

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.08.2015

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THE HONOURABLE MR.JUSTICE R.SUDHAKAR

C.M.A.Nos.3713 and 3714 of 2004  
and  
Cross Objection No.68 of 2008

Branch Manager,  
United India Insurance Co. Ltd.,  
Pollachi

... Appellant in both C.M.As/  
4th respondent

vs.

1. Thirunavukkarasu  
2. C.Subramanian  
3. Branch Manager,  
Oriental Insurance Co. Ltd.,  
11, EVN Road, Parimalam Complex,  
Erode - 638 011.

4. Anamallais Bus Transport Ltd.,  
(ABT Ltd.), 345, Corconcor Compound,  
Kolkapur, Maharashtra  
4th respondent set exparte before lower court)

.... Respondents in C.M.A.No.3713 of 2004/  
Petitioner/ Respondents 1 to 3

1. Annakodi  
2. Karuppanan  
3. C.Subramanian  
4. Branch Manager,  
Oriental Insurance Co. Ltd.,  
11, EVN Road, Parimalam Complex,  
Erode - 638 011.

5. Anamallais Bus Transport Ltd.,  
(ABT Ltd.), 345, Corconcor Compound,  
Kolkapur, Maharashtra  
(5th respondent set exparte before  
lower court)

.... Respondents in C.M.A.No.3714 of 2004/  
Petitioner/ Respondents 1 to 3

Branch Manager,  
The Oriental Insurance Co. Ltd.,  
No.11, EVN Road, Parimalam Complex,  
Erode - 638 011.

... Cross Objector in Cross Obj.No.68  
of 2008/3rd respondent in CMA No.2713

of 2004

vs.

1. Branch Manager,  
United India Insurance Co. Ltd.,  
Pollachi
2. Thirunavukkarasu
3. C.Subramanian
4. Anamallais Bus Transport Ltd.,  
(ABT Ltd.), 345, Corconcor Compound,  
Kolhapur, Maharashtra

..Respondents in in Cross Obj. No.68 of 2008/  
Respondents

Civil Miscellaneous Appeals is filed under Section 173 of Motor Vehicles Act, 1988 against the award and decree dated 21.05.2004 passed in M.C.O.P.Nos.1372 and 1392 of 2001 on the file of the Motor Accidents Claims Tribunal (Chief Judicial Magistrate), Erode.

Cross Objection filed under Order 41 Rule 22 of C.P.C. read with Section 173 of the Motor Vehicles Act against the award and decree dated 21.05.2004 passed in M.C.O.P.No.1372 of 2001 on the file of the Motor Accidents Claims Tribunal (Chief Judicial Magistrate), Erode.

For Appellant in C.M.As  
& For respondent -1 in Cross Objection: : Mr.M.B.Gopalan

For cross Objector in Cross Obj. &  
For R3 in C.M.A.No.3713 of 2004  
and For R4 in C.M.A.No.3714 of 2004 : Mr.J.Chandran

For R1 in C.M.A.No.3713 of 2004 &  
For R1 & R2 in C.M.A.No.3714 of 2004 : Mr.A.K.Kumarasamy

#### COMMON JUDGMENT

The United India Insurance Co. Ltd. has filed C.M.A.Nos.3713 and 3714 of 2004 challenging the award dated 21.05.2004 passed in M.C.O.P.Nos.1372 and 1392 of 2001 on the file of the Motor Accidents Claims Tribunal (Chief Judicial Magistrate), Erode.

2. The Oriental Insurance Co. Ltd. has filed the Cross Objection

challenging the award dated 21.05.2004 passed in M.C.O.P.No.1372 of 2001 on the file of the Motor Accidents Claims Tribunal (Chief Judicial Magistrate), Erode.

3. It is a case of fatal as well as injury. On 31.7.2001 at about 8.30 p.m., the deceased Sakthivel, aged about 22 years (C.M.A.No.3714 of 2004) and the injured Thirunavukkarasu, aged about 21 years (C.M.A.No.3713 of 2004), were travelling in the Matador Van bearing Registration No.TN33C/6396 as a workman engaged in loading and unloading goods from Bhavani to Chittode along NH 47 Main Road from North to South direction, a lorry bearing Registration No.NH09 A 9121 proceeding from South to North came in a rash and negligent manner collided with the van. As a result, the deceased Sakthivel sustained injuries and was taken to the Erode Government Hospital, where he was declared dead and the injured claimant Thirunavukkarasu had sustained grievous injuries. Hence, the father and mother of the deceased Sakthivel have filed Claim Petitions claiming compensation in a sum of Rs.5.00 lakhs. According to the claimants, the deceased was working as workman and was earning a sum of Rs.4,000/- per month. The injured claimant has also filed claim petition claiming compensation of Rs.15.00 lakhs. According to the injured claimant, he was working at Sakthi Bakery and was earning a sum of Rs.4,000/- per month.

4. In support of the claims, the injured claimant was examined as P.W.1, the mother of the deceased Sakthivel was examined as P.W.2, the doctors, who treated the injured claimant, were examined as P.Ws.3 and 5 and one Manoharan was examined as P.W.4. Exs.P.1 to P.18 were marked. On the side of the respondents, one C.Subramaniam was examined as R.W.1 and Exs.R1 to R3 were marked.

