

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.04.2016

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G. RAMESH
and
THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

C.M.A.No.833 of 2016
and
C.M.P.No.6826 of 2016

M/s. United India Insurance Company Ltd.,
A.K.M.Tower, First Floor, 397-1,
Junction Main Road,
Salem - 636 004. ... Appellant/3rd Respondent

Vs.

1. Sivakami
W/o Kanagaraj
2. Minor - Deepthi,
D/o Kanagaraj
3. Minor - Keerthi,
D/o Kanagaraj
4. Eswaran,
S/o Kumarappa Gounder
5. Palaniammal
W/o Eswaran
Minors /respondent Nos.2 & 3 are rep. by their
mother /guardian/next friend, Sivakami,
1st respondent.
6. Chandra Mohan
S/o Lakshmanan
7. Saravanan,
S/o vellaiyan,
8. Gunasekaran
S/o Seerangan
(Respondent Nos. 6 and 7 are
set exparte in Lower Court)

... Respondents/Petitioners/
Respondents 1 & 2

Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 27.04.2012 made in M.C.O.P.No.271 of 2010 on the file of Motor Accident Claims Tribunal, (Principal Subordinate Judge) at Tiruppur.

For Appellant : Mr.T.Ravichandran
for Mrs.R.Sree Vidhya

For Respondents : Mr.Ma.P.Thangavel
for R1 to R5
R6 & R7-exparte

J U D G M E N T

(Judgment of the Court was delivered by HULUVADI G. RAMESH,J.)

This appeal is filed by the Insurer challenging the quantum of compensation awarded by the Motor Accident Claims Tribunal, (Principal Subordinate Judge) at Tiruppur in M.C.O.P.No.271 of 2010 dated 27.04.2012.

2. It is a case of fatal accident. On 20.03.2010 at about 4.30 p.m, when the deceased was driving a car bearing TN-33-Q-1122 at the extreme left of Uthukuli R.S.Kangayam Road towards north to south, a tipper lorry bearing registration No.TN-22B-8699, driven in a rash and negligent manner, dashed against the car, due to which, the deceased sustained injuries and succumbed to the injuries. The claimants, who are wife, two minor daughters and parents of the deceased, have filed a claim petition for compensation of Rs.1,20,00,000/-. According to the claimants, the deceased aged about 36 years, was a medical practisioner in the Government Hospital, Tirupur and was earning a sum of Rs.50,000/- per month.

3. In support of the claim, the wife of the deceased was examined as P.W.1, one Kannan, stated to be an eye witness to the accident was examined as P.W.2 and one J.Dhanasekaran, Registrar of the Government Hospital, Tirupur, was examined as P.W.3 and Exs.P1 to P.14 were marked before the Tribunal.

4. On behalf of the Appellant Insurance Company, one Surendrakumar was examined as R.W.1 and one Saraswathi, Deputy Superintendent in the Regional Office of the United India Insurance Company was examined as R.W.2 and Exs. R1 to R6 were marked before the Tribunal.

5. The Tribunal, based on the oral and documentary evidence and taking note of the fact, the evidence of P.W.2, the eye witness to the accident, came to the conclusion that the driver of the tipper lorry was responsible for the accident and caused the death of the deceased and consequently, fixed the liability on the appellant Insurance Company and directed the Appellant Insurance Company to pay the compensation to the claimants and to recover the same from the owner of the vehicle as there was breach of policy condition.

6. Based on the oral and documentary evidence, the Tribunal, granted the following amounts as compensation with interest at 7.5% per annum.

Sl.N o.	Head	Amount granted by the Tribunal
1	Loss of income	Rs. 77,64,606/-
2	Loss of dependency	Rs. 50,000/-
3	Funeral expenses	Rs. 10,000/-
5	Loss of love and affection	Rs. 1,00,000/-
	Total	Rs. 79,24,606/- (rounded off to Rs. 79,24,600/-)

7. Heard, the learned counsel for the Appellant/Insurer and the learned counsel appearing for the respondents 1 to 5/ claimants.

8. In the present appeal, the appellant is not disputing the liability but only the quantum of compensation is disputed.

9. Learned counsel for the appellant/ Insurer submitted that the deceased was earning a sum of Rs.38,528/- per month and there is no necessity to add 50% towards future prospects and deducting 1/5 towards personnel expenses, as the 1st claimant/ wife of the deceased was also a doctor and a Government employee. He further submitted that the multiplier adopted is also on the higher side. Hence, the quantum awarded by the Tribunal has to be reduced.

