BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **12.06.2023**

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THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A.(MD).No.200 of 2021
and
Cross Objection (MD).No.5 of 2022
and
C.M.P.(MD).No.1695 of 2021

C.M.A.(MD).No.200 of 2021

National Insurance Company Limited,
represented by its Divisional Manager,
with its Divisional Office at
Anguvilas Buildings,
North Car Street, Nagercoil,
Kanyakumari District. ... Appellant

Vs.

1.Berkmans Johnson
2.Mary Thamarai Selvi
3.Anusindia
4.P.Manoharan

5.National Insurance Company Limited,
represented by its Branch Manager with its
Branch Office at II Floor,
K.K.Buildings, Aristo Junction,
Thampanoor, PB No.407,
Thiruvananthapuram 695 014. ... Respondents

PRAYER: Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the fair and decreetal order dated 22.10.2018 made in M.C.O.P.No.12 of 2015 on the file of the Motor Accident Claims Tribunal, Principal Sub Judge, Nagercoil.

For Appellant : Mr.S.Srinivasa Raghavan

For R1 to R3 : Mr.I.Robery Chandrakumar

Cross. Objection (MD).No.5 of 2022

1.Berkmans Johnson
2.Mary Thamarai Selvi
3.Anusindia ... Appellants

Vs.

1.National Insurance Company Limited,
represented by its Divisional Manager,
with its Divisional Office at
Anguvilas Buildings,
North Car Street, Nagercoil,
Kanyakumari District.

2.P.Manoharan

3.National Insurance Company Limited,
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Branch Office at II Floor,
K.K.Buildings, Aristo Junction,
Thampanoor, PB No.407,
Thiruvananthapuram 695 014. ... Respondents

PRAYER: The Cross Objection has been filed under Order 41 Rule 22 of C.P.C., r/w. Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 22.10.2018 made in M.C.O.P.No.12 of 2015 on the file of the Motor Accident Claims Tribunal, Principal Sub Judge, Nagercoil.

For Appellant : Mr.I.Robert Chandra Kumar

COMMON JUDGMENT

This appeal has been filed challenging the award passed by the Motor Accident Claims Tribunal, Principal Sub Judge, Nagercoil in M.C.O.P.No.12 of 2015, dated 22.10.2018.

2. The main ground urged before this court is that the deceased is a bachelor, at the time of accident and the Tribunal ought not to have followed the formula applicable to married persons in the case on hand. The Cross Objection has been filed by the claimants for enhancement of compensation.

3. The deceased is a bachelor, aged about 27 years and the claimants are his father, mother and sister. The deceased has completed his Polytechnic course and learnt Printing Technology in a printing press at Sivakasi for a period of one year. Thereafter, he went to Abudhabi and worked in Abudhabi Printing and Publishing Company from 10.11.2008 and earned 1400 dirhams equivalent to Rs.23,800/- per month. He came to his native place on 18.11.2013, for celebrating Christmas and New Year. On 22.12.2013 at about

20.45 hours, when the deceased was riding his motorcycle bearing Registration No.TN 75 7020, Anjugramam – Vazhukkamparai Main Road, near Murugan Petrol Bunk at Mylaudy Puthoor, the rider of the motor bike bearing Registration No.TN 74 AD 6078 in a rash and negligent manner overtook the motor bike of the deceased. As a result, the deceased lost his control and dashed against the front wheel of the first respondent bike and fell down and sustained injuries and succumbed to injuries on 24.12.2013. Hence, the petitioners have filed the claim petition before the Tribunal seeking compensation. The contention of the Insurance Company is that the accident was caused due to negligent riding of the deceased and the income of the deceased also denied. The third respondent / Insurance Company also took the same stand.

4. On the side of the petitioners, P.Ws.1 and 2 examined and Exs.P1 to P18 were marked and on the side of the respondents, R.Ws.1 and 2 were examined and Ex.R1 was marked.

