

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 8.3.2016

CORAM

THE HONOURABLE MR.JUSTICE R.SUDHAKAR  
and  
THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

C.M.A.Nos.3536 and 3537 of 2014  
and  
M.P.Nos.1 and 2 of 2014

The New India Assurance Co. Ltd.,  
T.S.No.1817, Neela South Road,  
Nagapattinam. .... Appellant/2nd Respondent  
(in both Appeals)

Vs.

1. S.Kavitha  
2. M.Jayanthi  
3. M.Rajendran .... Respondents 1 to 3/petitioners  
4. S.Singaravelu .... 4th Respondent/1st Respondent  
(R4 remained exparte) (in both Appeals)

Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988 against the award and decree dated 1.8.2014 passed in M.A.C.T.O.P.Nos.4809 and 4810 of 2010 respectively on the file of the Motor Accidents Claims Tribunal (VI Judge, Court of Small Causes), Chennai.

For Appellant : Mr.M.Krishnamoorthy

For Respondents 1 to 3 : Mr.K.Suryanarayanan

R4 : Exparte

COMMON JUDGMENT

(Judgment of the Court was delivered by R.SUDHAKAR, J.)

The Insurance Company is on appeals challenging the common award dated 1.8.2014 passed in M.A.C.T.O.P.Nos.4809 and 4810 of 2010 respectively on the file of the Motor Accidents Claims Tribunal (VI Judge, Court of Small Causes), Chennai.

2. It is a case of fatal accident. On 2.10.2010, when the deceased N.Murugesan and M.Ponnathal were proceeding in a motorcycle bearing Registration No.MH-04 BN 8939 at 19.30 hours, at NH 67, Karur to Kovai Road, Viramadai 4 Road, Thennilai P.S. Limit, Karur District from east to west, a Tarus Lorry bearing Registration No.TN50 D 8998 came in the opposite direction, driven by its driver in a rash and negligent manner, dashed against the motorcycle and thereby caused the death of N.Murugesan on the spot and grievous injuries to the pillion rider viz., M.Ponnathal, who also succumbed to he injuries at the hospital. The claimants, who are two married daughters aged about 31 and 28 years respectively and a son aged about 25 years, have filed two separate claim petitions seeking compensation of a sum of Rs.25,00,000/- in each case in respect of the death of their parents. According to the claimants, the deceased father was earning a sum of Rs.40,000/- per month and their mother was earning a sum of Rs.20,000/- per month.

3. In support of their claim, a daughter by name Kavitha was examined as P.W.1 and one Ravi, who is stated to be the eye witness to the accident was examined as P.W.2 and Ex.P-1 to Ex.P-10 were marked, the details of which are as follows:-

| Ex.No. | Details                                |
|--------|----------------------------------------|
| P1     | Copy of the First Information Report   |
| P2     | Copy of Charge Sheet                   |
| P3     | Postmortem Certificate (Ponnathal)     |
| P4     | Death Certificate of Ponnathal         |
| P5     | Postmortem Certificate of Murugesan    |
| P6     | Death Certificate of Murugesan         |
| P7     | Legalheirship Certificate              |
| P8     | Land Related Documents of the Deceased |
| P9     | Photographs-12 Nos                     |
| P10    | Income Certificate issued by VAO       |

Neither oral nor documentary evidence was adduced on the side of the Insurance Company.

4. The Tribunal, based on the oral evidence of the witnesses and the F.I.R., came to conclusion that the driver of the lorry had driven the vehicle in a rash and negligent manner and was responsible for the accident and consequently liability was fixed on the appellant Insurance Company, since the vehicle was insured with the appellant, to compensate the claimants. On

this issue, learned counsel for the appellant has no serious objection with regard to the finding of the Tribunal as no material has been placed to come to a different conclusion from that of the conclusion arrived by the Tribunal.

