BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 03.04.2024

PRONOUNCED ON : 17.04.2024

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THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.608 of 2018
and
CMP(MD).No. 7076 of 2018

The Branch Manager
The Oriental Insurance Company Ltd.,
No.6, North Cotton Road
Thoothukudi 628 002 .....Appellant/2nd Respondent

Vs.

1.Radha

2.Minor V.Balakrishnan

3.Thiraviyakani

4.Chitraivel ...Respondents 1 to 4/Petitioners 1 to 4

5.Chitrai Ponsekar ...5th Respondent/1st Respondent .

(Minor 2nd respondent is represented
through his mother, guardian and
next friend, the first respondent herein)

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PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988, to set aside the order of the Tribunal in MACT Cum I Additional District Judge, Thoothukudi made in MCOP.No.59 of 2015 dated 02.02.2018 and allow the appeal with costs.

For Appellant	: Mr.E.Chandrasekaran
For R1 to R4	: Mr.R.J.Karthick
For R5	: No appearance

J U D G M E N T

The appeal has been filed by the Insurance Company challenging the award passed by the Motor Accident Claims Tribunal, Thoothukudi in MCOP.No.59 of 2015. The appeal has been filed challenging the liability, negligence and quantum.

2.According to the claimants, when the deceased was travelling from East-West, the offending tractor cum trailer coming from the opposite direction, dashed against the two wheeler in which the deceased had sustained grievous injuries and later passed away.

3.According to the Insurance Company, the tractor cum trailer was travelling from East-West direction and it was parked on the southern most side of the road. The deceased had driven the two wheeler in a rash and negligent manner and dashed against the rear side of the trailer. The trailer has not been insured and therefore, they are not liable.

4.The respondents have marked the policy of the tractor cum trailer as Exhibit R4. A perusal of the policy clearly indicates that both the tractor and trailer have been insured. A sum of Rs.930/- has been paid as Trailer TP. Therefore, the contention of the learned counsel for the appellant that the trailer being not insured and they are not liable, is not legally sustainable and the said argument has to be rejected.

5.The learned counsel for the appellant had further contended that the two wheeler having dashed against the rear side of the parked tractor cum trailer at about 7.30 a.m, the entire negligence should be attributed to the rider of the two wheeler. When the deceased is the tort-feasor, the question of payment of compensation by the Insurance Company of the trailer does not arise. He relied upon Exhibit P7 rough sketch to contend that the accident has taken place on the southern side of the road and the two wheeler which had come from behind the tractor cum trailer had dashed against the rear side of the trailer.

6.The learned counsel for the appellant had further relied upon the Motor Vehicle Inspector's report of the tractor cum trailer and the two wheeler which are marked as Exhibits P4 and P5 and contended that the rear portion of the trailer alone has got dented and there is no damage to the front portion of the tractor. Therefore, it is clear that the accident has taken place only due to the negligence on the part of the rider of the two wheeler.

7.A perusal of Exhibit P7 sketch indicates that though the trailer has been parked on the southern side, it is not parked in the mud road but on the road itself. It is not brought on record whether any parking lights were blinking at the time of parking the vehicle. The tractor driver had parked the said vehicle and gone to take a tea. Therefore, the entire negligence cannot be attributed to the two wheeler rider.

8.The trial Court has not appreciated the said fact and has fixed the entire liability upon the driver of the tractor. Therefore, the finding relating to the negligence of the Tribunal is hereby set aside and the negligence is apportioned as 50-50 between the tractor driver and the deceased two wheeler rider.

9.The learned counsel appearing for the appellant had further questioned the quantum of compensation on the ground that without any proof, the trial Court has fixed the notional income at Rs.6500/-. He had further contended that a sum of Rs.1,00,000/- ought not to have been awarded for loss of love and affection. The Tribunal has further awarded a sum of Rs. 50,000/- towards loss of consortium to the wife of the deceased person. Hence, the amount awarded under these heads have to be reduced.

