

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 24.08.2015

CORAM

THE HONOURABLE MR. JUSTICE R.SUDHAKAR

C.M.A. NOS. 1218 & 1219 OF 2013

AND

M.P. NOS. 1 OF 2013

The United India Insurance Co. Ltd.
Branch Office
7-A, West Veli Street
II Floor, Madurai.

... Appellant in both the
appeals/2nd Respondent in both the MCOPS

- Vs -

1. Mr. P.Kandan @ Kandasamy
2. Mr. S.Thiruselvam

... Respondents in CMA 1218/13/
Petitioner/Respondent

1. M.Nallammal
2. Sagunthala
3. Easwari
4. M.Shanmugavel
5. S.Thiruselvam

... Respondents in CMA 1219/13 /
Petitioners/Respondents

Appeals filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 30.04.2012, passed by the Motor Accident Claims Tribunal (Prl. District Judge), Namakkal, made in MCOP Nos.562 & 626 of 2009.

For Appellant : Mr. J.Chandran

For Respondents : Mr. Aniruthan for R-1 in CMA 1218/13 &
RR-1 to 4 in CMA 1219/13
No Appearance for R-2 in CMA 1218/13
& R-5 in CMA 1219/13

COMMON JUDGMENT

Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respective respondents in the appeals. There is no representation for the owner of the vehicle, who has been set exparte even before the Tribunal.

2. The appeals have been filed by the insurer of the

vehicle, viz., United India Insurance Company, challenging the award dated 30.04.12 passed by the Motor Accidents Claims Tribunal (Prl. District Judge), Namakkal, made in M.C.O.P. Nos.562 & 626 of 2009, fixing the liability on the insurer.

3. This is a case of fatal accident to one person, viz., the deceased Muthan and injury sustained by the other person, viz., first respondent in CMA No.1218/13, in an accident that happened on 21.10.09. On 21.10.09, at about 7.15 a.m., when the deceased Muthan was travelling as pillion rider in the TVS 50 motor cycle bearing Regn. No.TN-28-6612 belonging to Kandasamy, the first respondent in CMA No.1218/13, near Meickalnaickenpatti bus stop on the Trichy-Namakkal Main Road, the TATA Sumo car, bearing Reg. No.TN-63-U-6717, coming in the same direction, belonging to Thiruselvam, the second respondent in CMA 1218/13 and the fifth respondent in CMA 1219/13, driven in a rash and negligent manner by the driver, dashed against the TVS 50 Motorcycle and as a result of the said accident, while the deceased, Muthan, who was the pillion rider, suffered severe injuries and died, the driver of the TVS 50, viz., Kandasamy, the first respondent in CMA 1218/13 sustained severe injuries. The said Kandasamy initially took treatment in the Government Hospital, Namakkal and, thereafter, was shifted to CM Hospital, Namakkal and took treatment as in-patient. A case was registered against the driver of the car in Cr. No.218/09. The first respondent in CMA 1218/13, who suffered grievous injuries in the accident, while claimed compensation in a sum of Rs.5,00,000/-, respondents 1 to 4 in CMA No.1219/13, viz., the wife, son and daughters of the deceased Muthan claimed compensation in a sum of Rs.7,00,000/=.

4. In support of the claim, the fourth respondent in CMA 1219/13 examined himself as P.W.1 and the first respondent in CMA 1218/13 examined himself as P.W.2 besides Dr.Sivalingam was examined as P.W.3, and Exs.P-1 to P-8 were marked, the details of which are as follows:-

Ex.P-1	-	Photocopy of First Information Report
Ex.P-2	-	Rough Sketch
Ex.P-3	-	Copy of the Postmortem Certificate of the deceased
Ex.P-4	-	Death Certificate of the deceased
Ex.P-5	-	Legal Heir Certificate
Ex.P-6	-	Wound Certificate
Ex.P-7	-	Disability Certificate
Ex.P-8	-	X-Rays

5. Though no witness was examined either by the owner of the vehicle or the Insurance Company, Exs.R-1 to R-5 were marked, the details of which are as hereunder :-

Ex.R-1	-	Letter
Ex.R-2	-	Driving Licence
Ex.R-3	-	Copy of Policy Document
Ex.R-4	-	Motor Vehicle Inspector Report
Ex.R-5	-	O.D. Claim Petition rejected letter

6. The Tribunal based on the oral evidence of the witnesses, the F.I.R. and also taking note of the corroborating evidence in the form of the evidence of P.W.3 and also taking into account the documentary evidence, came to the conclusion that the accident was caused due to the rash and negligent driving by the driver of the car and, therefore, the liability was fixed on the owner of the car and consequently the appellant, viz., the insurer of the car, was directed to compensate the respective claimants.

