BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.04.2023

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THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.78 of 2017
and
C.M.P(MD) No.682 of 2017

The Divisional Manager,
The New India Assurance Company Ltd.,
Market Road,
Thanjavur. ....Appellant/2nd Respondent

Vs.

1. Krishnamoorthy

2. Shanthi
3. Minor. Deivaraj
4. Minor. Santhosh
5. Minor. Naveen
(Minors R3 to R5 are represented through father and natural guardian of first respondent)
.... Respondents/Petitioners

6. Premavathy .... 6th Respondent/ 1st Respondent
7. Stalin .... 7th Respondent/ 3rd Respondent

8. The Divisional Manager,
The United India Insurance Company Ltd,
South Street,
Thanjavur. ... 8th Respondent/4th Respondent

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, challenging the award and decree, dated 27.11.2015 made in M.C.O.P.No.182 of 2011 on the file of Motor Accidents Claims Tribunal (Special District Court), Thanjavur.

For Appellant : Mr.B.Vijay Karthikeyan

For Respondents : Mr.J.S.Murali – for R8
: No appearance – R1 to R7

J U D G M E N T

The present Civil Miscellaneous Appeal has been filed by the New India Assurance Company challenging the award passed by the Motor Accidents Claims Tribunal (Special District Court), Thanjavur, M.C.O.P.No.182 of 2011.

2. The claimants have contended that the deceased was a Coolie, earning a sum of Rs.5,000/- (Rupees Five Thousand only) per month. While the deceased was travelling in a trailer on 17.02.2009, at about 12.00 midnight, for the purpose of carrying sand, the Tractor driver had driven the vehicle in a rash and negligent manner and the vehicle capsized and deceased had fallen down and died on the spot.

3. According to the claimants, he was a load man in the said vehicle. The claimants have further contended that the first respondent in the claim petition is the owner of the Tractor, the second respondent is the Insurance Company, the third respondent is the owner of the Trailer and the fourth respondent is the Insurance Company of the Trailer.

4. The Tribunal, after considering the oral and documentary evidence arrived at a finding that the accident has happened only due to the rash and negligent driving of the Tractor driver. The Tribunal further found that even though, it is contended that the Tractor driver did not have any valid driving license, no efforts have been taken to initiate proceedings. However, the Tribunal had directed the Insurance Company of the Tractor to pay the compensation and to recover the same from the owner of the Tractor.

5. The Tribunal proceeded to fix the monthly income of the deceased at Rs.5,000/- (Rupees Five Thousand only) and added 50% towards future prospectus and applied multiplier of "18" and arrived at

the total compensation under the head of loss of income at Rs.8,10,000/- (Rupees Eight Lakhs and Ten Thousand only) and other conventional damages were added and ultimately a sum of Rs.9,85,000/- (Rupees Nine Lakhs and Eighty Five Thousand only) was awarded as compensation. This award is under challenge by the Insurance Company of the Tractor.

6. The learned counsel appearing for the appellant had contended that, admittedly, the deceased had travelled only on the Trailer and not on the Tractor. Therefore, the Insurance Company of the Trailer alone should have been mulcted with the liability to pay the compensation. He further contended that the Tribunal ought not to have awarded interest at the rate of 9% per annum. The learned counsel appearing for appellant relied upon the judgment of our High Court reported in (***2001) 3 MLJ 496 (K.M.Manoharan and others Vs. Kandasamy and others)*** to contend that where the Tractor and Trailer are involved in the accident, the owner of the Tractor as well as the Trailer should be jointly and severally liable to pay the compensation and insurers of both the vehicles are liable to indemnify the claim made against them.

7. The learned counsel appearing for the United India Insurance Company, which has insured the Trailer, had contended that the future prospectus cannot be fixed at 50% for an agricultural Coolie and only 40% should have been added to the notional income of Rs.5,000/- (Rupees Five Thousand only). He further contended that already pay and recovery has been ordered by the Tribunal on the ground that the driver of the first respondent was not holding a badge for driving the vehicle which weighs more than 7500 Kg.

8. Though the claimants have been served, there is no appearance for them either in person or through their counsel.

9. I have carefully considered the submissions made by the learned counsel on the side of the Insurance Company.

10. Even as per the admitted case of the claimants, the deceased had travelled only on the Trailer and not on the Tractor. At the time of the accident, the Trailer was attached to the Tractor. Therefore, the liability has to be shared between the owner of the Tractor and the Trailer

and consequentially the respective the Insurance Companies should be made liable to indemnify the claim. In view of the judgment of our High Court reported in (***2001) 3 MLJ 496 (K.M.Manoharan and others Vs. Kandasamy and others),*** this Court is of the opinion that the liability has to be shared between the Insurance Company of the Tractor and the Insurance Company of the Trailer.

11. As rightly pointed out by the learned counsel appearing for the appellant, the Tribunal ought not to have awarded interest at the rate of 9%. Therefore, this Court is of the opinion that any award amount fixed by the Court/Tribunal would attract any interest at the rate of 7.5% from the date of the claim petition.

12. Further, as rightly pointed out by the learned counsel appearing for the eighth respondent (Insurance Company of the Trailer) that the future prospectus of the deceased ought not have been fixed at 50%. Therefore, in view of the fact that the deceased was working in an un-organized sector, the future prospectus should be fixed only at 40%. In view of the above said discussion, the compensation under the head of

loss of income is as follows:

(i) The Monthly Income being Rs.5,000/- (Rupees Five Thousand only) and if 40% is added towards future prospectus, the Total income per month would be Rs.7,000/- (Rupees Seven Thousand only). Considering the fact that the deceased was a bachelor after deducting 50% the monthly income would be Rs.3,500/- (Rupees Three Thousand and Five Hundred only) and loss of income would be (3500x 12x 18 = 7,56,000/-) (Rupees Seven Lakhs and Fifty Six Thousand only) instead of Rs.8,10,000/- (Rupees Eight Lakhs and Ten Thousand only) fixed by the Tribunal. The award of the Tribunal under the other heads are hereby confirmed.

13. The total award amount is reduced from Rs.9,85,000/- (Rupees Nine Lakhs and Eighty Five Thousand only) to Rs.9,31,000/- (Rupees Nine Lakhs Thirty One Thousand only)

14. The award of the Tribunal is modified to the following effect:

(i) The Total award of Rs.9,31,000/- (Rupees Nine Lakhs Thirty

One Thousand only) shall be paid by the second respondent and fourth respondent Insurance Company equally;

(ii) After satisfying the award the respondents 2 and 4 are entitled to recover the same from the respondents 1 and 3 in the claim petition by filing execution proceedings in M.C.O.P.No.182 of 2011.

(iii) Following the judgment of the Honourable Supreme Court reported in ***(2004) 13 SCC 224 (Oriental Insurance Company Ltd., Vs. Nanjappan and others)*** the compensation amount will carry interest at the rate of 7.5% from 21.12.2010 on wards. In other respects the award of the Tribunal is confirmed.

15. Accordingly, this Civil Miscellaneous Appeal is allowed to the extent as stated above. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

11.04.2023

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

1.The Motor Accidents Claims Tribunal,
(Special District Court),
Thanjavur.

2. The Divisional Manager,
The United India Insurance Company Ltd,
South Street,
Thanjavur.

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

R.VIJAYAKUMAR,J.

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Judgement made in
C.M.A(MD)No.78 of 2017

11.04.2023