

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.03.2015

CORAM

THE HONOURABLE MR. JUSTICE N. KIRUBAKARAN

C.M.A. Nos. 419 & 420 of 2015

&

M.P. Nos. 1 of 2015

C.M.A. No. 419 of 2015

The Branch Manager,
The United India Insurance Co. Ltd.,
Vellore. ..Appellant

Vs.

1. Pushpa
2. Minor Sangeetha
3. Minor Karuthamma
(Minors rep. By their mother & NF
Pushpa, the 1st respondent herein)
4. K. Kumaresan
5. G.V. Ravi
6. The Branch Manager,
The Oriental Insurance Co. Ltd.,
Vellore
(4th & 5th respondents remained ex parte and
notice is dispensed with for them).

..Respondents

Prayer: Civil Miscellaneous Appeal as against the judgment and decree dated 12.09.2012 passed in M.C.O.P. No. 45 of 2010 by the Motor Accidents Claims Tribunal (Additional District & Sessions Judge's Court NO.3), Vellore at Tirupattur.

C.M.A. No. 420 of 2015

The Branch Manager,
The United India Insurance Co. Ltd.,
Vellore. ..Appellant

Vs.

1. Kamala
2. Samu
3. Jayaraman
4. Sivakumar

5. K. Kumaresan
6. G.V. Ravi
7. The Branch Manager,
The Oriental Insurance Co. Ltd.,
Vellore.

..Respondents

Prayer: Civil Miscellaneous Appeal as against the judgment and decree dated 12.09.2012 passed in M.C.O.P. No. 50 of 2010 by the Motor Accidents Claims Tribunal (Additional District & Sessions Judge's Court NO.3), Vellore at Tirupattur.

For Appellant in both appeals :: Mr.M. Krishnamoorthy

J U D G M E N T

The above Civil Miscellaneous Appeals have been preferred by the Insurance Company as against the award of Rs.9,14,000/-, granted in respect of death of one Thirupathi, aged about 37 years, an agriculturist and a businessman dealing in aluminum vessels, earning about Rs.25,000/- per month and as against the award of Rs.7,48,500/- granted in respect of death of one Sivalingam, an Electrician (Contractor), aged about 25 years, earning about Rs.21,000/- per month, in the accident which occurred on 03.03.2008, when the mini lorry, belonging to one Kumaresan, 4th respondent in C.M.A. No.419/2015/5th respondent in C.M.A. No. 420/2015 and insured with the appellant, in which Thirupathi was travelling, driven by its driver in a rash and negligent manner, hit the two-wheeler driven by Sivalingam, from behind, throwing him out of his vehicle, resulting in his death and thereafter, as the mini lorry went out of control, it dashed against a tipper lorry coming in the opposite direction resulting in the death of Thirupathi as well.

2. On contest, the Tribunal found that the mini lorry insured with the appellant Insurance Company was driven rashly and negligently and awarded the aforesaid respective compensation amounts, to the respective claimants. Challenging the quantum of compensation amounts, the above appeals have been preferred by the Insurance Company.

3. Heard Mr.M. Krishnamoorthy, learned counsel for the appellant in both the appeals.

4. Though the quantum awarded by the Tribunal is challenged before this Court, a perusal of the records would show that, as far as C.M.A. No. 45 of 2010 is concerned, the deceased Thirupathi, an agriculturist and a businessman in vessels, was claimed to be earning Rs.25,000/- per month. However, in the absence of any evidence on record, with regard to the income, the Tribunal,

considering that the deceased was involved in selling aluminum vessels, rightly determined his monthly income at Rs.6000/- per month. Therefore, taking Rs.6000/- as monthly income, after deducting one-fourth towards "personal expenses" and applying multiplier 16, Rs.8,64,000/- was justifiably awarded as compensation towards "Loss of Income". Though it is contended that the multiplier adopted is wrong, the said multiplier is in consonance with the II Schedule to the Motor Vehicles Act, 1988. Therefore, the amount awarded towards "Loss of Income" cannot be said to be on the higher side.

5. Besides, the sum of Rs.10,000/- awarded towards "Funeral Expenses" and Rs.10,000/- awarded towards "Transportation Expenses" are reasonable and they are confirmed. Though the sum of Rs.30,000/- awarded towards "Pain and Suffering" for minor respondents 2 and 3, aged about 9 years and 7 years is on the lower side, this Court is not enhancing the said amount, considering the total compensation awarded by the Tribunal. Therefore, the award of Rs.9,14,000/- passed by the Tribunal together with interest @ 7.5% per annum is confirmed.

6. As far as C.M.A. No. 420 of 2015 is concerned, the deceased Sivalingam, an Electrician, was aged about 25 years and the Tribunal, fixed Rs.4500/- as the monthly income, deducted one-fourth towards "Personal Expenses", applied multiplier 17 as per the age of the deceased and arrived at Rs.6,88,500/- as "Loss of Income". The deceased Sivalingam, was a bachelor. But, the Tribunal, instead of 50% deduction, deducted one-fourth towards "Personal Expenses". However, considering the overall compensation awarded by the Tribunal and non-consideration of "Future Prospects", while calculating the compensation, this Court is not interfering with the compensation awarded by the Tribunal. The amounts awarded under other heads, namely, Rs. 10,000/- towards "Transportation Expenses", Rs.10,000/- awarded towards "Funeral Expenses" and Rs.40,000/- awarded towards "Loss of love and affection" are confirmed. Eventhough the Tribunal made some deviation, this Court is not inclined to interfere with the compensation awarded as the overall amount awarded by the Tribunal, to the tune of Rs.7,48,500/- is just and reasonable. The rate of interest awarded by the Tribunal at 7.5% per annum remains unaltered.

7. The appellant Insurance Company is directed to deposit the respective award amounts, with accrued interest and costs, after deducting the amount already deposited, in respect of each of the appeals, if any, before the Tribunal, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the 1st respondent in C.M.A. No. 419 of

2015 and respondents 1 to 4 in C.M.A. No. 420 of 2015 are permitted to withdraw their respective shares of the respective award amounts within a period of one week thereafter. As far as the shares of the minor respondents, namely, respondents 2 and 3 in C.M.A. No. 419 of 2015 are concerned, the same shall be re-invested in any one of the Nationalised Banks in interest bearing Fixed Deposit till they attain majority. The 1st respondent in C.M.A. No. 419 of 2015 is permitted to withdraw interest accruing on such deposit once in three months.

8. In the result, the Civil Miscellaneous Appeals are dismissed confirming the common award passed by the Tribunal. No costs. Connected M.Ps. are closed.

Sd/-
Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

nv

To

The MACT (Addl. Dist. & Sessions Judge No.III),
Vellore at Tirupattur.

1 cc to Mr.M. Krishnamoorthy, Advocate, Sr. 12693

C.M.A. Nos. 419 & 420 of 2015

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