BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **20.03.2023**

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)Nos.50 of 2015 & 845 of 2019

C.M.A(MD)No.50 of 2015:

The Branch Manager,
National Insurance Company Limited,
No.63, West Prathakchanam Road,
Karur. ... Appellant/2nd Respondent

Vs.

1.M.Vasuki

2.Minor.M.Thirukumaran
Represented by his Guardian & Mother
M.Vasuki.

3.Minor.M.Thirunirai
Represented by her Guardian & Mother
M.Vasuki.

4.R.Selvarani

5.M.Rajendran ... Respondents/Petitioners 1-5

6.D.Dhineshkumar ... Respondent/1st Respondents

7.R.Vellaisamy ... Respondent/3rd Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Order Section 173 of the Motor Vehicles Act, to set aside the judgment and decree of the Claims Tribunal in M.C.O.P.No.110 of 2012, dated 25.02.2014 on the file of Motor Accident Claims Tribunal, Principal District Court, Karur and allow the appeal.

For Appellant	: Mr.J.S.Murali
For R1-R4	: Mr.N.Sudhagar Nagaraj
For R5	: Mr.T.Selvakumaran
For R6&R7	: No Appearance

C.M.A(MD)No.845 of 2019:

1.M.Vasuki

2.Minor.M.Thirukumaran

3.Minor.M.Thirunirai

4.R.Selvarani

5.M.Rajendran ... Appellants/Petitioners

(Appellants 2 & 3 represented by their guardian Mother M.Vasuki)

Vs.

1.D.Dhineshkumar

2.The Branch Manager,
National Insurance Co.Ltd.,
No.63, West Prathakchanam Road,
Karur.

3.R.Vellaisamy ... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Order Section 173 of the Motor Vehicles Act, to allow this appeal and enhance the award amount in M.C.O.P.No.110 of 2012 on the file of the Motor Accident Claims Tribunal, (Principal District Judge), Karur, dated 25.02.2014.

For A1-A4	: Mr.N.Sudhagar Nagaraj
For A5	: Mr.T.Selvakumaran
For R1 & R3	: No Appearance
For R2	: Mr.A.S.Mathialagan

COMMON JUDGEMENT

C.M.A(MD)nos.50 of 2015 and 845 of 2019 have been filed challenging an award passed by the Motor Accident Claims Tribunal, Karur in M.C.O.P.No.110 of 2012.

2. C.M.A(MD)No.50 of 2015 has been filed by the insurance company challenging the liability and quantum. C.M.A(MD)No.845 of 2019 has been filed by the claimants seeking enhancement.

3. The learned counsel appearing for the appellant/insurance company in C.M.A(MD)No.50 of 2015 had contended that the deceased

was riding on a bullock cart and at that point of time, a lorry coming from the opposite direction has dashed against the bullock cart and the deceased had died. According to the learned counsel appearing for the insurance company, the lorry driver did not have any driving license at that relevant point of time. Despite the said fact, the tribunal has awarded pay and recovery. Therefore, according to the learned counsel appearing for the appellant, when there is no driving license, pay and recovery order should not have been passed and the insurance company should have been exonerated.

4. I have carefully considered the submission on the issue of liability raised by the learned counsel appearing for the appellant/insurance company.

5. It is now settled position of law that even in case of no driving license, the Hon'ble Supreme Court has passed several judgments for pay and recovery alone. Therefore, the learned counsel appearing for the insurance company is not right in contending that the insurance company should have been exonerated and the pay and recovery order is wrong. The issue of quantum will be decided in the other appeal. The learned counsel appearing for the appellant had relied upon a judgment of the

Hon'ble supreme Court reported in ***2004 (1) TN MAC (SC) 211 (Oriental Insurance Co.Ltd., Vs. Shri Nanjappan & Others)*** Paragraph No.8, which is extracted as follows:

