BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: **27.04.2022**
CORAM:
THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN
C.M.A(MD)No.998 of 2021

The Branch Manager,
The National Insurance Company Limited,
2/A, First Floor, Thirumakkulam,
Therkkutheru, Thallakulam,
Madurai Town and District,
through its Branch Manager. :Appellant/Second respondent

.vs.

1.Pandimuthu

2.Minor Kaviya

3.Minor Dhivya

4.Minor Prabhavathi

5.Minor Prethika

6.Vellaichami

7.Selvi :Respondents 1 to 7/Petitioners

8 Kalidhas :8th Respondent / 1st Respondent

(Minor respondents 2 to 5 are represented by their mother and natural guardian, the first respondent herein Pandimuthu)

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act,1988, against the judgment and decree made in M.C.O.P.No.98 of 2017, dated 22.06.2020, on the file of the Motor Accidents Claims Tribunal, Principal District Court, Sivagangai.

For Appellant :Mr.J.S.Murali

For Respondents 1 to 7 :Mr.P.Aju Tagore

For R-8 :No Appearance

JUDGMENT
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This Civil Miscellaneous Appeal is directed against the judgment and decree made in M.C.O.P.No.98 of 2017, dated 22.06.2020, on the file of the Motor Accidents Claims Tribunal, Principal District Court, Sivagangai.

2.The Insurance Company is the appellant herein challenging the award passed in M.C.O.P.No.98 of 2017 on the ground of liability and quantum.

3.The respondents 1 to 7 herein who are the legal heirs of the deceased Prabhu,husband of the first Petitioner, have preferred the claim petition alleging that the Prabhu, the husband of the first Petitioner and father of the Petitioners 2 to 5 and children of 6^{th} and 7^{th} Petitioners, when he was riding a two-wheeler bearing Registration No. TN 63 E 3872 on Thiruppathur to Manamadurai near Malar Mill on 6.5.2016 at 7.30 p.m., from east to west, an Eicher van bearing Registration No. TN 55 Q 7438 driven by its driver in a rash and negligent manner and dashed against him causing the accident, in which, the said Prabhu suffered injuries on his body and head and died on the spot. Claiming that the said Prabhu was earning Rs.15,000/- per month working as a Painter, has come up with the present Civil Miscellaneous Appeal against the owner and the insurer of Eicher Van.

4.The appellant Insurance Company has filed a counter statement inter-alia contending that at the time of accident, there is no valid insurance, since the driver of the offending vehicle having Registration No.TN 57 Q 7438 does not possess the valid driving licence to drive the vehicle, the same amounts to violation of policy condition and hence, the Insurance Company is not liable to pay any compensation and futhermore, at the time of accident, the deceased riding the two-wheeler is not wearing helmet, which is in violation of the provisions of the Motor Vehicles Act, thereby, he had contributed to the accident and in view of the injury sustained on the head, he died. Had he weard the helmet on that day, fatality could have been averted and furthermore, on the point of quantum of compensation, the learned counsel would contend that future prospects to be calculated at 40% and not at 50% since the age of the deceased was 29 years at the time of accident, as per the post-mortem Ceritificate marked as Ex.P3.

5.Per contra, the learned counsel for the respondents/ claim petitioners would contend that the salary fixed for the accident of the year is too low and he died due to the injuries sustained on the chest and head and not on the head and other compensation also needs revision.

6.The rival submissions made by the respective counsels are taken note of.

7.The accident is of the year 2015. P.W.2, the occurrence witness during cross-examination has admitted that at the time of accident, the injured who drove the two wheeler does not wear helmet and he sustained grievous injuries on the head resulted in death. fatality. As per Ex.P3-postmortem certificate, the deceased is aged about 29 years at the time of accident and therefore future prospects be determined at 40% as per ***Pranay Sethy's case.*** Deduction has to be made at 1/5th since there seven dependants. The Tribunal has held that the accident has taken place due to the rash and negligent driving of the driver of the lorry and the appellant Insuance Company is jointly and severally liable to pay the compensation. In order to butress the plea that there is no breach of policy condition, the Insurance Company has summoned R.W.1 and R.W.2.,Assistants/officials from the Regional Transport Office and through whom Ex.R1-Letter of Transport Officer and Ex.R2-copy of the Insurance Certificate are produced. R.W.2 would enlighten the fact that on the date of the accident, the driver of the lorry does not possess valid driving licence.

