BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **26.06.2023**

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A.(MD).No.427 of 2023
and
C.M.P.(MD).No.5200 of 2023

The Branch Manager,
TATA AIG General Insurance Company Limited,
North Block, 3rd Floor,
A.A.Towers,
No.4, 5 By-Pass Road,
Madurai.

... Appellant

Vs.

1.Sahaya Aruljothi
2.Minor Arockiyabelsi
3.Minor Jospirishilla
4.Alphonse Mary

Minor respondents 2 and 3 are represented
by their mother and guardian
1st respondent Sahaya Aruljothi.
5.A.Jensi Joseph

... Respondents

PRAYER: Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree passed in M.C.O.P.No.320 of 2019, dated 18.08.2022 on the file of the Motor Accident Claims Tribunal, Additional District Court, Pudukottai.

For Appellant : Mr.J.S.Murali

For Respondents : No appearance

JUDGMENT

Challenging the award passed by the Motor Accident Claims Tribunal, Additional District Court, Pudukottai in M.C.O.P.No.320 of 2019, dated 18.08.2022, the present appeal has been filed by the Insurance Company.

2. The Tribunal has passed the following award:

S. No	Description	Amount awarded by the Tribunal
1.	Loss of income	Rs.18,90,000/-
2.	Loss of consortium and loss of estate	Rs.55,000/-
3.	Loss of love and affection	Rs.1,20,000/-
4.	For transportation	Rs.10,000/-
5.	For funeral expenses	Rs.15,000/-
	Total	**Rs.20,90,000/-**

After deducting 20% towards contributory negligence on the part of the deceased, the Tribunal has awarded a sum of Rs.16,72,000/-.

3. The claimants are the legal heirs of the deceased one Charles @ Victorcharles. He died in the accident. It is the case of the claimants that the deceased was working in Singapore and when he came to native place, he has borrowed a car bearing Registration No.TN 22 W 7989 from his brother and

went to Pudukottai along with his friends. While coming back in the car, the car capsized. According to the claimants, a two wheeler came in a high speed and to avoid collusion with the two wheeler, the deceased applied the break, at that time, the car capsized. The Insurance Company disputed the manner of accident. It is the contention that the entire accident happened only due to the rash and negligent driving of the deceased himself and disputed the liability.

4. Before the Tribunal, on the side of the petitioners, P.Ws.1 and 2 were examined and Exs.P1 to P6 were marked and on the side of the respondents, R.W.1 was examined and Exs.R1 to R5 were marked.

5. Based on the evidence and materials, the Tribunal has come to the conclusion that only the deceased was a tort - feasor and he was driven the vehicle in a rash and negligent manner and as a result, the vehicle capsized and fixed 20% negligence on the part of the deceased and 80% on the part of the first respondent and awarded a sum of Rs.16,72,000/- as compensation.

6. The learned counsel appearing for the appellant/Insurance Company would submit that when the deceased himself as a tort - feasor, the question of payment of compensation adopting multiplier method does not arise at all. In

support of his contention, he has relied on a judgment in the case of ***Ramkhiladi and another*** v. ***United India Insurance Company and another***, reported in ***2020 (1) TN MAC 1 (SC)***,

7. Despite name printed, none appeared on the side of the respondents.

8. In the light of the above submissions, now the point for consideration in this appeal is whether the Tribunal is right in awarding the compensation after holding that the deceased himself as a tort - feasor?

9. It is well settled that when the deceased himself as a tort -feasor, the method of multiplier and other aspect does not arise at all. The deceased admittedly borrowed the vehicle from his brother and drove the same in such a manner and died. When the deceased himself as a tort - feasor, except the personal accident coverage, he is not entitled to any compensation as settled position of law. In such a case, he stepped into the shoes of the brother. The accident took place in the year 2011, much prior to the amendment took place in the year 2019, for enhancement of P.A.coverage.

10. In such a view of the matter, on the date of accident, the policy covers only Rs.1,00,000/- towards the personal accident coverage and the amount awarded under the other heads is liable to be set aside. Accordingly, the award passed by the Tribunal is entirely set aside and the claimants are entitled to a sum of Rs.1,00,000/-. It is stated that the appellant/Insurance Company has already deposited the entire award amount. Therefore, except Rs.1,00,000/-, other amounts shall be refunded to the Insurance Company and they are entitled to get back the same.

11. In the result, the Civil Miscellaneous Appeal is allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

26.06.2023

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To

1.The Motor Accident Claims Tribunal,
Additional District Court,
Pudukottai.

2.The Record Keeper,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

N.SATHISH KUMAR,J.

akv

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