

IN THE HIGH COURT OF JUDICATUE AT MADRAS

DATED: 08.11.2016

CORAM

THE HONOURABLE MR. JUSTICE T.RAJA

C.M.A.Nos.1903 of 2015 and 499 of 2016

United India Insurance Co. Ltd.,
TKM Complex 1st Floor,
45-51, Katpadi Road,
Vellore - 632 004. ... Appellant in CMA.1903/15
& 2nd respondent in CMA No.499/16

Vs

1.Chitra
2.Selvam (Minor)
3.Selvi (Minor)
4.Senthilkumari (Minor)
5.Palaniyandi
6.Anjalai ... Respondents 1 to 6 in CMA 1903/15
& Appellants in CMA No.499/16

7.Sree Sastha Institute of Engineering
and Technology,
No.339, Poonamallee High Road,
Aminjikarai, Chennai - 106... 7th respondent in CMA 1903/15
& 1st respondent in CMA No.499/16

C.M.A.No.1903 of 2015 is filed under Section 173 of the
Motor Vehicles Act, 1988, against the award dated 14.11.2014,
made in O.P.No.6157 of 2012, on the file of the Motor Accident
Claims Tribunal (II Court of Small Causes), Chennai.

C.M.A.No.499 of 2016 is filed under Section 173 of the Motor
Vehicles Act, 1988, against the award dated 14.11.2014, made in
O.P.No.6157 of 2012, on the file of the Motor Accident Claims
Tribunal (II Court of Small Causes), Chennai.

CMA No.1903 of 2015

For Appellant : Mr.D.Bhaskaran
For R1 to R6 : Mr.K.Suryanarayanan
for Mr.S.Ravikumar

CMA.No.499 of 2016

For Appellants : Mr.K.Suryanarayanan
for Mr.S.Ravikumar

For R2 : Mr.D.Bhaskaran

COMMON JUDGMENT

C.M.A.No.1903 of 2015 is preferred by the appellant-Insurance Company against the award dated 14.11.2014, made in O.P.No.6157 of 2012, on the file of the Motor Accident Claims Tribunal (II Court of Small Causes), Chennai.

2.C.M.A.No.499 of 2016 is filed by the claimants against the award dated 14.11.2014, made in O.P.No.6157 of 2012, on the file of the Motor Accident Claims Tribunal (II Court of Small Causes), Chennai.

3. On 17.10.2012 at about 16.30 hrs., while the deceased was crossing MMDA colony main road, Arumbakkam, Chennai, a bus bearing Registration No.TN-25-B-1969 proceeding from South to North belonging to the 7th respondent College and insured with the appellant Insurance Company driven by its driver in a rash and negligent manner, hit against the deceased, as a result, he died on the spot. Immediately after the accident, a case registered against the driver of the bus in Cr.No.518/AS2/2012, on the file of the K4 Anna Nagar Traffic Investigation Police Station, Chennai. Subsequently, the claimants, being the wife, children and parents, have filed the claim petition claiming a sum of Rs.20,00,000/- as compensation.

4. After considering the oral and documentary evidence, the Tribunal held that the accident had occurred only due to the rash and negligent driving of the driver of the bus belonging to the 7th respondent College and insured with the appellant Insurance Company and awarded a sum of Rs.16,19,000/- with interest at 7.5% per annum. Aggrieved by that award, the Insurance Company as well as the claimants have filed the present appeals.

5. Learned counsel appearing for the appellant Insurance Company submitted that the deceased was a coolie and there was no document to substantiate that he was earning Rs.500/- per day as claimed by the claimants, therefore, in terms of Syed Sadiq and others V. Divisional Manager, United India Insurance Co. Ltd reported in 2014 (1) TN MAC 459 (SC), the Tribunal ought to have fixed Rs.6500/- as the monthly income of the deceased, instead of Rs.7000/-. It is also his further contention that the Tribunal has also committed yet another mistake in adding 50% of his salary towards future prospects, when the deceased was not in permanent employment. On these short grounds, he prayed for interference of the award passed by the Tribunal.

6. Learned counsel appearing for the respondents/claimants submitted that the Tribunal has considered all the materials available on record and has rightly awarded a

just and reasonable compensation, therefore, he pleaded, the award passed by the Tribunal may be confirmed.