5. The Tribunal based on the oral evidence of the witnesses, the F.I.R. and also taking note of the fact that there was no contra evidence on the side of the appellant herein with regard to the negligence came to conclusion that the accident had occurred on account of the rash and negligent act of both the van driver and the lorry driver and consequently fixed the liability on the appellant Insurance Company, viz., United India Insurance Co. Ltd. as well as on Oriental Insurance Co. Ltd. to compensate the claimants.

6. On this issue, learned counsel for the appellant appearing for Oriental Insurance Co. Ltd. has submitted that the negligence fixed equally on both the driver and the liability on the two insurance companies is not proper.

7. On a perusal of the order of the Tribunal and the evidence on record, we find that the findings of the Tribunal appear to be justified. The Tribunal based on the oral and documentary evidence, particularly, the evidence of P.W.1, who is the eye witness, and after analysing the exhibits, namely, Ex.P.1 - F.I.R., P.2 - Rough sketch, P.3- Observation Mahazar, P.5 and P.6 - reports of the Motor

Vehicle Inspector, arrived at the conclusion that the accident had occurred due to the rash and negligent driving of both the driver of the van as well as the driver of the lorry and fixed the responsibility at 50% on each of them. Further, no material has been placed before us to come to a different conclusion from that of the conclusion arrived by the Tribunal. Accordingly, the liability fixed by the Tribunal on the two Insurance Companies is justified.

8. With regard to the quantum arrived at by the Tribunal, based on the oral and documentary evidence, the Tribunal granted a sum of Rs.9,91,600/- as compensation with interest at 9% per annum to the injured claimant, Thirunavukkarasu (C.M.A.No.3713 of 2004). The Tribunal taking note of the evidence of R.W.1, who stated in his evidence that the injured claimant was working in his bakery and was given a sum of Rs.4,000/- per month as salary and taking into consideration the fact that at the time of delivering the goods, the accident had happened, the Tribunal fixed the monthly income of the injured claimant at Rs.2,000/-. Taking into consideration the permanent disability at 100% and the evidence of the doctors, who had given the certificate of permanent disability stating that both the legs of the injured claimant have been amputated, adopting multiplier 16 as per the second schedule of the Motor Vehicles Act, the Tribunal awarded a sum of Rs.3,84,000/- towards permanent disability (Rs.2000 x 12 x 16 x 100%). The Tribunal also awarded a sum of Rs.2,47,585/- towards medical expenses, as per the bills produced by the injured claimant for taking treatment at Kovai Medical Center and Rs.2,00,000/- towards medical expenses for taking treatment at C.K.Hospital. The Tribunal referring to the decision of the Supreme Court in the case of R.D.Hattangadi V. Pest Contral (India) P. Ltd. and others reported in 1995 ACJ 366 (Supreme Court and Delhi Transport Corporation V. Arun Sondi reported in 1997 ACJ 1286), awarded a sum of Rs.1,50,000/- towards pain and suffering and mental agony. The Tribunal also awarded a sum of Rs.5,000/- towards extra nutrition; Rs.5,000/- towards transport expenses. In all, the Tribunal awarded a sum of Rs.9,91,600/- as compensation.

9. On the face of the award, there appears to be no infirmity in the quantum of compensation granted by the Tribunal and the interest at 9% per annum also is not excessive, as the accident happened in the year 2001. The Tribunal awarded meagre sum of Rs.1,50,000/- towards pain and suffering though in the decision referred to by the Tribunal, the Supreme Court has awarded a sum of Rs.3.00 lakhs towards pain and suffering. In the instant case also, the injured claimant had lost both his legs at the young age and he has to depend upon some other person throughout his life. The Tribunal has not awarded any amount towards attender charges. The Tribunal has also not granted any amount towards future medical expenses, loss of marital life and loss of amenities. Hence, the amount awarded with the interest at the rate of 9% per annum is justified.

10. In respect of the deceased person Sakthivel (C.M.A.No.3714 of 2004), the Tribunal based on the oral and documentary evidence,

granted a sum of Rs.2,68,000/- to the claimants as compensation with interest at 9% per annum. The Tribunal taking note of the oral and documentary evidence, fixed the monthly income of the deceased at Rs.2,000/-. After deducting 1/3rd towards personal expenses and adopting the multiplier 16, the Tribunal awarded a sum of Rs.2,56,000/- towards loss of income. The Tribunal also awarded a sum of Rs.5,000/- each towards loss of love and affection and Rs.2,000/- towards funeral expenses. In all, the Tribunal, awarded a sum of Rs.2,68,000/- as compensation.

11. On the face of the award, there appears to be no infirmity in the quantum of compensation granted by the Tribunal and the interest also is not excessive as the accident happened in the year 2001 and the Tribunal awarded meagre sum towards loss of love and affection and funeral expenses.

12. Finding no merit, both the Civil Miscellaneous Appeals and the Cross Objection are dismissed. It is stated that the appellant had deposited the entire compensation amount and the claimants in both the appeals have withdrawn 50% of the award amount. The claimants in both the appeals are permitted to withdraw the balance amount lying in deposit along with accrued interests and costs, if any. No costs.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

The Chief Judicial Magistrate,  
(Motor Accidents Claims Tribunal) Erode.

+2ccs to Mr.M.B. Gopalan, Advocate, S.R.No.45667, 45666  
+2ccs to M/s. A.K. Kumarasamy, Advocate, S.R.No.44793, 44794  
+1cc to Mr.J. Chandran, Advocate Sr.45647

UG(CO)  
EU(14/10/2015)

C.M.A.Nos.3713 and 3714 of 2004  
and  
Cross Objection No.68 of 2008