10. On the other hand, learned counsel for the respondents/ claimants submitted that the income of the deceased, fixed by the Tribunal is very meagre. He further submitted that the tribunal has not taken into account the number of dependents, namely, two minor daughters and aged parents and also have not taken into consideration the earning of the deceased from

private practice. The deceased was a doctor by profession and he is an anesthetist. He was earning more than his salary from his private practice, visiting private hospital. Therefore, it is contended that the compensation award is on the lower side.

11. Having gone through the award passed by the Tribunal and taking into account the submissions made on either side, we are of the view that there is no scope for interference with the award passed by the Tribunal. The income of the deceased was fixed by the Tribunal based on the salary of the deceased and after deducting the amount towards personal expenses and also considering the loss of future prospects based on decision of the Honourable Supreme Court reported in 2012 (6) SCC 421 (Santhosh Devi, v. National Insurance Company Limited). The Tribunal has not taken into consideration that the deceased was capable of earning well from private practice, being an anesthist. In the circumstances, there is no scope to interfere with the award passed by the Tribunal.

12. For the reasons aforesaid, the Civil Miscellaneous Appeal is dismissed as follows:-

- (i) The award of the Tribunal granting compensation to the tune of Rs.79,24,600/- is confirmed.
- (ii) The interest granted by the Tribunal at 7.5% per annum is confirmed.
- (iii) The appellant/Insurance Company is directed to deposit the award amount along with interest within a period of three months from the date of receipt of a copy of this order, if not already deposited.
- (iv) On such deposit, the claimants are permitted to withdraw their proportionate share as apportioned by the Tribunal.
- (v) The share of the minor claimants shall be invested in Fixed Deposit in any one of the Nationalised Banks initially for a period of three years and the same shall be renewed periodically till the minors attain majority. The interest accrued on the share of the minor claimants shall be paid to 1st respondent/ mother of the minor claimants once in three months till the 2nd respondent attains majority.
- (vi) There will be no order as to costs in this appeal.
- (vii) Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

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Sub Assistant Registrar

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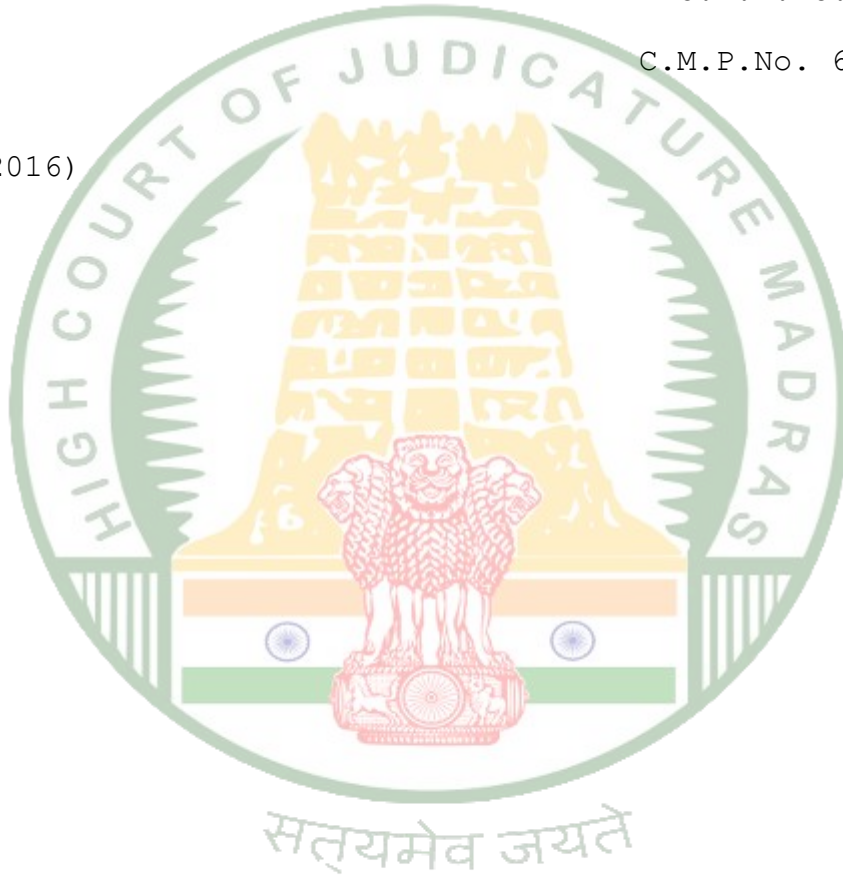
To

The Principal Subordinate Judge
Motor Accident Claims Tribunal
Tiruppur.

+1cc to Mr.T.Ravichandran, Advocate, S.R.No.24135

C.M.A.No.833 of 2016
and
C.M.P.No. 6826 of 2016

AK(CO)
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