8.The learned counsel for the Insurance Company would rely upon the case of ***Belli Ram .vs. Rajinder Kumar and another reported in 2020(2) TN MAC 445(SC)*** and would contend that since the driver is not having valid driving licence, the Insurance Company cannot mulcted with the liability. The above decision was considered by this Court in several C.M.As' and this Court has held that in respect of claim petition filed under Workmen Compensation Act, ***Belli Ram's case*** was followed and in respect of claim petition filed under the Motor Vehicles Act, it amounts to violation of policy condition and therefore, the Insurance Company though not mulcted with the liability, by various judicial pronouncements, the Insurance Company may be directed to pay and recover the amount from the owner of the vehicle and accordingly, the finding of the Tribunal is modifed as to one of pay and recovery from the owner of the vehicle. In this regard, the evidence of R.W.1, official from RTO Office and R.W.2 another official from the RTO Office was not properly considered by the Tribunal and the contra finding recorded by the Tribunal stands vacated and it is held that at the time of accident, the driver of the lorry does not possess valid driving licence and hence pay and recovery was ordered.

9.On the point of contributory negligence by the deceased, my attention was drawn to the evidence of P.W.2, the occurrence witness that at the time of accident, the injured does not wear helmet consequently he suffered head injury and died of the head injury.Following the decision of the Honourable Division Bench, 10% Contributory negligence has to be fixed from the contributory negligence part. The notional income is fixed at Rs.6000/-p.m., and future prospects of the deceased widow below 40 years is fixed at 40%.Therefore Rs.6000/-+40%(Rs.2400/-)=Rs.8400/- and the deduction for personal expenses of the deceased for seven dependants is 1/5 and accordingly, the loss of income is reassessed at Rs.8400x12x17x4/5=13,70,880/-. Further this Court awards a sum of Rs.15,000/- for funeral expenses,for loss of estate at Rs.15,000/- and the amount awarded under the head of love and affection at Rs.1,75,000/- stands negatived instead filatial consortium for the first claimant/wife at 40,000/- and the loss of parental consortium for claimants 2 to 7 at Rs.40,000/- x 6 = Rs.2,40,000/- and thus the total compensation payable to the claimants is arrived at Rs.16,80,800/- from which, 10% of the award amount has to be deducted towards the 10% contributory negligence of the deceased and hence the total compensation is Rs.16,80,800/--Rs.1,68,088/- = Rs.15,12,792/-, rounded off to Rs.15,12,800/- with interest at 7.5% p.a.

10. In fine, the Civil Miscellaneous Appeal is partly allowed to the extent as indicated above and the award amount is reduced from Rs.17,63,800/- to Rs.15,12,800/- with interest at the rate of 7.5% per annum from the date of claim petition till the date of realisation.The appellant Insurance Company is directed to pay the above said compensation to the claimants at the first instance and then to recover the same from the owner of the vehicle,by following the due process of law. The appellant Insurance Company is directed to deposit the modified award amount with proportionate accrued interest and costs,less the award amount, if any, already deposited, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit being made, the major claimants/respondents 1,6 and 7 are permitted to withdraw their share in the award amount with proportionate interest and costs, as per the terms and ratio of apportionment made by the Tribunal, less the award amount, if any already withdrawn, by filing necessary application before the Tribunal. The Tribunal is directed to deposit the share of the minor claimants/respondents 2 to 5 herein together with accrued interest and costs, in interest bearing fixed deposit, in any one of the nationalised bank, initially for a period of three years, renewable thereafter, till the minors attain majority. The first respondent/mother and natural guardian of the minor claimants 2 to 5 is permitted to withdraw the interest from the above said deposits, once in three months, directly from the bank and utilize the same for the welfare of the children.Registry is directed to refund the excess court fee, if any to the appellant/Insurance Company, as per law. No costs.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

vsn

TO

The Motor Accidents Claims Tribunal,
Principal District Judge, Sivagangai.

Copy to:

1. The Sub Assistant Registrar,
   C.O. Department,
   Madurai Bench of Madras High Court, Madurai.

2. The Section Officer,
   V.R. Section,
   Madurai Bench of Madras High Court,
   Madurai.(2 copies)

+1 CC to M/s.P. AJU TAGORE, Advocate (SR-21617[F] dated 27/04/2022)

+1 CC to M/s.J.S. MURALI, Advocate (SR-21834[F] dated 27/04/2022)

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