BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **04.03.2024**

CORAM

THE HON'BLE MRS.JUSTICE S.SRIMATHY

C.M.A.(MD)No.735 of 2023

1.Vijayalakshmi
2.Nithiya
3.Vidhya
4.Sathya
5.Minor.Sakthiganesh
6.Sengammal ... Appellants

(Minor 5th appellant represented by his mother and natural guardian the 1st appellant herein)

Vs.

1.Moorthi

2.TATA AIG General Insurance Company Limited,
No.1, Ethiraj Salai,
Egmore, Chennai. ... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree, dated 16.06.2023, passed in MCOP No.1236 of 2019 on the file of the Motor Accident Claims Tribunal, (Special District Judge), Thanjavur.

For Appellants : Mr.G.Karnan
For R2 : Mr.J.S.Murali

JUDGMENT

The claimants have preferred this Civil Miscellaneous Appeal.

2.It is a case of fatal. The contention of the claimants is that the Tribunal has come to the correct conclusion, however, the Tribunal has fixed the liability on the owner of the vehicle. Since the owner was not having policy to covering the 3rd party liability, the Tribunal has stated that in the policy, there is no mention of package policy. Therefore, the Tribunal has come to the conclusion that it is only Act policy and not a package policy or a comprehensive policy. But the learned Counsel for the claimants submitted that at the column of basic premium, a premium has been collected and it is stated as “basic 3rd party liability” including “TPPD” and an amount of Rs.887/- was collected as premium. This would indicate that the 3rd party liability is also included in the insurance policy. If 3rd party liability is included, it has to be construed as package policy or comprehensive policy. If a third-party liability is not included, then the appeal would come under act policy. Therefore, the Tribunal has erred in not taking the 3rd party liability which has been covered under the insurance policy. Therefore, this Court is of the considered opinion that the Insurance Company is liable to pay the compensation.

3. The next contention of the claimants is that the deceased was working as Mason and Plumber but the Tribunal has taken his notional monthly salary as Rs. 10,000/-. It is seen that the deceased was aged about 48 at the time of death. Therefore, the proper fixation of salary would not be Rs.10,000/- and the notional monthly salary should be fixed as Rs.11,000/- with 25% future prospects. The Tribunal has not granted any relief under the head of transportation, therefore, this Court is granting Rs.20,000/- under the head of transportation. This Court is also enhancing the funeral expenses from Rs.15,000/- to Rs.25,000/-.

4. The enhanced award amount granted by this Court is as under:

i.	Monthly income of the deceased	Rs.11,000/-
ii.	Loss of future income (25%)	Rs.2,750/-
Total		Rs.13,750/-
1/4th of income deducted towards personal expenses		- Rs.3,437/-
After deduction		Rs.10,313/-

Sl.No.	Head of Compensation	Modified award granted by this Court	Award granted by the Tribunal
1.	Loss of Income (Rs.10,313/-*12*13)	Rs.16,08,828/- (enhanced)	Rs.14,62,500/-
2.	Loss of Consortium (Rs.40,000/- * 6)	Rs.2,40,000/- (confirmed)	Rs.2,40,000/-
3.	Funeral Expenses	Rs.25,000/- (enhanced)	Rs.15,000/-
4.	Transportation	Rs.20,000/-	Nil
5.	Loss of Estate	Rs.18,000/- (confirmed)	Rs.18,000/-
Total compensation granted by this Court		**Rs.19,11,828/- (enhanced)**	**Total = Rs. 17,35,500/-**

5.The Insurance Company is directed to deposit Rs.19,11,828/- (Rupees Nineteen Lakh Eleven Thousand Eight Hundred and Twenty Eight only) 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 equal shares 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 appellant herein, who is the mother/guardian, is permitted to withdraw the interest amount once in three months. Once the minor claimant attains majority, he is permitted to withdraw his share with accrued interest. Since this Court is enhancing the compensation, the claimants are liable to pay the balance Court fee.

6. With the above said directions, the Civil Miscellaneous Appeal is partly allowed. No costs.

04.03.2024

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

Tmg

To

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

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

S.SRIMATHY, J.

Tmg

C.M.A(MD)No.735 of 2023

04.03.2024