7. Heard the learned counsel appearing on either side and perused the materials available on record.

8. At the time of accident, the deceased was 34 years old. The deceased was working as coolie and he said to have earned Rs.500/- per day, but, there was no document to substantiate the same. Therefore, as rightly pointed out by the learned counsel for the appellant Insurance Company, this Court, by following the judgment of the Honourable Apex Court in Syed Sadiq's case (cited supra), wherein, for a vegetable vendor, in respect of the accident of the year 2008, the Honourable Apex Court, fixed the monthly income at Rs.6500/-, even in the absence of any material evidence, is inclined to fix a sum of Rs.6,500/- as the monthly income of the deceased. Accordingly, by fixing so, this Court also hereby confirms the multiplier '16' as well as the deduction of $1/4^{\text{th}}$ towards personal expenses of the deceased, as the same are in fine tune with the decision of the Hon'ble Apex Court in Sarla Verma and others v. Delhi Transport Corporation and another [2009 (2) TNMAC 1 (SC)]. As the deceased was only 34 years old, the Tribunal by following the judgment of the Hon'ble Apex Court in Rajesh and others v. Rajbir Singh and others (2013 (3) CTC 883 (SC) has rightly added 50% towards future prospects. Finally, after the above modification in the monthly salary of the deceased, this Court arrives at the compensation towards loss of dependency as stated below:

Salary of the deceased	= Rs.6,500/- p.m.
50% of the salary to be added as future prospects	= Rs.6500+3250
	= Rs.9750/- p.m.
$1/4^{\text{th}}$ of Rs.9750/- is deducted as personal expenses	= Rs.7300/- p.m.
Loss of dependency after multiplier of 16 is applied (Rs.7300 x 12 x 16)	= Rs.14,01,600/-

9. The Tribunal has also awarded a sum of Rs.75000/- towards loss of consortium, which needs modification as per the said judgment of the Hon'ble Apex Court in Rajesh's case (cited supra) and accordingly, this Court hereby awards a sum of Rs.1,00,000/- towards loss of consortium. Again, the Tribunal has awarded a sum of Rs.50000/- each to the children and Rs.25000/- to the 6th claimant towards loss of love and affection, which are, in my view very meagre amount, as they lost sole breadwinner of the family at the age of 34 years old. Had he been alive, he would have taken care of his family by working hard and he would have given good education to his children, therefore, this Court hereby awards a sum of Rs.1,00,000/- each to the children and Rs.50000/- each to the

parents towards loss of love and affection. Towards funeral expenses, the Tribunal has awarded a sum of Rs.25,000/, therefore, the same is hereby confirmed.

10. In toto, this Court hereby awards a sum of Rs.19,26,600/- as total compensation. The appellant Insurance Company is directed to deposit the entire award amount along with interest at 7.5% per annum from the date of claim petition till the date of realization, less the amount already deposited if any, to the credit of O.P.No.6157 of 2012, on the file of the Motor Accident Claims Tribunal, II Court of Small Causes, Chennai, within a period of four weeks from the date of receipt of a copy of this judgment, failing which, they will have to pay interest at 12% p.a. On such deposit being made, the fifth claimant / father of the deceased is permitted to withdraw a sum of Rs.1,00,000/- and in respect of the balance amount of Rs.18,26,600/-, the claimants 1 and 6 are entitled to withdraw their respective share amount as apportioned by the Tribunal by moving necessary application. In respect of the minors' shares i.e. Claimants 2 to 4, it is made clear that the same shall continue to be in the deposit in any nationalized bank till they attain the majority. The first claimant is also permitted to withdraw the interest accrued in the deposit of the minors' shares once in three months on making proper application.

11. In fine, for the reasons stated above, C.M.A.No.1903 of 2015 filed by the Insurance Company stands dismissed and C.M.A.No.499 of 2016 filed by the claimants stands allowed to the extent mentioned above. Consequently, connected miscellaneous petitions are closed. No Costs.

Sd/-
Asst.Registrar (CS VII)

/true copy/

Sub Asst. Registrar

To

1.The II Judge, Motor Accidents Claims Tribunal,
Court of Small Causes, Chennai.

+1 cc to M/s.D.Bhaskaran,advocate,sr.64236.

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krd 5/1

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2015 and 499 of 2016