"8. Therefore, while setting aside the judgment of the High Court we direct in terms of what has been stated in Baljit Kaur's Case (supra) that the insurer shall pay the quantum of compensation fixed by the Tribunal, about which there was no dispute raised, to the respondent-claimants within three months from today. For the purpose of recovering the same from the insured, the insurer shall not be required to file a suit. It may initiate a proceeding before the concerned Executing Court as if the dispute between the insurer and the owner was the subject matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer. Before release of the amount to the insured, owner of the vehicle shall be issued a notice and he shall be required to furnish security for the entire amount which the insurer will pay to the claimants. The offending vehicle shall be attached, as a part of the security. If necessity arises the Executing Court shall take assistance of the concerned Regional Transport authority. The Executing Court shall pass appropriate orders in accordance with law as to the manner in which the insured, owner of the vehicle shall make payment to the insurer. In case there is any default it shall be open to the Executing Court to direct realization by disposal of the securities to be furnished or from any

other property or properties of the owner of the vehicle, the insured. The appeal is disposed of in the aforesaid terms, with no order as to costs."

6. In view of the above said judgment, the order of pay and recovery passed by the tribunal is hereby confirmed. As far as the issue raised by the learned counsel appearing for the appellant/insurance is concerned, this Court is of the view that the quantum fixed by the tribunal is on lesser side and therefore, no interference is called for. Hence, C.M.A(MD)No.50 of 2015 stands dismissed. No costs.

7. C.M.A(MD)No.845 of 2019 has been filed by the claimants seeking enhancement of the quantum fixed by the tribunal.

8. As per the claim of the claimants, the deceased was running and owning a bullock cart for hire and he was also taking tuition as a teacher. They have further contended that he was a Diploma holder in Teacher Education as per Exhibit P.4. The tribunal has fixed the monthly income at the rate of Rs.6,000/- and arrived at the total loss of income at Rs.9,18,000/-. However, the learned counsel appearing for the appellants after pointing out Exhibit P.4 Diploma in Teacher Education and

consider the age of the deceased, the future prospects ought to have been fixed at the rate of 40%. He further contended that loss of consortium to the wife and filial consortium in favour of both the minor children should have been Rs.40,000/- each. However, the tribunal has awarded Rs.30,000/- to the wife and Rs.10,000/- each to the minor children and he prayed for enhancing the compensation under these heads.

9. However, the learned counsel appearing for the respondent/insurance company had contended that the question of awarding future prospects will not arise on the facts of this case and the consortium has been properly fixed by the tribunal and no interference is called for by this Court.

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

11. As rightly contended by the learned counsel appearing for the appellants, the deceased was working in an unauthorized sector and the age was below 40 years at the time of the accident. Therefore, 40% should have been taken into consideration under the heads of future prospects. If 40% is added to Rs.9,18,000/-, then an additional sum of

Rs.3,67,200/- has to be awarded under the head of future prospects.

12. As far as payment of consortium is concerned, the wife as well as the minor children would be entitled to Rs.40,000/- each. However, the tribunal has awarded just Rs.30,000/- to the wife and Rs.10,000/- each to the minor children. Therefore, this Court is of the opinion that an additional sum of Rs.10,000/- could be paid to the wife and each minor children would be entitled to an additional sum of Rs.30,000/- each. Therefore, under the head of loss of consortium, another sum of Rs.70,000/- could be paid. This Court is not inclined to interfere in the quantum of compensation awarded by the tribunal under any other heads.

13. Considering the above said facts, this Court is inclined to award an additional compensation of Rs.4,37,200/- (Rupees Four Lakh Thirty Seven Thousand and Two Hundred only). This additional compensation shall carry an interest of 7.5% from 02.04.2012 till the date of realization. The insurance company is granted eight (8) weeks time to deposit the enhanced award amount.

14. With the above said observations, C.M.A(MD)No.845 of 2019 stands partly allowed to the extent as stated above.

15. C.M.A(MD)No.50 of 2015 stands dismissed and C.M.A(MD)No.845 of 2019 stands partly allowed. No costs.

20.03.2023

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

To

1.The Motor Accident Claims Tribunal,
Principal District Court,
Karur.

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

R.VIJAYAKUMAR ,J.

gbg

Order made in
C.M.A(MD)Nos.50 of 2015 & 845 of 2019

20.03.2023