5. The Tribunal, after considering the evidence of the witnesses and the final report also filed against the first respondent, has come to the conclusion that the first respondent rode the motorcycle in a rash and negligent manner, which resulted in accident. The negligence aspect was not challenged in the

appeal and only the method of formula adopted by the Tribunal is challenged in this appeal by the Insurance Company. Therefore, once the finding recorded on the basis of the appreciation of evidence, it has not been challenged and the same reached finality.

6. In such a view of the matter, now it has to be seen the other aspect. The Cross Objection has been filed for enhancement of the compensation. The Tribunal has fixed the notional income of the deceased at Rs.6,500/- per month. The Tribunal has disbelieved Ex.P5/salary certificate and Ex.P16/receipt of transfer of money, on the ground that no one has been examined to substantiate those documents.

7. Heard the learned counsel for the appellant and the learned counsel appearing for the respondents 1 to 3 and perused the materials available on record.

8. In the light of the above submissions, now the point for consideration in this appeal is whether the award amount passed by the Tribunal is just and reasonable?

9. Admittedly, the deceased was aged about 27 years. He was also working in Abudhabi for some time is also not disputed. To establish the fact that he has travelled to Abudhabi, Ex.P7/passport also filed. Though Ex.P5/salary certificate filed to show that the deceased was paid the monthly income of 1400 dirhams equivalent to Rs.23,800/- per month, the fact whether the said salary has been regularly credited to his bank account, there is no evidence available on record except Ex.P5/salary certificate.

10. Such being the position, the claimants take a specific stand as to the nature of the income derived by the deceased and they have also filed such documents to substantiate their claim. However, Ex.P16/receipt of transfer of money, appears to be relating to 16.11.2013, which is one year prior to the accident and except that, no other document has been filed. Therefore, in the absence of proof to indicate the salary and the income, Exs.P5 and P16 alone are not sufficient to come to the definite conclusion that the deceased was earning a sum of Rs.23,800/- per month. However, the fact remains that the deceased was aged about 27 years and he has also completed Polytechnic course and Ex.P9/Polytechnic Mark Sheet also filed in this regard.

11. Such being the position, even *de hors* the salary certificate, considering the age and his education, he doing any other work, he would have earned more than Rs.12,000/-. Hence, this Court has fixed the notional income of the deceased at Rs.12,000/- per month. The deceased was aged about 27 years and the proper multiplier is '17' and added 40% towards future prospects (Rs.12,000/- + Rs.4,800/- = Rs.16,800/-) and after deducting ½ share towards personal expenses, the total monthly income comes to Rs.8,400/- (Rs.16,800/- - Rs.8,400/-). Accordingly, the loss of dependency comes around Rs.17,13,600/- (Rs.8,400/- x 17 x 12). That apart, the Tribunal has granted only Rs.40,000/- towards loss of love and affection and the same is enhanced to Rs.1,20,000/- for all the claimants and the amount awarded by the Tribunal under the other heads is confirmed. Thus, the total compensation comes around **Rs.18,63,600/-** in the following manner:

S. No	**Description**	**Modified Award Amount**
1.	For loss of dependency	Rs.17,13,600/-
2.	For loss of love and affection	Rs.1,20,000/-
3.	For loss of estate	Rs.15,000/-
4.	For funeral expenses	Rs.15,000/-
	Total	**Rs.18,63,600/-**

12. The above amount shall carry interest at the rate of 7.5% from the date of petition till the date of realisation. The appellant/Insurance Company is directed to deposit the entire award amount within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the second claimant/mother is entitled to a sum of Rs.10,00,000/- and the claimants 1 and 3/the father and sister are equally entitled to a sum of Rs.4,31,800/-.

13. In the result, the Civil Miscellaneous Appeal filed by the Insurance Company is dismissed and the Cross Objection filed by the claimants is allowed. No cots. Consequently, the connected Miscellaneous Petition is closed.

12.06.2023

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To

1.The Motor Accident Claims Tribunal,
Principal Sub Judge,
Nagercoil.

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

N.SATHISH KUMAR,J.

akv

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