

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.09.2015

CORAM

THE HON'BLE MR.JUSTICE C.S.KARNAN

C.M.A.No.339 of 2014

and

M.P.No.1 of 2014

and

CMA.No.1833 of 2015

CMA.No.339 of 2014

M/s.New India Assurance Co. Ltd.,
First Floor, N.K.N. Complex,
Bed Ford Circle,
Conoor - 643 101. ..Appellant/3rd Respondent

vs

1.C.Mahali
2.A.Geethamani
3.A.Rajeshkumar ..Respondent 1to3/Petitioners
4.G.Subramani
5.The Manager,
M/s.Nonsuch Tea Estate Ltd.,
Nonsuch Post, Katteri,
Coonoor Taluk,
Nilgiris District. ..Respondents 4&5/Respondents 1&2

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicle Act, 1988, against the Judgment and Decree in M.C.O.P.No.195 of 2011, dated 30.04.2013, on the file of the Motor Accidents Claims Tribunal, Subordinate Court, Sathyamangalam.

For Appellant : Mr.N.Vijayaraghavan

For Respondents:Mr.Ma.P.Thangavel (for R1 to R3)
Mr.Mukunt (for R5)
for M/s.Sarvabhauman Associates

CMA.No.1833 of 2015

1.C.Mahali
2.A.Geethamani
3.A.Rajeshkumar

..Appellants/Petitioners

vs

1.G.Subramani
2.The Manager,
M/s.Nonsuch Tea Estate Ltd.,
Nonsuch Post, Katteri, Coonoor Taluk,
Nilgiris District.
3.The New India Assurance Company Ltd.,
1st Floor, N.K.N. Complex,
Bed Ford Circle, Conoor - 643 101 ...Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicle Act, 1988, for enhancement of compensation awarded in the Judgment and Decree dated 30.04.2013 made in M.C.O.P.No.195 of 2011, on the file of Motor Accidents Claims Tribunal, Subordinate Court, Sathyamangalam, with interest and cost.

For Appellants : Mr. Ma.P.Thangavel

For Respondents: Mr.Mukunt (for R2)
for M/s.Sarvabhauman Associates

Mr.N.Vijayaraghavan (for R3)

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COMMON JUDGMENT

On 16.03.2011, when the deceased Anbazhagan was travelling as loadman, on the Tractor bearing Registration No.TN-43-5470, along with goods comprising of tea leaves, on the Nonsuch Estate Road, the driver of the Tractor had driven the vehicle in a negligent manner and as a result, the Tractor had capsized and the (deceased) sustained injuries and succumbed to it. Hence,

the claim petition had been levelled against the owner and insurer of the offending vehicle.

2.The Insurance company had filed a counter statement and resisted the claim. The respondent denied that the deceased was travelling on the Tractor. The respondent further denied the contentions regarding age, income and occupation of the deceased. All the claimants are not depending upon the income of the deceased. Further, the vehicle was not insured with the respondent. Therefore, the Insurance company is not liable to pay compensation. The respondent further submits that the deceased is not permitted to travel on the tractor. As such, the deceased was a gratuitous passenger. Further, the quantum of compensation is on the higher side.

3.On considering the averments on both sides, the Tribunal had framed two issues. On the side of the claimant, 3 witnesses were examined and 9 documents were marked. On the side of the respondents 3 witness were examined and 9 documents were marked. After recording evidence of both sides and on perusing the exhibits marked by both parties, the Tribunal had granted a sum of Rs.3,81,000/- with interest at the rate of 7.5% per annum. Aggrieved by the said award, the Insurance Company has filed the appeal in CMA.No.339 of 2014 and challenged the said award. Not being satisfied with the quantum of compensation, the claimants have filed the appeal in CMA.No.1833 of 2015 for additional compensation.

4.The highly competent counsel Mr.Vijayaraghavan appearing for the Insurance Company submits that the vehicle bearing Registration No.TN-43-A-5470 is not insured with the Insurance Company. Actually, the tractor and trailer are both separate vehicles and both are having separate Registration Number. In the instant case, the Tractor bearing Registration No.TN-43-A-5470 is not covered under the Insurance policy. The deceased was not permitted to travel on the tractor. Therefore, the Insurance Company is not liable to pay compensation. Further, the deceased's age and income had not been proved by authenticated records. The second claimant had not been depending upon the income of the deceased. Hence, the very competent counsel entreats the Court to set aside the award.

5.The very competent counsel Mr.Ma.Pa.Thangavel appearing for the claimants submits that the deceased was travelling as a loadman on the tractor. The tractor was loaded with tea leaves and when it was proceeding on the Nonsuch estate road, the driver had driven it in a rash and negligent manner with high speed due to which the vehicle had capsized. Hence, the (deceased) had sustained grievous injuries and succumbed to it on the spot.

