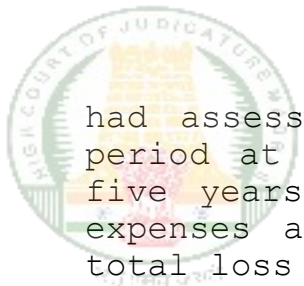
PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988, praying this Court to set aside the judgment and decree made in M.C.O.P.No.234 of 2013, dated 13.3.2015, on the file of the Motor Accidents Claims Tribunal, IVth Additional District Court, Tirunelveli.

For Appellant	:Mr.K.Gokul
For Respondents	:No appearance
1 to 4 and 6	
For Respondent-5	:Mr.T.Selvakumaran

JUDGMENT

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

Challenge in this appeal is to the award of Rs.19,33,000/-for the death of one Thangapandi in a road accident that occurred on 28.02.2012 and the deceased was employed as a Special Sub-Inspector and was drawing salary of Rs.33,304/- The Tribunal had concluded that the accident had occurred only due to the rash and negligent driving of the rider of the two-wheeler. It also took the salary at Rs.33,304/-, deduced 10% towards income-tax and 1/5th towards personal expenses. Adopting split multiplier, the Tribunal took the entire salary for the first three years and thereafter, the Tribunal



had assessed the loss of dependency for the first three years period at Rs.8,63,244/-.The Tribunal, for the remaining period of five years, took $\frac{1}{2}$ of the salary deducted 15% towards personal expenses and arrived at Rs.7,94,520/- as loss dependency. The total loss of dependency was arrived at Rs.16,57,764/-.

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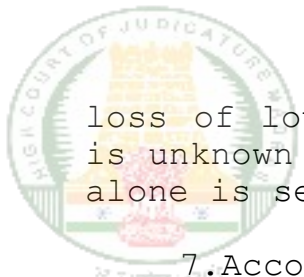
2.Mr.Gokul, learned counsel appearing for the appellant/Insurance Company would submit that there is duplication in the award. The award of Rs.90,000/- for loss of service is already covered in loss of dependency. The learned counsel would further submit that having found that the rider of the two-wheeler drove the vehicle in a rash and negligent manner, the Tribunal is not right in directing the appellant Insurance Company to pay the compensation at the first instance with an option to recover the same from the owner of the vehicle.

3.Mr.T.Selvakumaran, learned counsel appearing for the fifth respondent would submit that in the absence of licence, there is violation of policy condition and the direction to pay and recover is just and proper. The learned counsel would also submit that the award on the whole is reasonable and the quantum as awarded by the Tribunal need not be disturbed.

4.Heard the submissions made on either side and perused the materials placed before this Court.

5.As far as the direction to pay and recover is concerned,we are not in agreement with the learned counsel for the appellant. Absence of licence, being a violation of policy condition, the Insurance Company can be directed to pay the compensation at the first instance, with liberty to recover the amount from the insured. Hence we do not find any merit in the contentions of the learned counsel for the appellant that the Tribunal was not correct in directing the appellant to pay and then recover the award from the insured.

6.On the quantum, we find that the split multiplier adopted by the Tribunal is just and proper. The deceased was aged about 55 years at the time of accident and he had three years period of service left. Therefore the Tribunal was justified in following the split multiplier theory. The contention of the learned counsel for the appellant/Insurance Company that there is duplication of the award for loss of dependency cannot be accepted. For the first three year period, the Tribunal has assessed the loss of dependency at Rs.8,63,244/- and for the remaining five year period(multiplier being '8'), the Tribunal has awarded a sum of Rs.7,94,520/- towards loss of dependency. We see no duplication in the award. The learned counsel for the appellant would submit that the award of Rs.90,000/- towards loss of service cannot be sustained. The Tribunal has awarded Rs.50,000/- towards loss of consortium to the Services to court in the services wife, Rs.25,000/- to the other claimants towards



loss of love and affection. Beyond that, award for loss of service is unknown to law. Hence the award of Rs.90,000/-for loss of service alone is set aside.

7. Accordingly, the Civil Miscellaneous Appeal is partly allowed and the total compensation is reduced to Rs.18,43,000/- from Rs.19,33,000/-. The apportionment made by the Tribunal is modified as follows:

8. The first claimant/wife is entitled to Rs.10 lakhs with proportionate accrued interest and costs and the claimants 2 to 5, who are the daughters of the deceased, are entitled to equal share in the remaining award amount of Rs.8,43,000/- with proportionate accrued interest and costs. The other directions of the Tribunal in respect of deposit of the compensation and rate of interest are retained. No costs.

Sd/-

Assistant Registrar (CS-II)

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/ /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. (2C)

JUDGMENT MADE IN
C.M.A(MD)No.1382 of 2015
17.02.2022

SS (CO)
GC (10.03.2022) 3P 4C