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

| Sl. No. | Head                     | Award in respect of CMA 3536/2014         | Award in respect of CMA 3537/2014           |
|---------|--------------------------|-------------------------------------------|---------------------------------------------|
| 1       | Loss of dependency       | Rs. 30,80,000/-<br>(35000 x12x<br>2/3x11) | Rs. 21,84,000/-<br>(Rs.19500x12x<br>2/3x14) |
| 2       | Funeral Expenses         | Rs. 25,000/-                              | Rs. 25,000/-                                |
| 3       | Loss of Love & Affection | Rs. 1,00,000/-                            | Rs. 1,00,000/-                              |
| 4       | Loss of estate           | Rs. 50,000/-                              | Rs. 50,000/-                                |
| 5       | Transport charges        | Rs. 5,000/-                               | Rs. 5,000/-                                 |
|         | Total                    | Rs. 32,60,000/-                           | Rs. 23,64,000/-                             |

6. The objection raised by the learned counsel appearing for the appellant is with regard to the quantum of compensation awarded by the Tribunal towards Loss of income.

7. Insofar as the quantum of compensation is concerned, we are of the view that the monthly income fixed by the Tribunal is on the higher side and beyond the level of prudence. Hence, we are of the view that it needs to be fixed at Rs.10,000/- and Rs.7500/- respectively. Similarly, we are of the view that the award of Rs.25,000/- towards funeral expenses has to be reduced to Rs.20,000/- and there is no question of awarding any transport charges. Otherwise, the Tribunal has awarded reasonable amounts viz., Rs.1,00,000/- towards loss of love and affection and Rs.50,000/- towards loss of estate considering the sympathetic condition of the legal heirs in losing their parents simultaneously.

8. Accordingly, the compensation awarded by the Tribunal stands modified as follows:

| Sl. No. | Head                     | Award in respect of CMA 3536/2014        | Award in respect of CMA 3537/2014         |
|---------|--------------------------|------------------------------------------|-------------------------------------------|
| 1       | Loss of dependency       | Rs. 8,80,000/-<br>(10000 x12x<br>2/3x11) | Rs. 8,40,000/-<br>(Rs.7500x12x<br>2/3x14) |
| 2       | Funeral Expenses         | Rs. 20,000/-                             | Rs. 20,000/-                              |
| 3       | Loss of Love & Affection | Rs. 1,00,000/-                           | Rs. 1,00,000/-                            |
| 4       | Loss of estate           | Rs. 50,000/-                             | Rs. 50,000/-                              |
|         | Total                    | Rs. 10,50,000/-                          | Rs. 10,10,000/-                           |

9. There is no serious objection in respect of the interest granted at 7.5% per annum.

10. Accordingly, the Civil Miscellaneous Appeals are partly allowed as follows:-

- (i) The award of the Tribunal is reduced from Rs.32,60,000/- to Rs.10,50,000/- in respect of C.M.A.No.3536 of 2014 and from Rs.23,64,000/- to Rs.10,10,000/- in respect of C.M.A.No.3537 of 2014.
- (ii) The interest granted by the Tribunal at 7.5% per annum is confirmed.
- (iii) The appellant is granted eight weeks time to deposit the award amount as modified by this Court, after deducting the deposit, if any, already made.
- (iv) On such deposit being made, the claimants are permitted to withdraw the amount as per the apportionment made by the Tribunal.
- (v) Except the above modification, the award of the Tribunal in all other aspects stands confirmed.
- (vi) There will be no order as to costs in this appeal.
- (vii) Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

ssk/sl.

To

1.Motor Accidents Claims Tribunal  
(VI Judge, Court of Small Causes),  
Chennai.

2.The Section Officer,  
V.R.Section,  
High Court, Madras.

+2cc's to Mr.M.Krishnamoorthy, Advocate, S.R.Nos.14803 & 14802  
+2cc's to Mr.K.Suryanarayanan, Advocate, S.R.Nos.14786 & 14787

C.M.A.Nos.3536 and 3537 of 2014

TEJ(CO)  
CA(24/03/2016)



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