

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 20.07.2015

CORAM

THE HON'BLE MR.JUSTICE V.RAMASUBRAMANIAN

AND

THE HONOURABLE MR.JUSTICE T. MATHIVANAN

C.M.A.No.3495 of 2013 & 45 of 2015

and

M.P.No.1 of 2013 & 1 of 2015

C.M.A.No.3495 of 2013

The New India Assurance Company Limited,
No.45, Moores Street,
Chennai-1

..Appellant/2nd Respondent

Versus

1. Rajakumari
2. P.Roshan
3. P.Shalini
(minors 2 & 3, rep. by their mother and
natural guardian Rajakumari)
4. Thangam
5. Sarangan

6. M/s.Mohamad Naveen Nisham Foods Pvt Ltd.,
No.35, Royapettah High Road,
Royapettah,
Chennai-1

(No relief against R6, hence notice to R6 may be
dispensed with) ..respondents/Petitioners/
1st Respondent

Prayer in C.M.A.No.3495 of 2013: Civil Miscellanious Appeal is
filed against the judgment and decree dated 08.04.2013 and
made in M.C.O.P.No.2630 of 2012, on the file of the Motor
Accident Claims Tribunal(II Court of Small Causes), Chennai.

C.M.A.No.45 of 2015

1. Rajakumari
2. P.Roshan
3. P.Shalini
(minors 2 & 3, rep. by their mother and
natural guardian Rajakumari)

4. Thangam
5. Sarangan

..Appellants/Petitioners

Vs.

1.M/s.Mohamad Naveen Nisham Foods Pvt Ltd.,
No.35, Royapettah High Road,
Royapettah,
Chennai-600 014.

2.The New India Assurance Company Limited,
No.45, Moores Street,
Chennai-1

..Respondents/Respondens

Prayer in C.M.A.No.45 of 2015: Civil Miscellaneous Appeal is filed against the judgment and decree dated 08.04.2013 and made in M.A.C.T.O.P.No.2630 of 2012, on the file of the Motor Accident Claims Tribunal(II Court of Small Causes), Chennai.

C.M.A.No.3495 of 2013

For Appellant	:Mr.S.Manohar
For RR1 to R5	:Mr.F.Terry Chellaraja for Mr.V.Velu

C.M.A.No.45 of 2015

For Appellants	:Mr.F.Terry Chellaraja for Mr.V.Velu
For R2	:Mr.S.Manohar

JUDGMENT

(Judgment of the Court delivered by T. MATHIVANAN, J.)

The award dated 04.06.2012 and made in claim petition in M.C.O.P. No. 2630 of 2012, on the file of the Motor Accident Claims Tribunal(II Court of Small Causes), Chennai has been challenged in both the appeals.

2. The appeal in Civil Miscellaneous appeal No.3495 of 2013 has been filed by the New India Assurance Company Limited, who is the second respondent in the claim petition, for setting aside the award, where as the another appeal in Civil Miscellaneous appeal No.45 of 2015 has been filed by the claimants for enhancing the compensation awarded by the claims tribunal.

3. With the issue involved in both the appeals is common in nature. They have been consolidated together, heard jointly and disposed of in this common judgment.

4. For easy reference and for the sake of convenience, the appellants in the appeal in CMA No.45 of 2015 may herein after be referred to as the claimants and the appellant in CMA No.3495 of 2013 may herein after referred to as the second respondent /Insurance company, where ever the context so required.

5. The claimants 1 to 5 are the wife and minor children (claimants 2 & 3) and the parents of the deceased Mr.S.Ponnambalam.

6. The claimants had moved the Motor Accident Claims Tribunal(II Court of Small Causes) Chennai in claim petition in MCOP No.2630 of 2012, claiming a sum of Rs.30,00,000/- towards the compensation for the death of S.Ponnambalam in a road traffic accident said to have been taken place on 25.04.2012 involving a car bearing registration No.TN-06-E-6000, belonging to the first respondent in the claim petition.

7. After evaluating evidence both oral and documentary, the claims tribunal had gone to the extent of awarding a sum of Rs.22,66,000/- on all heads in favour of the claimants.