6. On considering the facts and circumstances of the case and arguments advanced by the learned counsels on either side and on perusing the typed set of papers, this Court is of the view that a criminal case has been registered against the driver of the offending vehicle. Therefore, the negligence rests only on the side of the driver of the vehicle. Further, the vehicle had been insured with the Insurance Company and copy of the policy had been marked as Ex.P9. The age of the deceased was 52 years and the claimants are 3 in Numbers. The Tribunal had fixed the income of the deceased at Rs.3,500/- per month, which is on the lower side. This Court is of the view that the deceased was a loadman and hence he would have earned Rs.9,000/- per month, considering that the year of the accident was 2011. Therefore, this Court reassesses the compensation as follows:-

Rs.7,92,000/- is awarded under the head of loss of income (9,000X2/3X12X11); Rs.25,000/- is awarded under the head of loss of consortium; Rs.25,000/- each is awarded to the 2nd and 3rd claimants for loss of love and affection; Rs.25,000/- towards funeral expenses; Rs.10,000/- towards transport. In total, this Court awards Rs.9,02,000/- as compensation. This amount will carry interest at the rate of 7.5% per annum. After deducting initial compensation of a sum of Rs.3,81,000/- this Court awards Rs.5,21,000/- as additional compensation. This Court directs the Insurance Company to deposit the said additional compensation amount with interest at the rate of 7.5% per annum from the date of claim till date of deposit. This Court further directs the Insurance Company to remit the amount within a period of six weeks from the date of receipt of this order. After such deposit being made, it is open to the claimants to withdraw the said compensation amount equally among themselves, after filing a memo, along with a copy of this order before the trial Court.

7. In the result, the CMA.No.339 of 2014 is dismissed and CMA.No.1833 of 2015 is partly allowed. Consequently, the Judgment and Decree passed in M.C.O.P.No.195 of 2005, on the file of the Motor Accidents Claims Tribunal / Subordinate Court, Sathyamangalam, dated 30.04.2013, is modified. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

To

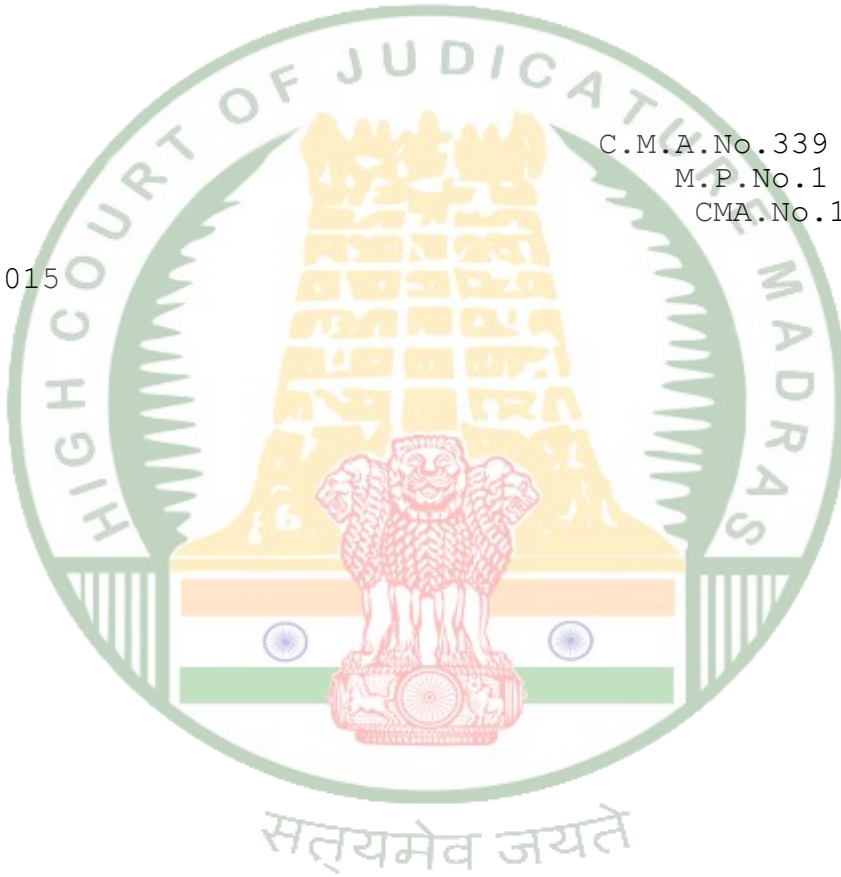
1.The Motor Accidents Claims Tribunal
(Subordinate Court)
Sathyamangalam.

2.The Section Officer,
VR Section, High Court, Madras.

+1 cc to Mr.Vijayaragavan, Advocate (sr.48498)

MG(co)
cp 28/10/2015

C.M.A.No.339 of 2014 and
M.P.No.1 of 2014 and
CMA.No.1833 of 2015



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