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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **13.02.2024**

CORAM

THE HON'BLE MRS.JUSTICE S.SRIMATHY

C.M.A(MD)No.13 of 2021
and
C.M.P.(MD)No.110 of 2021

Chola Mandalam General Insurance
Company Limited,
2nd Floor, No.41, Tab Complex,
Bharathidasan Road, Cantonment,
Trichy-1. ... Appellant

Vs.

1.Pavunammal

2.Punithavalli

3.Minor Punniamoorthy,
represented by his next friend and Guardian
Mother 1st respondent Pavunammal.

4.A.Raja ... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act 1988, against the judgment and decree made in M.C.O.P.No.966 of 2017, on the file of the Motor Accident Claims Tribunal, (Special District Judge), Tiruchirapalli, dated 10.02.2020.

For Appellant : Mr.K.R.Shivashankari
For R1 to 3 : Mr.C.Deepak
R3 : Represented by R1
For R4 : No appearance

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JUDGEMENT

This Civil Miscellaneous Appeal is filed by the Insurance Company.

2. It is a case of fatal. The contention of the Insurance Company is that the age of the deceased is above 60 and hence the multiplier of 9 is not applicable. In other words, the claimant has not proved the age of the deceased is below 50, so that the multiplier of 9 could be applied.

3. However, this plea of the Insurance Company was vehemently opposed by the claimants and had produced the Aadhar Card as well as latest ration card wherein it indicates the date of birth of the deceased as 27.11.1960. If this date of birth is taken into account, the age of deceased is 57, then the multiplier of 9 is applicable. Therefore, the Tribunal has taken the multiplier correctly. Therefore, this Court is not inclined to entertain the plea of the Insurance Company.

4. As far as the other pleas are concerned, the Tribunal has granted parental consortium as well as loss of love and affection. As per the judgment rendered by the Hon'ble Supreme Court in the case of ***National Insurance Company Limited Vs. Pranay Sethi and others*** reported in ***2017 (2) TN MAC 609 (SC)***, the Court

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can grant either under the head of parental consortium or under the head of loss of love and affection but cannot grant under both the heads. As far as the consortium to the wife is concerned, the Tribunal has granted Rs.40,000/-, this Court is inclined to increase the same to Rs.50,000/-. As far as the parental consortium to the claimants 2 and 3 is concerned, the Tribunal has granted Rs. 80,000/-, this Court is inclined to increase the same to Rs.1,00,000/-. However, for love and affection, the Tribunal has granted Rs.1,00,000/- and the same is declined. The amount granted by the Tribunal under other heads are confirmed. This Court is modifying the compensation as under:

Head	Amount
Loss of Dependency	Rs.7,93,800/-
Consortium to the 1st claimant, the wife of the deceased	Rs.50,000/-
Parental consortium to the claimants 2 and 3, the children of the deceased (Rs. 50,000*2)	Rs.1,00,000/-
Transport Expenses	Rs.7,000/-
Loss of Estate	Rs.15,000/-
Funeral Expenses	Rs.15,000/-
Total	Rs.9,80,800/-

Hence, the total compensation awarded by the Tribunal is Rs.10,50,800/- and the same is reduced to Rs.9,80,800/-.

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5. As far as the liability is concerned, the Insurance Company submitted that the driver was not having valid license and hence the Insurance Company is not liable. However, the RTO officials while deposing before the Tribunal has simply stated if the license number is provided, they will be able to trace the license. This statement cannot be accepted, because if the name of the person is given, the officials could trace from their records whether the driver was having license or not. However, this Court is simply recording the said contention and leaving the question open, if in future the owner of the vehicle could lay his hands and prove the license is available, he can produce the same. Since as on date the fact remains that the driving license is not available then the Insurance Company is liable to pay and recover from the owner of the vehicle.

6. Hence, the Insurance Company is directed to pay and recover from the owner of the vehicle / 4th respondent herein. The appellant Insurance Company shall deposit Rs.9,80,800/- with interest at the rate of 7.5% per annum and costs to the credit of M.C.O.P., on the file of claims Tribunal, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the claimants are permitted to withdraw their

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shares (1st claimant is entitled to Rs.3,80,800/-, 2nd claimant is entitled to Rs. 3,00,000/-, 3rd claimant is entitled to Rs.3,00,000/-) with proportionate accrued interests and costs, less the amount already withdrawn by them, if any, by filing appropriate application before the Tribunal. The Tribunal is directed to deposit the share of the minor child in a nationalized bank until the child attains majority. The first respondent herein, who is the mother/guardian, is permitted to withdraw the interest amount once in three months. The appellant Insurance Company is entitled to recover the same from the owner of the vehicle / 4th respondent herein, by way of filing Execution Petition, without actually filing a suit as held by Hon'ble Apex Court in the judgment reported in ***2004 (2) CTC 464 (Oriental Insurance Co., Ltd., vs. Shri Nanjappan and others)***.

7. With the above said observation, the Civil Miscellaneous Appeal is party allowed. No costs. Consequently, connected miscellaneous petition is closed.

13.02.2024

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

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To

1. Motor Accident Claims Tribunal,
   (Special District Judge), Tiruchirapalli.

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

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S.SRIMATHY, J.

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