7. Insofar as negligence is concerned, learned counsel for the appellant has no serious objection with regard to the finding of the Tribunal and further no material has also been placed before this Court to come to a different conclusion than the one arrived at by the Tribunal.

8. The Tribunal, insofar as CMA No.1219/13 is concerned, on considering the evidence, both oral and documentary, awarded compensation under the following heads :-

Sl. No.	Head	Amount granted by the Tribunal
1	Loss of dependency	Rs.1,20,000/-
2	Funeral Expenses	Rs.10,000/-
	Total	Rs.1,30,000/-

9. Insofar as CMA No.1218/13 is concerned, on considering the evidence, both oral and documentary, awarded compensation under the following heads :-

Sl. No.	Head	Amount granted by the Tribunal
1	Permanent Disability @ 50%	Rs.1,00,000/-
2	Loss of future earning capacity	Rs.75,000/-
3	Pain & Suffering	Rs.1,00,000/-
	Total	Rs.2,75,000/-

10. In all, the Tribunal awarded a sum of Rs.1,30,000/- to the claimants/respondents 1 to 4 in CMA No.1219/13 and Rs.2,75,000/- to the claimant/first respondent in CMA No.1218/13 along with interest at the rate of 7.5% p.a. from the date of filing of the claim petition till the date of deposit.

11. Though the claimants in CMA No.1219/13 contended that the deceased was earning Rs.8,000/= by doing agricultural work, no proof having been produced, the Tribunal fixed the income of the deceased at Rs.3,000/=. After deducting one-third towards personal expenses, based on the post-mortem certificate, Ex.P-3, the Tribunal fixed the age of the deceased at 65 years and by adopting a multiplier of 5, arrived at the compensation at Rs.1,20,000/=. The Tribunal also awarded a sum of Rs.10,000/= towards funeral expenses. In all, the Tribunal awarded a total compensation of Rs.1,30,000/= with interest at the rate of 7.5% per annum from the date of filing of the petition till the date of deposit to be apportioned at the rate of Rs.1,00,000/= to the first claimant and Rs.10,000/= each to claimants 2 to 4.

12. Insofar as CMA No.1218/13 is concerned, the Tribunal awarded Rs.1,00,000/= towards permanent disability, which was estimated at 50%. The Tribunal also awarded a further sum of Rs.1,00,000/= towards pain and suffering and Rs.75,000/= towards loss of earning power. In all, the Tribunal awarded a sum of Rs.2,75,000/= along with interest at the rate of 7.5% per annum from the date of filing of the petition till the date of deposit.

13. Though it is urged by the learned counsel for the appellant that the amounts awarded is on the higher side, however, this Court, on a consideration of the entire gamut of facts, is of the considered view that there appears to be no infirmity in the quantum of compensation granted by the Tribunal and the rate of interest granted also is not excessive as the accident happened in the year 2009. Further, it is evident from the records that insofar as CMA No.1219/13 is concerned, no amount was granted towards mental shock and agony to the

claimants, who are the wife and children of the deceased. Further, no amount has also been awarded towards "loss of love and affection", "pain and suffering" and "transportation expenses". However, the claimants/respondents 1 to 4 in CMA No.1219/13 have not filed any appeal claiming enhancement of the award. In the above background, this Court is of the considered opinion that there is no reason to interfere with the amount awarded by the Tribunal.

14. Insofar as the award of Rs.2,75,000/= granted to the injured claimant/respondent No.1 in CMA No.1218/2013, this Court is of the considered opinion that the award is just and reasonable and warrants no interference at the hands of this Court. Further, no amount has been granted towards medical expenses, attender charges, transportation expenses, extra nourishment and future medical expenses. However, the claimant has not chosen to file any appeal for enhancement under the above heads. Therefore, this Court is not inclined to award any separate amounts on those heads.