10.Per contra, the learned counsel for the claimants have contended that the Tribunal had fixed a sum of Rs.6500/- not only towards notional monthly income, but also towards the future prospects. However, the Court has not correctly fixed the notional income. As per the judgement of the Hon'ble Supreme Court reported in ***2014 (2) SCC 735*** (***Syed Sadiq Etc vs Divisional Manager,United India Insurance Companay Ltd.,),*** the Hon'ble Supreme Court has fixed the notional income at Rs.6500/- p.m for an accident that had taken place in the year 2008. Therefore, for an the accident that was taken place in the year 2012, the Tribunal ought to have taken the notional income at Rs.12000/- per month. He had further pointed out that there is no error on the part of the Tribunal in awarding loss of love and affection at Rs.25,000/- for each one of the claimants. He further pointed out that for loss of estate, no amount has been awarded. For Transport Expenses merely a sum of Rs.5000/- has been awarded. Hence, he sought to enhance the compensation.

11.The Hon'ble Supreme Court in a judgement reported in ***2014 (2) SCC 735 (Syed Sadiq Etc vs Divisional Manager,United India Insurance Companay Ltd.,)*** has fixed the notional monthly income at Rs.6500/- for an accident that had taken place in the year 2000. Hence, this Court is of the opinion that the notional monthly income for an accident that had taken place in the year 2012 could be fixed at Rs.8000/-. Since there are four dependents, 1/4th could be deducted towards personal expenses. Therefore, the notional monthly income would be at Rs.6000/-. As per the judgment of the Hon'ble

Supreme Court in Pranay Sethi's case reported in ***2017 (16) SCC 680*** (***National Insurance Co. Ltd vs Pranay Sethi),*** 40% could be added toward future prospects for a self employed who is below the age of 40 years. If 40% is added, the monthly income could be fixed at Rs.8400/-. The deceased being aged 32 years, the correct multiplier is 16. Therefore, the loss of income could be calculated as Rs.8400/-x12x16 is Rs.16,12,800/-. The loss of consortium for each one of the claimants could be awarded at Rs.40,000/-.

12.In view of the above said deliberation, this Court is inclined to modify the award of the Tribunal as follows:

Sl. No.	Head	Award of the Tribunal	Award of the High Court
1.	Loss of Income	Rs. 9,36,000.00	Rs.16,12,800.00
2.	Loss of love and affection	Rs. 1,00,000.00	Rs. 1,60,000.00
3.	Loss of consortium	Rs. 50,000.00	---
4.	Transport Charges	Rs. 5,000.00	Rs. 10,000.00
5.	Funeral Expenses	Rs. 15,000.00	Rs. 15,000.00
6.	Loss of estate	---	Rs. 15,000.00
	Total	Rs.11,06,000.00	Rs. 18,12,800.00

After deducting 50% towards Contributory Negligence, the modified award amount comes to Rs.9,06,400/-.

13.In view of the above said discussion, the award of the Tribunal is modified and reduced from Rs.11,06,000/- to Rs.9,06,400/-. The appellant/Insurance Company is directed to deposit the modified award amount with proportionate interest and costs, less the amount already deposited, if any, to the credit of the claim petition, within a period of six weeks from the date of receipt of a copy of this judgment.

14.On such deposit, the first claimant shall be entitled to Rs.4,00,000/-. The second claimant shall be entitled to Rs.1,50,000/-. The share of the second claimant/minor shall be deposited in a Nationalised Bank in Fixed Deposit till he attains majority. The interest accruing on such deposit is permitted to be withdrawn by the 1st respondent/mother of minor, once in three months directly from the bank. After attaining majority, it is for the minor claimant to withdraw his share by making necessary application before the Tribunal discharging guardianship. The third and fourth claimants shall be equally entitled to Rs.1,78,200/- each with interest at the rate of 7.5 % per annum. The excess amount, if any, deposited by the appellant/Insurance Company shall be refunded along with accrued interest. In other respects, the award of the Tribunal stands confirmed.

15.In the result, this Civil Miscellaneous Appeal is allowed to the extent as stated above. No costs. Consequently, connected miscellaneous petition is closed.

17.04.2024

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

1. The Motor Accident Claims Tribunal
/I Additional District Judge, Thoothukudi

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

R.VIJAYAKUMAR,J.

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Pre-delivery Judgement made in
C.M.A(MD)No.608 of 2018
and
CMP(MD).No. 7076 of 2018

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