8. Being aggrieved by the award, the second respondent/Insurance Company have preferred the above said appeal in CMA No.3495 of 2013 questioning the quantum. On the other hand, having been not satisfied with the award, the claimants stand before this Court with the appeal in CMA No.45 of 2015 claiming enhancement of compensation.

9. Heard Mr.S.Manohar, learned counsel appearing for the appellant in CMA No.3495 of 2013 and for the second respondent in CMA No.45 of 2015 and Mr.F.Terry Chellaraja, learned counsel appearing for the respondents 1 to 5 in CMA No.3495 of 2013 and for the appellants in CMA No.45 of 2015.

10. At the time of the accident, according to the claimants, the deceased was aged about 25 years but the tribunal based on the post mortem certificate has recommended the deceased was aged about 27 years. The accident was taken place on 25.04.2012 at 01.30 p.m at Palaru Bridge located at Vempancherry ECR Road.

11. It is alleged that when the car bearing registration No.TN-06-E-6000 was proceeding towards Pondicherry at a hytech speed and it had hit against the motor cycle bearing registration No.TN-19-D-7967 which was ridden by the deceased from the opposite direction. The petitioners have claimed that the accident was taken place due to the rashness and negligence on the part of the driver of the car.

12. Both the respondents viz., the first respondent, who is the owner of the vehicle as well as the second respondent/Insurance Company had contested the claim petition by filing their respective counter statements. The second respondent / Insurance Company did not contest the claim petition on any specific ground. However, the first respondent being the owner of the vehicle had contended that the accident was not due to the rashness and negligence on the part of the driver but it took place due to the rashness and negligence of the deceased.

13. The contentions of the second respondent / Insurance Company as well as the first respondent, the owner of the vehicle were rejected by the claims tribunal and proceeded to conclude that both the respondents viz., the owner of the vehicle as the Insurance company jointly and severally liable to pay the compensation because the Insurance of the offending vehicle with the second respondent / Insurance Company was not disputed and denied.

14. On coming to the question of quantum, PW3 one Mr.Santhakumar has deposed that he was the employer of the deceased and that he had been doing business on Tiles under the name and style of Karthik Tiles at GST Road, Chengalpet. According to PW3, he had paid a sum of Rs.20,000 per mensem to prove this fact, through documents viz., Ex.P4, 5 and P6 came to be marked through PW3. Ex.P4 is the copy of the registration certificate of his Company. Ex.P5 is the copy of his PAN Card. Ex.P6 is the salary certificate issued in respect of the monthly salary of the deceased wherein it is stated that the deceased was getting a sum of Rs.20000/- per month.

15. However, the claims tribunal had not recognised those certificates and observed that on perusal of the above said documents (Ex.P4 to 6), there was no records like attendance register, salary ledger excepting the salary certificate. Therefore, the tribunal had determined the monthly income of the deceased at Rs.10,000/- only since he had died at the age of 27 years.

16. As pointed out by the Apex Court in Smt.Sarala Varma & Others Vs. Delhi Transport Corporation and Another(2009 5 L.W Page-561) , 30% of the future prospects based on his monthly salary could be taken into consideration in addition to his monthly income of Rs.10,000/- Therefore, the tribunal had arrived at a sum of Rs.3000 on the ratio of 30% towards the additional monthly income($10,000 \times 30\% / 100 = 3,000$). Secondly, since the deceased was aged about 27 years at the time of the

accident, the tribunal had selected the multiplier of 18 and given reduction $1/4^{\text{th}}$ towards the deceased's personal expenses based on the decision of the Apex Court in Smt.Sarala Varma & Others Vs. Delhi Transport Corporation and Another(2009 5 L.W Page-561) . After giving $1/4^{\text{th}}$ deduction, his take over salary was determined at Rs.9,750/- per month. Accordingly, the annual dependence of the family would be Rs.1,17,000/- Applying the multiplier of 18, the life dependence of the family would be Rs.21,06,000/- .

17. Apart from this, the tribunal had also awarded compensation in favour of the claimants under the following heads:

(a) Towards loss of consortium	Rs. 50,000/-
(b) Funeral expenses	Rs. 10,000/-
© Loss of love and affection	Rs.1,00,000/-

Totally, the tribunal had awarded a sum of Rs.22,66,000/-

18. We have considered the submissions made on behalf of both sides and find that the tribunal went on a right direction and find that the claimants are entitled to get a sum of Rs.22,66,000/-, which according to our view does not require any disturbance.