15. Accordingly, finding no merit, these Civil Miscellaneous Appeals are dismissed. It is stated that the appellant has deposited only a sum of Rs.25,000/= each, to the credit of MCOP No.562 and 626 of 2009. Further, this Court, vide order dated 1.7.13, in respect of CMA No.1218/13, directed the appellant/insurance company to deposit 50% of the award amount along with interest and costs, as ordered by the Tribunal. In view of the above deposit, the appellant/insurance company is directed to deposit the balance award amount in the respective appeals to the credit of the respective original petitions, less the amount already deposited, within four weeks from the date of receipt of this order. On such deposit being made, the claimants/respondents 1 to 4 in CMA No.1219/13 are permitted to withdraw the award amount as apportioned to them by the Tribunal and the claimant/respondent No.1 in CMA No.1218/13 is permitted to withdraw the award amount, as ordered by the Tribunal. Consequently, connected miscellaneous petition is closed. However, in the circumstances of the case, there shall be no order as to costs.

sd/
ASSISTANT REGISTRAR (CS-II)

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SUB-ASSISTANT REGISTRAR

GLN

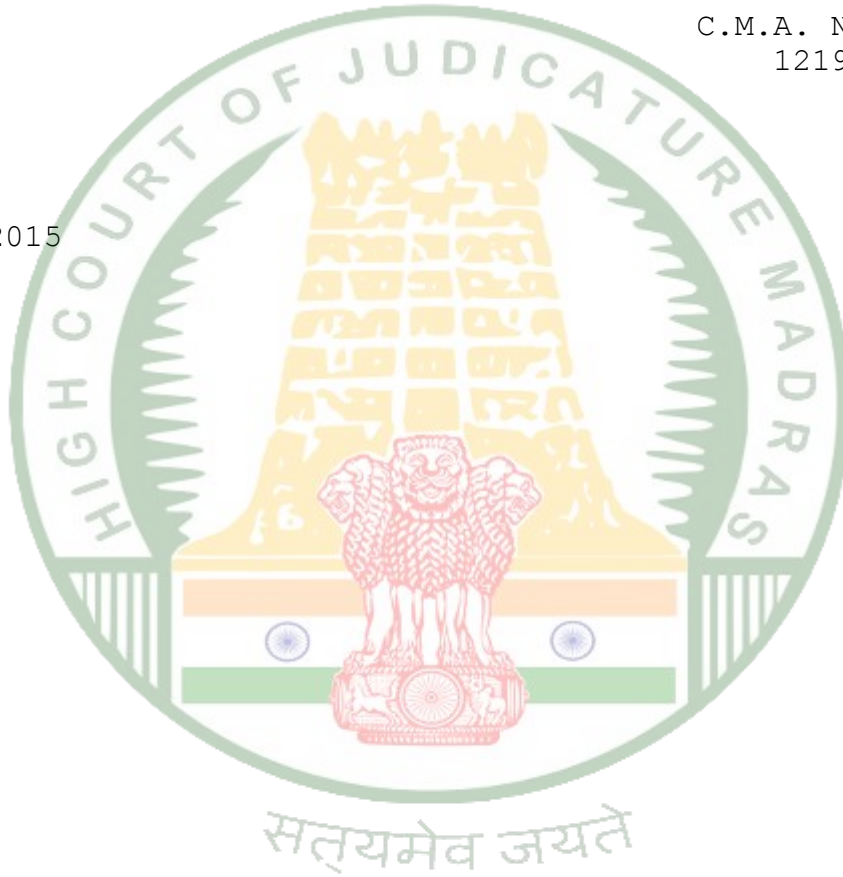
To

The Principal District Judge
(Motor Accident Claims Tribunal)
Namakkal.

+1 CC to MR. J.Chandran Advocate. SR.NO. 45633
+2 CC to MR. M.Aniruthan Advocate. SR.NO. 45020,45021

C.M.A. NOS.1218 &
1219 OF 2013

CO-GJ
JD 04/11/2015



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