BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **09.06.2023**

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THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.1375 of 2015
and
M.P(MD)No.1 of 2015

National Insurance Company Limited,
Through its Divisional Manager,
37-C, S.N.High Road,
Tirunelveli. ... Appellant/3rd Respondent

Vs.

1.Josphine

2.Soosai Antony Durai

3.Vinothkumar

4.Sahaya Vijayabalan ... Respondents/Petitioners 1-4

5.Kannan

6.Ponnukutti ... Respondents/Respondents 1&2

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, to set aside the judgment and decree passed by the Motor Accident Claims Tribunal, III Additional District Court, Tirunelveli in M.C.O.P.No.1203 of 2013, dated 07.04.2015.

For Appellant : Mr.D.Sivaraman

For R2 : No Appearance

JUDGMENT

The present appeal has been filed by the insurance company challenging the award passed by the Motor Accident Claims Tribunal, Tirunelveli challenging the negligence and quantum.

2. According to the claimant, the deceased is a vegetable wholesale vendor aged about 49 years and he was travelling along with vegetables from Udangudi market to Nazareth market in a Swaraj Mazda van, siting in the left side of the cabin. The driver of the said van had driven the vehicle in a rash and negligent manner and the left side cabin door of the van got automatically opened and the deceased, sitting near the cabin, fell down on the road and sustained serious head injuries. He later succumbed to the injuries. According to the claimants, the deceased was earning a sum of Rs.15,000/- per month and they claimed compensation of Rs.15,00,000/-.

3. The owner of the Swaraj Mazda van and the driver have remained ex parte and the insurance company had filed a counter contending that the deceased was in a a drunken mood at the time of the accident and he was attempting to climb upon the vehicle and he had fallen down on his own and sustained injuries and passed away. Therefore, the accident has not taken place due to the rash and negligent driving on the part of the driver of the Swaraj Mazda van. Therefore, they are not liable to pay any compensation. The quantum of compensation was also disputed by the insurance company.

4. The tribunal after considering the oral and documentary evidence, came to a conclusion that the accident has taken place only due to the rash and negligent driving on the part of the driver of the Swaraj Mazda van. That apart, the deceased was travelling along with the goods he has purchased, from Udangudi market and therefore, he cannot be considered to be a gratuitous passenger. The tribunal further found that there is no proof for establishing the income of the deceased person and therefore, it has notionally fixed the monthly income of Rs.6,500/- per month. Thereafter, the tribunal has added 15% towards future prospects and after deducting 1/4th towards personal expenses, arrived at a monthly

income of Rs.5,600/-. Thereafter, multiplier of 11 was applied and the loss of income was arrived at Rs.7,39,200/-. Under the head of conventional damages, a sum of Rs.75,000/- was awarded towards loss of consortium, a sum of Rs.50,000/- towards loss of love and affection, a sum of Rs.10,000/- towards transport expenses, a sum of Rs.25,000/- towards funeral expenses and totally, a sum of Rs.8,99,200/- was awarded. This award is under challenge in the present appeal.

5. According to the learned counsel appearing for the appellant, accident register has been marked as Exhibit R.4. P.W.2 has given information to the doctor in the said accident report. As per the record found in the accident report, the deceased had fallen on his own while attempting to climb upon the van. Further, he was under the influence of alcohol at the time of accident. Therefore, according to the learned counsel appearing for the appellant, the accident has not taken place in the manner as contended in the claim petition. When the vehicle was stationary, the deceased had attempted to climb upon the vehicle and due to the drunken mood, he had fallen down and had passed away. There is no accident whatsoever involving the said vehicle which is insured. Hence, the company is not liable to pay any compensation whatsoever.

He has further contended that the tribunal has arrived at a finding that the deceased is aged about 51 years and being a self employed person, only 10% should have been added towards future prospects. Hence, he prayed for allowing the appeal.

6. Though the claimants have been served, they have neither appeared in person nor through counsel.

7. I have carefully considered the submissions made on the side of the appellant.

8. It is the specific case of the claimants that the deceased had alighted the cabin of the van at Udangudi market with vegetables which he had purchased. The van was moving towards Nazareth market. In between, this accident is said to have taken place at Maruthoor Karai on Udangudi - Nazareth main road. Therefore, it is clear that the deceased was already inside the cabin from Udangudi market. The reference relating to climbing of the vehicle in mid-way by the deceased person is not true in view of the specific contentions of the claimants. No oral or documentary evidence has been let in on the side of the insurance

company to show that the deceased person had not entered into the vehicle at Udangudi market, but he attempted to enter into the vehicle in the mid-way. Therefore, this Court is not inclined to accept the case of the insurance company that the deceased had fallen on his own while attempted to alight the van.

9. Though it is seen from the medical records that the deceased was under the influence of alcohol, it is nobody's case that he was driving the vehicle. Therefore, whether the claimant was under the influence of alcohol or not is not going to decide the liability of the owner of the van or the insurance company.

10. As rightly pointed out by the learned counsel appearing for the appellant, as per the judgment of the Hon'ble Supreme Court reported in ***2017 (16) SCC 680 (National Insurance Company Limited Vs. Pranay Sethi & Others)***, only 10% should be added for future prospects for the self employed, who is aged more than 50 years at the time of the accident. However, the tribunal has added 15% towards future prospects. The tribunal ought to have awarded Rs.40,000/- for each one of the claimants towards loss of consortium/loss of love and affection which

would arrive at Rs.1,60,000/-. However, only a sum of Rs.1,25,000/- has been awarded towards loss of consortium / loss of love and affection. Considering the fact that the deceased was taken by ambulance to Tiruchendur hospital and thereafter, he was taken to Sathankulam, this Court finds that the award of Rs.10,000/- for transportation is also on the lesser side. Therefore, this Court is not inclined to disturb the total award passed by the tribunal.

11. In view of the above said facts, there are no merits in the appeal. Hence, this Civil Miscellaneous Appeal stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

09.06.2023

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

1.The Motor Accident Claims Tribunal,
III Additional District Court,
Tirunelveli.

2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court, Madurai.

R.VIJAYAKUMAR,J.

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Judgment made in
C.M.A(MD)No.1375 of 2015

09.06.2023