19. It is seen from the records that at the time of admission of the appeal in CMA No.3495 of 2013, a conditional stay order was granted by this Court on 09.01.2014, directing the second respondent/Insurance company to deposit 50% of the award amount with proportionate accrued interest and costs to the credit of Claim petition in M.C.O.P.No.2630 of 2012, on the file of the Motor Accident Claims Tribunal(II Court of Small Causes), Chennai within a period of eight weeks from today. No reference is available in the record as to whether the second respondent /Insurance company has complied with the above said conditional order.

20. However, we direct the second respondent /Insurance company to deposit the award amount deducting 50% as stated in the conditional order if paid earlier within a period of one month to the credit of the claim petition in M.C.O.P.No.2630 of 2012, on the file of the Motor Accident Claims Tribunal(II Court of Small Causes), Chennai and on such deposit being made, the claimants are entitled to withdraw the entire amount as per the ratio directed by the claims tribunal without making any formal application seeking direction.

21. In the result, both the appeals are dismissed. Consequently, connected miscellaneous petitions are also closed. No costs.

Sd/-
Assistant Registrar(CS VI)

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Sub Assistant Registrar

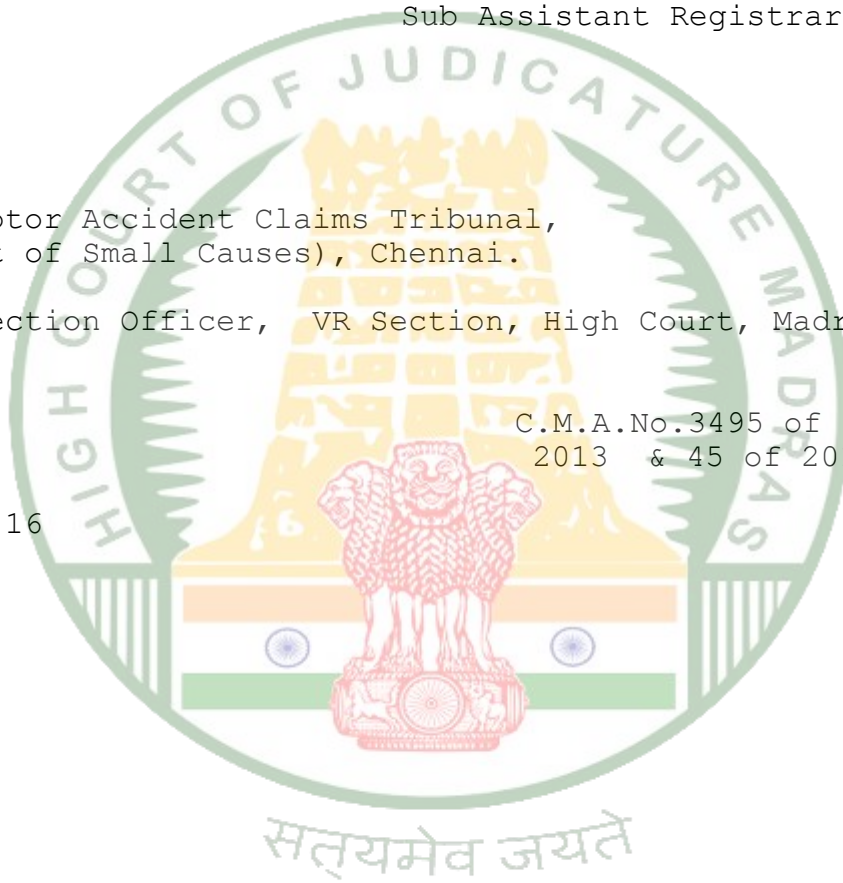
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To

1. The Motor Accident Claims Tribunal,
(II Court of Small Causes), Chennai.
2. The Section Officer, VR Section, High Court, Madras.

C.M.A.No.3495 of
2013 & 45 of 2015

GJ(CO)
Eu 06.04.16



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