BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **02.07.2024**

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THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.1086 of 2017

Ganesan (Died) ... Appellant/Petitioner

2.Santhakumari

3.Priya Dharshini

4.Pratheep

5.Anushiya ... Proposed Appellants

(Appellants 2 to 5 are brought on record as Lrs of the deceased sole appellant vide Court order, dated 14.09.2022 made in C.M.P(MD)Ns.5934, 5936 & 5937 of 2022.)

Vs.

1.S.Kuljin

2.P.Gilbert

3.The National Insurance Company Ltd.,
Represented by its Branch Manager,
Nagercoil,
Nagercoil Village,
Kanyakumari District. ... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988, to enhance the award amount in M.C.O.P.No.12 of

2014 on the file of the Motor Accident Claims Tribunal (Special Court), Nagercoil, dated 29.01.2016.

For Appellant	: Mr.C.Sankar Prakash
For R1	: No Appearance
For R2	: Mr.K.Ashok Kumar Ram
For R3	: Mr.R.Rajamani

JUDGMENT

The present appeal has been filed by the claimant challenging the award passed in in M.C.O.P.No.12 of 2014 on the file of the Motor Accident Claims Tribunal / Special Court, Nagercoil seeking enhancement of compensation.

2. The injured claimant (now deceased) had filed the said claim petition contending that he had met with an accident on 17.03.2008, in which he had sustained grievous injuries. He had prayed for a sum of Rs.5,00,000/- as compensation from the owner, driver and insurer of a tempo lorry which had dashed against him. In the claim petition, the claimant had filed Exhibits.P.8, P.9, P.10 and P.11 medical bills claiming the said amount. However, the tribunal has rejected the payment for the medical bills on the ground that the employer of the injured claimant had

taken a personal accident policy with ICICI Lombord and the employee had made a claim to the insurance company. Challenging that portion of the award, the present appeal has been filed.

3. According to the learned counsel appearing for the claimant, the injured claimant has already passed away and his wife and other legal heirs have been impleaded to prosecute the appeal. After the death of the original claimant, his employer, namely Tamil Nadu Mercantile Bank has not followed up the matter with the ICICI Lombord insurance company. Therefore, as on today, the medical bills have not been reimbursed either by the bank or by the ICICI Lombord insurance company. Therefore, the tribunal having mulcted the liability upon the driver of the tempo, National Insurance Company should be held liable for payment of the said amount also. The wife of the injured claimant (now deceased) has filed an affidavit to the effect that so far, neither the employer nor ICICI Lombord Insurance Company has paid the medical bills.

4. Per contra, the learned counsel appearing for the respondent insurance company has contended that if the claimant had received the personal accident compensation from ICICI Lombord insurance

company, they cannot make a double claim from the owner or the insurer of the offending vehicle. Hence, he prayed for sustaining the award passed by the tribunal.

5. I have carefully considered the submissions made on either side and perused the material records.

6. The claimant had filed Exhibits P.8 to P.11 towards medical expenses which totals to a sum of Rs.58,000/-. The employer of the injured claimant, namely Tamil Nadu Mercantile Bank has taken a personal accident policy for their staff members with the ICICI Lombord Insurance Company. The Mercantile Bank has also addressed communications under Exhibits P.13 and P.14 to their insurance company for re-imbursing the said medical bills. However, till the date of passing of the award, the amount has not been paid by ICICI Lombord Insurance Company. That apart, the personal accident policy coverage given by an employer is based upon a separate premium paid by the employer on behalf of the employee to another insurance company, namely ICICI Lombord Insurance Company. Therefore, the advantages received under the said policy cannot be adjusted towards the liability

upon the owner or the insurer of the tempo lorry. In such circumstances, this Court is of the considered opinion that the tribunal ought to have awarded the medical bills to an extent of Rs.58,000/-.

7. In view of the above said deliberations, the award of the tribunal is enhanced from Rs.79,000/- (Rupees Seventy Nine Thousand only) to Rs.1,37,000/- (Rupees One Lakh and Thirty Seven Thousand only). The enhanced award amount will carry an interest at the rate of 7.5% from the date of filing of the claim petition. The insurance company is directed to deposit the said award amount within a period of eight (8) weeks from the date of receipt of copy of this order. On such deposit, the appellants herein are entitled to withdraw the said amount equally among themselves.

8. This Civil Miscellaneous Appeal is partly allowed to the extent as stated above. No costs.

02.07.2024

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

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To

1.The Motor Accident Claims Tribunal
(Special Court),
Nagercoil.

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

R.VIJAYAKUMAR,J.

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Order made in
C.M.A(MD)No.1086 of 2017

02.07.2024