

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.04.2016

CORAM

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

C.M.A.No.1971 of 2012
& M.P.No.1 of 2012
and
Cross Objection No. 110 of 2014

United India Insurance Co.Ltd.
No.48, Arcot Road,
Saligramam,
Chennai - 600 093

...Appellant in CMA & 1st Respondent/2nd
Respondent in Cross Objection

Vs.

1. T.V.Rajendiran

2. T.R.Manjula

...RR1 & R2 & Cross Objections 1 & 2/
Petitioners

3. Janakiraman

(R3 set exparte in lower Court)...Respondent 3 in CMA/

R2 in Cross Objec/3rd Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor
Vehicles Act 1988 against the Judgement and Decree dated
16.11.2011 made in M.C.O.P.No.525 of 2010 on the file of Motor
Accident Claims Tribunal (Fast Track Court-II) at Poonamallee.

For Appellant

: Mr.S.Arunkumar

For respondents

: Mr.K.Varadha Kamaraj for R1 and R2
R3 - set exparte in lower Court

Cross Objection No.110 of 2014

1. T.V.Rajendiran

2. T.R.Manjula

..Cross objectors/Respondents 1 & 2/
Petitioners

Vs.

1. United India Insurance Co.Ltd.
No.48, Arcot Road,
Saligramam, Chennai - 600 093

...Respondent/Appellant/
2nd Respondent

2. Janakiraman

..Respondent/Respondent NO.3/
1st Respondent

Cross Objection filed under Order XLI Rule 22 of CPC against the Judgement and Decree dated 16.11.2011 made in M.C.O.P.No.525 of 2010 on the file of Motor Accident Claims Tribunal (Fast Track Court-II) at Poonamallee.

For Cross objectors : Mr.K.Varadha Kamaraj
For respondents : Mr.S.Arunkumar for R1

COMMON ORDER

(Order of the Court was made by HULUVADI G. RAMESH, J.)

The Civil Miscellaneous Appeal and the Cross Objection are filed aggrieved by the award passed by the Motor Accident Claims Tribunal (Fast Track Court-II) at Poonamallee, dated 16.11.2011 in M.C.O.P.No.525/2010.

2. It is a case of fatal accident. On 01.05.2010 at about 9.20 p.m., while the deceased was travelling in the motor cycle bearing Registration No.TN-22-BX-0951 as pillion rider on the Velacherry Main Road from Medavakkam to Velacherry from South to North near Mylai Balaji Nagar, a two wheeler viz., TVS XL Super, bearing Registration No.TN-07-BB-9223, which came in the opposite direction suddenly turned right from east to west and in that process it dashed against the two wheeler of the deceased, due to which, the deceased fell down from the vehicle and sustained head injury and inspite of treatment, the deceased succumbed to the head injury.

3. The claimants/father and mother of the deceased have filed a claim petition in M.C.O.P.No. 525 of 2010 seeking a compensation of Rs.60,00,000/-. In support of their claim, the father of the deceased was examined as P.W.1., one Nandhagopal, stated to be an eye witness to the accident, was examined as P.W.2 and one Moorthy, who was working as Senior Executive in National Institute of Ocean Technology, Chennai, in which the deceased was working was examined as P.W.3 and Exhibits P1 to P10 were marked on the side of the claimants. No witness was examined and no exhibits were marked on the side of the respondents/Insurance Company.

4. The Tribunal, after taking note of the oral and documentary evidence held that the accident had happened only due to the rash and negligent driving by the driver of the offending motor cycle, viz., TVS XL Super and therefore, fastened the liability on the insurer of the offending motor cycle and the appellant herein, the Insurer of the vehicle was directed to compensate the claimants.

5. Accordingly, the Tribunal granted the following amounts as compensation with interest at 7.5% per annum:-

Sl.No.	Head	Amount granted by the Tribunal
1	Pecuniary Loss	Rs. 37,41,120/-
2	Transport charges	Rs. 5,000/-
3	Funeral expenses	Rs. 5,000/-
4	Loss of love and affection	Rs.20,000/-
	Total	Rs.37,71,120/-

6. The Appeal and the Cross Objection are filed disputing the quantum of compensation.

7. Learned counsel for the appellant/Insurer submitted that the compensation awarded is on the higher side and the award passed is without taking into consideration the actual income of the deceased and the multiplier adopted is also on the higher side. He further submitted that the deceased was aged 26 years at the time of death and the mother must be above 50 years and not less than 46 years. The Tribunal ought to have fixed the average multiplier at 11, instead of adopting a multiplier of 16 and hence, the same has to be reduced.

8. Per contra, learned counsel for the claimants submitted that having regard to the age of the deceased, the Tribunal should have adopted the multiplier of 18 but the Tribunal has adopted the multiplier of 16 only and also on the other heads, the compensation has not been properly awarded. The compensation awarded for loss of love and affection and funeral expenses is meagre, which needs enhancement.

