BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **01.07.2024**

CORAM

THE HON'BLE MRS.JUSTICE S.SRIMATHY

C.M.A(MD)No.903 of 2016
and
C.M.P.(MD).No.8293 of 2016

1. The Bajaj Allianz General Insurance Company Limited,
Represented by its Manager,
No.25, 26, Prince Towers,
4th Floor, College Road, Nungambakkam,
Chennai – 6.

2.The Bajaj Allianz General Insurance Company Limited,
Represented by its Branch Manager,
No.25, 26, Prince Towers,
4th Floor, College Road, Nungambakkam,
Chennai – 6. ... Appellants

Vs.

1.M.Rose Mary
2.A.Dhivya
3.A.Nithya
4.Sivakumar
5.Nainar Pillai
6.Ram Sankar
7.Babu
8.Ajaish Singh
9.Antony

10.The United India Insurance Company Limited,
Represented by its Branch Manager,
Ambasamudram and Post, Tirunelveli District,
having office at Assisi Building,
Nagercoil & Village,
Agasteeswaram Taluk,
Kanyakumari District.

11.Sureshkumar

12.The IFFICO Tookio General Insurance
Company Limited,
Represented by its Manager,
Preetham Plaza, Ponmeni,
Bye-Pass Road, Madurai-10,
Madurai District.

13.Narayanan ... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree in M.C.O.P.No.48 of 2013, dated 22.02.2016, on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Nagercoil.

For Appellant : Mr.J.S.Murali
For R1 to R3 : Mr.T.Selvakumaran
For R10 : Mr.C.Karthik
For R4 to 9, 11 & 12 : No Appearance

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JUDGMENT

The Insurance Company has preferred this Civil Miscellaneous Appeal.

2.It is a case of fatal. The respondents 1 and 2 in the claim petition are the tortfeasors who drove the vehicle and committed the accident. The respondents 3 and 4 in the claim petition has also responsible for the accident and their vehicle are registered with the Insurance Company. Likewise, due on this accident, subsequently, several vehicles hit and the accident has occurred.

3. The contention of the Insurance Company is that the respondents 1 and 2 were not having any licence and the deceased was not wearing any helmet. Therefore, the entire liability should be fixed on the respondents 1 and 2. The said contention cannot be accepted, since it is a beneficial legislation. Further the Tribunal has considered the evidence and has fixed the liability on four persons including the tortfeasors and their share is fixed as 25% each. Therefore, this Court is of the considered opinion that the sharing of liability is absolutely right.

4.The next contention of the Insurance Company is that the deceased was a bachelor. However, 1/3rd deduction of income for personal expenses is taken by the Tribunal. It is a settled proposition that for a bachelor 50% ought to be deducted for personal expenses. Therefore, this Court is deducting 50% for personal expenses.

5. The next contention of the Insurance Company is that the deceased was 26 years old but the Tribunal has fixed the multiplier as 18, which is incorrect. As per the table, 17 is the appropriate fixation of multiplier. Therefore, this Court is fixing the multiplier as 17.

6. The next contention of the Insurance Company is that the driver of the vehicle was not having any license and none was wearing helmet, hence the Insurance Company is praying to grant pay and recovery order. The said contention of the Insurance Company cannot be entertained. At the most, a portion of the award can be deducted. Therefore, this Court is deducting some amount from the total compensation which would be appropriate fixation.

7. The next contention of the Insurance Company is that the Tribunal has granted Rs.1,00,000/- for pain and suffering. Also granted Rs.1,00,000/- for loss

of love and affection for 1st claimant, Rs.50,000/- for 2nd claimant and Rs.50,000/- for 3rd claimant. It is seen that the claimants are mother and two sisters and one of the sister is already married and she is not dependant. Therefore, this Court of the considered opinion that the mother and two sisters are entitled to compensation under loss of love and affection and the same is fixed as Rs.1,20,000/- (Rs. 40,000/-*3). As far as pain and suffering is concerned, the same is deleted. The 3rd claimant namely Nithya is married and settled. Therefore, she is entitled to Rs. 40,000/- alone. The balance amount shall be equally apportioned between the mother and unmarried sister (claimants 1 and 2)

8.The modified award amount granted by this Court is as under:

Annual Income	Rs.96,000/-
Multiplier	17
Total (Rs.96,000/- * 17)	Rs.16,32,000/-
Deduction of 50% of income towards personal expense	- Rs.8,16,000/-
After deduction	Rs.8,16,000/-

Sl. No.	Heads	Award granted by Tribunal	**Award granted by this Court**	Enhanced / Confirmed / Reduced
1.	Loss of Income	Rs.11,52,000/-	Rs.8,16,000/-	Enhanced
2.	Pain and Suffering	Rs.1,00,000/-	Nil	Reduced
3.	Funeral Expense	Rs.25,000/-	Rs.25,000/-	Confirmed
4.	Transport Expense	Rs.5,000/-	Rs.5,000/-	Confirmed
5.	Loss of Love and Affection	Rs.1,00,000/- (1st claimant) Rs.50,000/- (2nd claimant) Rs.50,000/- (3rd claimant)	Rs.1,20,000/- (Rs.40,000/- *3)	Reduced
	Total	Rs.14,82,000/-	**Rs.9,66,000/-**	**Reduced**

Thus, the total compensation granted by the Tribunal to the tune of Rs.14,82,000/- is reduced to Rs.9,66,000/- by this Court. The compensation shall be paid as per the ratio below:

The respondents 4 and 5 shall pay 25%, the appellant shall pay 25%, the 10th respondent shall pay 25% and the 12th respondent shall pay 25% of the compensation to the claimants.

9. i)The appellant Insurance Company is directed to deposit Rs.2,41,500/- 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 six weeks from the date of receipt of a copy of this judgment.

ii)The 10th respondent Insurance Company is directed to deposit Rs.

2,41,500/- with interest at the rate of 7.5% per annum 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 six weeks from the date of receipt of a copy of this judgment.

iii) The 12th respondent Insurance Company is directed to deposit Rs. 2,41,500/- with interest at the rate of 7.5% per annum and 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 six weeks from the date of receipt of a copy of this judgment.

iv) The respondents 4 and 5 are directed to deposit Rs.2,41,500/- jointly or seperately with interest at the rate of 7.5% per annum 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 six weeks from the date of receipt of a copy of this judgment.

v) On such deposits, the claimants are permitted to withdraw their shares (the claimants 1 to 3 are entitled to Rs.4,63,000/-, Rs.4,63,000/- and Rs.40,000/- respectively) with proportionate accrued interests and costs, less the amount already withdrawn by them, if any, by filing appropriate application before the Tribunal.

vi)The appellant and the respondents 4, 5, 10 and 12 shall withdraw the excess amount, if any.

10. With the above said directions, the Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

01.07.2024

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

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To

1. The Motor Accident Claims Tribunal,
   Chief Judicial Magistrate Court, Nagercoil.

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

S.SRIMATHY, J.

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C.M.A(MD)No.903 of 2016

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