BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **20.06.2023**

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**THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR**

**C.M.A(MD)No.507 of 2020**
**and**
**C.M.P(MD)Nos.5475 of 2020 & 427 of 2022**

United India Insurance Company Limited,
Represented by it's Branch Manager,
Door No.254, Goodshed Street,
Madurai-1. ... Appellant/3rd Respondent

Vs.

1.Jeyaprakash

2.Sangeetha

3.Sasinthar ... Respondents/Petitioners 1-3

4.K.Prabhakaran

5.M.Manokaran ... Respondents/Respondents 1&2

**PRAYER:** Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, to set aside the judgment and decree, dated 16.10.2019 passed in M.C.O.P.No.15 of 2013 on the file of the Motor Accident Claims Tribunal and District and Sessions Court (Communal Clash Cases Court), Madurai.

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| For Appellant | : Mr.I.Suthakaran |
| For R1-R3 | : Mr.A.Liaket Ali |
| For R4 | : Mr.A.Kannan |
| For R5 | : No Appearance |

## JUDGMENT

The present appeal has been filed by the insurance company challenging the award passed by the Motor Accident Claims Tribunal, Madurai in M.C.O.P.No.15 of 2013.

2. According to the claimants, the deceased was aged 48 years and she was a home maker. While she was attempting to cross the road on 04.05.2011 at about 01.00 p.m, a two wheeler which was driven by the 1st respondent, owned by the 2nd respondent and insured with the 3rd respondent was driven in a rash and negligent manner and dashed against the deceased and she had sustained grievous injuries. Initially, she was admitted to Government Rajaji Hospital, Madurai. Later, she was shifted to Apollo hospital, Madurai. Since the doctors have expressed their inability to cure the patient, against medical advice, the claimants have discharged the deceased person and she passed away on her way to

home. The claimants have prayed for a sum of Rs.5,00,000/- towards compensation.

3. The 2nd respondent in the claim petition who is the owner of the two wheeler has filed a counter contending that the accident has taken place only due to the negligence on the part of the deceased and she had crossed the road without taking due care. The insurance company has filed a counter supporting the said case. The insurance company has further contended in their counter that the rider of the two wheeler was not having a proper and valid driving license at the relevant point of time. They have also contended that the owner of the two wheeler has not intimated about the said accident till date which is a clear policy violation.

4. The tribunal after considering the oral and documentary evidence has arrived at a finding that the accident has taken place only due to the rash and negligent driving on the part of the driver of the two wheeler. The tribunal further found that the deceased was originally admitted to Government Rajaji Hospital on 04.05.2011 and due to deteriorating health, she was shifted to Apollo Hospital on 05.05.2011

from where she was discharged as against the medical advice and she had passed away while on her way to home. The tribunal has further referred to Exhibit P.3 which is the Motor Vehicle Inspector's report to the effect that the front left side indicator is broken which would establish the involvement of the vehicle in the said accident. Based upon the above said facts, the tribunal has arrived at a finding that the accident has taken place only due to the rash and negligent driving on the part of the driver of the two wheeler.

5. Considering the fact that the deceased was a home maker, the tribunal has relied upon a judgment of the Hon'ble Supreme Court in ***Syed Sadiq Vs. The Divisional Manager, United India Insurance Company*** and fixed the notional income at Rs.6,500/-. After deducting 1/3rd towards personal expenses, the tribunal has arrived at a monthly income at Rs.4,334/- and applying a multiplier of 13, the loss of income was decided at Rs.6,76,104/-. A sum of Rs.40,000/- each has been awarded to the claimants 1 to 3, another sum of Rs.10,000/- has been awarded towards transport expenses, a sum of Rs.15,000/- has been awarded towards funeral expenses. Totally, a sum of Rs.8,21,104/- has been awarded. Challenging the said award, the present appeal has been filed by the insurance company.

6. The learned counsel appearing for the appellant had contended as follows:

(a) The deceased was originally admitted to Government Rajaji Hospital, Madurai as an injury case. Later, she has been shifted to Apollo Hospital. However, the reason or the cause for the death has not been established by the claimants. Unless the claimants establish the connection between the accident and the death, the present claim petition claiming compensation as a death case is not maintainable.