9. 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 the finding rendered by the Tribunal, fastening the liability on the part of the driver of the offending motor cycle which had coverage with the appellant herein/ insurer, cannot be found fault with. However, we are of the view that the compensation awarded under the heads "funeral expenses" and "loss of love and affection" is on the lower side and therefore, this Court awards a sum of Rs.1,00,000/- towards

"loss of love and affection" and Rs.20,000/- towards "funeral expenses". Further, in respect of pecuniary loss, we are of the opinion that having regard to the age of the deceased, adopting the multiplier of 18 would be appropriate. This Court further holds that the income fixed by the Tribunal is proper and after deducting 50% towards the personal expenses of the deceased and adopting a multiplier of 18 and deducting 10% income tax on the actual income the pecuniary loss to the claimants is arrived at Rs.39,67,884/- (Rs.440876 x 50% x 18). There is no serious objection in respect of the interest granted at 7.5 % per annum. Accordingly, the compensation awarded by the Tribunal stands modified as follows:

Sl.No	Head	Amount granted by the Tribunal	Amount awarded by this Court
1	Pecuniary loss	Rs. 37,41,120/-	Rs.39,67,884/-
2	Loss of love and affection	Rs.20,000/-	Rs.1,00,000/-
3	Funeral expenses	Rs. Rs. 5,000/-	Rs.20,000/-
4	Transport charges	Rs. 5,000/-	Rs. 5,000/-
	Total	Rs.37,71,120/-	Rs.40,92,884/-

10. Accordingly, C.M.A.No.1971 of 2012 is dismissed and Cross objection No.110 of 2014 is allowed in part as follows:-

(i) The award of the Tribunal is enhanced to Rs.40,92,884/- from Rs.37,71,120/-.

(ii) The interest granted by the Tribunal at 7.5% per annum is confirmed.

(iii) The appellant/Insurer is directed to deposit the award amount granted by this Court along with accrued interest and costs 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 being made, the claimants are permitted to withdraw the award amount as per the apportionment ordered by the Tribunal.

(v) There will be no order as to costs in these appeals.

(vii) Consequently, connected miscellaneous petition is closed.

-s/d-
Assistant Registrar

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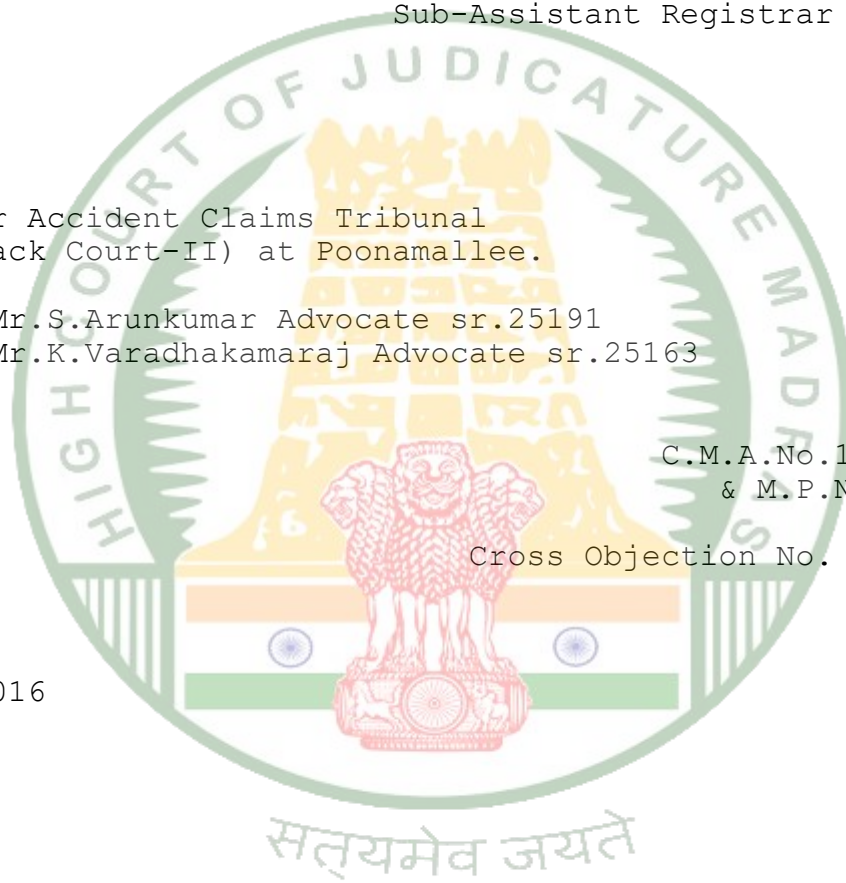
The Motor Accident Claims Tribunal
(Fast Track Court-II) at Poonamallee.

+1 cc to Mr.S.Arunkumar Advocate sr.25191

+1 cc to Mr.K.Varadhakamaraj Advocate sr.25163

C.M.A.No.1971 of 2012
& M.P.No.1 of 2012
and
Cross Objection No. 110 of 2014

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