BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **18.03.2024**

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THE HON'BLE MRS.JUSTICE S.SRIMATHY

C.M.A(MD)No.614 of 2022
and
CROS.OBJ.(MD).No.5 of 2024

C.M.A(MD)No.614 of 2022:

Branch Manager,
National Insurance Company Limited,
First Floor, T.S.No.4132,
East Main Road,
Pudukottai – 624 001. ... Appellant

Vs.

1.A.Selvaraj
2.S.Latha
3.S.Rameshkumar
4.C.Kannan ... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act 1988, against the Judgment and Decree, dated 08.04.2021, made in in M.C.O.P.No.1023 of 2016 on the file of MACT, Special District Court, Tiruchirapalli.

For Appellant : Mr.A.S.Mathialagan
For R1 to R3 : Mr.R.Maheswaran
For R4 : No appearance

CROS.OBJ.(MD).No.5 of 2024:

1.A.Selvaraj
2.S.Latha
3.S.Rameshkumar ... Cross Objectors

Vs.

1.Branch Manager,
National Insurance Company Limited,
First Floor, T.S.No.4132,
East Main Road,
Pudukottai – 624 001.

2.C.Kannan ... Respondents

PRAYER: Cross Appeal is filed under Order 41 Rule 22 of the CPC, to call for the records and to set aside the Judgment and Decree dated 08.04.2021 passed by the Motor Vehicle Accidents Claims Tribunal Cum Special District Judge, Tiruchirapalli, in M.C.O.P.No.1023 of 2016 and to enhance the compensation by allowing this cross appeal in C.M.A.(MD).No.614 of 2022.

For Cross Objectors : Mr.R.Maheswaran

For R1 : Mr.A.S.Mathialagan

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JUDGMENT

The Insurance Company has preferred this appeal and the claimants have filed cross objection.

2.It is a case of fatal. The contention of the Insurance Company is that the accident took place in the middle of the road for which he has relied on the sketch which has been marked as Exhibit P5. On perusing the same, it is seen that the accident has occurred in the middle of the road. Even if there are other roads which are criss crossing each other, both the lorry and the car have travelled in the same road, but opposite direction and it is head on collision. In such circumstances, the contributory negligence ought to be fixed since both are liable.

3. Therefore, this Court is fixing 18% of contributory negligence on the deceased and 82% of contributory negligence on the lorry. Therefore, the Insurance Company is liable to pay the 82% which is fixed on the lorry.

4. The learned Counsel appearing for the claimants submitted that he has filed cross objection for enhancing the compensation. The learned Counsel is relying on the income tax returns filed for the assessment year 2014-2015. The accident occurred in the year 2015. But the learned Counsel appearing for the Insurance Company vehemently objected for taking the income tax return which was filed for the year 2014-2015, since it would cover only the financial year 2013-2014. Unless the income tax return for the year assessment year 2015-2016 is filed, the income of the deceased for the financial year 2014-2015 cannot be arrived at. But such a technical contention cannot be accepted, since it is a

beneficial legislation. Moreover, based on the income tax return for the assessment year 2014-2015, the approximate income of the deceased can be arrived at.

5.On perusing the income tax return, it is seen that the deceased has paid income tax to the tune of Rs.9,899/- and the gross total income of the deceased is Rs.3,11,500/-. Therefore, on dividing the gross total income of the deceased for the 12 months, the amount of monthly income comes to Rs.25,958/- which can be rounded off to Rs.26,000/-. This Court is inclined to fix the salary of the deceased based on the evidence to the tune of Rs.20,500/- with 40% future prospects. Except for the aforesaid modification, the compensation granted by the Tribunal under other heads are confirmed.

6.The modified award amount is as under:

i.	Monthly income of the deceased	Rs.20,500/-
ii.	Loss of future income (40%)	Rs.8,200/-
Total		Rs.28,700/-
50% of income deducted towards personal expenses		50% of Rs.28,700/- =Rs.14,350/-

Sl.No.	Head of Compensation	Modified award granted by this Court	Award granted by the Tribunal
1.	Loss of Dependency (Rs.14,350/-*12*17)	Rs.29,27,400/- (enhanced)	Rs.21,42,000/-
2.	Hospital Transportation Expenses	Rs.7,000/- (confirmed)	Rs.7,000 /-
3.	Filial Consortium (Rs.35,000 * 3)	Rs.1,05,000/- (confirmed)	Rs.1,05,000/-
4.	Funeral Expenses	Rs.10,000/- (confirmed)	Rs.10,000/-
5.	Loss of Estate	Rs.10,000/- (confirmed)	Rs.10,000/-
Total compensation granted by this Court		**Rs.30,59,400/- (enhanced)**	**Total = Rs. 22,74,000/-**

7.The appellant Insurance Company is liable to pay 82% of the enhanced compensation, i.e., Rs.25,08,708/- with interest. The appellant Insurance Company shall deposit **Rs.25,08,708/-** 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 1 and 2 are permitted to withdraw their shares (equal share) with proportionate accrued interests and costs, less the amount already withdrawn by them, if any, by filing appropriate application before the Tribunal. The Insurance Company shall deduct TDS and the balance amount shall be paid to the claimants 1 and 2. The claimants 1 and 2 are at liberty to file appropriate form for refund. The 3rd claimant who is the brother of the deceased and he is not depending on the deceased brother. Therefore, he is not entitled to compensation and the entire compensation shall be granted to claimants 1 and 2, who are the parents of the deceased.

8.With the above said directions, the Civil Miscellaneous Appeal and the Cross Objection are disposed of. No costs.

18.03.2024

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

Tmg

Note: Issue order copy on 25.03.2024.

To

1.MACT, Special District Court, Tiruchirapalli.

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

<u>S.SRIMATHY, J.</u>

Tmg

C.M.A(MD)No.614 of 2022

18.03.2024