(b) At the time of the accident, the two wheeler was driven by one Pragatheeswar. Since the said Pragatheeswar was not having an effective driving license, another person, namely K.Prabhakaran has been set up as a driver of the said two wheeler. Therefore, the company is not liable to pay any compensation in view of the fact that it is a clear case of breach of policy condition by permitting a person to drive a vehicle without a valid and effective driving license.

(c) The deceased being a home maker, the tribunal ought not to have taken into consideration the notional monthly income of Rs.6,500/-.

He prayed for reducing the quantum, in case if the Court arrives at the finding that the accident has taken place due to the rash and negligent driving on the part of the driver of the two wheeler.

7. Per contra, the learned counsel appearing for the respondents/claimants had contended that though originally the deceased was admitted to Government Rajaji Hospital, Madurai, due to deterioration of health, she was shifted to Apollo hospital. The Apollo hospital had issued the discharge summary under Exhibit P.7 which would clearly indicate that the deceased was solely relying upon ventilater at the time when she was discharged. He further relied upon the deposition of the Apollo hospital doctor who was examined as P.W.6. According to the learned counsel appearing for the claimants, the doctor has categorically stated that if the ventilation support is removed, the survival of the patient can be only for another 24 or 48 hours. Therefore, the claimants have clearly established the connection between the accident and the death.

8. The learned counsel appearing for the respondents/claimants have further contended that though the tribunal has taken the notional

income at Rs.6,500/- based upon the case of ***Syed Sadiq Vs. The Divisional Manager, United India Insurance Company***, the tribunal has not awarded any amount towards future prospects. He prayed for adding 25% towards future prospects considering the age of the deceased, namely 48 years. Hence, he prayed for enhancement of compensation under the head of future prospects.

9. I have carefully considered the submissions made on either side.

10. The primary contention on the part of the learned counsel appearing for the insurance company is that the claimants have not established the connection between the accident and the cause of death. A perusal of Exhibit P.7 which is the discharge summary issued by the Apollo hospital indicates that at the time of discharge, the patient was unconscious and she was not responding to pain stimulator or reacting to light. In fact, as per the summary, the hospital authorities have explained the poor prognosis to the patient attenders. The Apollo hospital doctor, namely S.Sundarrajan has been examined as P.W.6 on the part of the claimants. He has categorically pointed out that the deceased had sustained grievous head injury. He has also pointed out that if the

treatment is stopped, there is every likelihood that she would die immediately. Therefore, it is clear that the claimants have established the connection between the accident and the death of the deceased person.

11. The Hon'ble Supreme Court in a judgment reported in ***2021 (1) TN MAC 785 (Rajendra Singh & Others Vs. National Insurance Co. Ltd., & Others)*** has awarded 40% towards future prospects in the case of a home maker who passed away in an accident in the year 2012 who was aged 30 years at the time of the accident. Considering the fact that the deceased was 48 years old at the time of the accident, this Court is inclined to add 25% towards future prospects. The tribunal has taken the notional monthly income at Rs.6,500/-. When 25% is added to Rs.6,500/-, her monthly income would be Rs.8,125/-. After deducting 1/3rd towards personal expenses, her notional monthly income would come at Rs.5,417/-. After applying a multiplier of 13, the total compensation under the head of loss of income would be Rs.8,45,052/-. The award of the tribunal under the other heads are hereby confirmed. The total award amount of the tribunal is hereby enhanced form Rs.8,21,104/- to Rs.9,90,052/-. The insurance company is directed to deposit the enhanced award amount within a period of eight (8) weeks

from the date of receipt of a copy of this order. The first claimant, namely the husband shall be entitled to Rs.4,00,000/-. The other two claimants shall be equally entitled to the balance amount. The award amount carries interest at the rate of 7.5% from the date of claim petition. The claimants shall deposit the additional Court fee before drafting of decree.

12. The Civil Miscellaneous Appeal is disposed of on the above said terms. No costs. Consequently, connected Civil Miscellaneous Petitions are closed.

**20.06.2023**

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

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To

1.The Motor Accident Claims Tribunal
and District and Sessions Court
(Communal Clash Cases Court),
Madurai.

2.The Section Officer,
Vernacular Section,

**R.VIJAYAKUMAR,J.**

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Judgment made in
C.M.A(MD)No.507 of 2020

20.06.2023