

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.02.2016

C O R A M

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

C.M.A.No.3041 of 2012
and M.P.No.1 of 2012

National Insurance Company Limited
2nd Floor, D.No.81/D1, Chetty Street
Opp to Bus Stand
Tiruchengode ...Appellant

Vs

1.S.Lalitha
2.Minor B.L.Oviyashree
3.Minor B.L.Nandabalan

2nd and 3rd respondents
rep. By NF/Mother 1st respondent

4.D.Balakrishnan
5.Kauveriyammal
6.Subramanian ... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1989, against the order and decree passed in M.C.O.P.No.610 of 2010 on 29.02.2012 on the file of the Motor Accidents Claims Tribunal (Principal District Judge), Namakkal.

For appellant ... Ms.N.B.Surekha
For respondents ... Mr.D.Shivakumaran for R1 to R3
Mr.C.D.Johnson for R5 and R6
R4- No appearance

JUDGMENT

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

The National Insurance Company is on appeal challenging the award dated 29.02.2012 passed in M.C.O.P.No.610 of 2010 on the file of the Motor Accidents Claims Tribunal (Principal District Judge), Namakkal.

2. It is a case of fatal accident. As per the claim petition filed by the respondents 1 to 3 herein/claimants viz., the mother and children, before the Tribunal, it is stated that on 01.06.2010, while the 1st respondent's husband viz., S.Baluswamy was proceeding in his two wheeler bearing Regn.No.TN-28-AA-1003 from Padamudipalayam to Elayampalayam on the Paramathy Velur to Tiruchengode Main Road, a Lorry bearing Reg.No.TN-30-1213 came in the opposite direction in a rash and negligent manner and hit upon S.Balauswamy's vehicle and caused accident and in the said accident, S.Baluswamy died on the spot. According to the wife of the deceased, 1st respondent herein, her husband was aged 34 years and was working as Head of the Department of Tamil, P.G.P.College of Arts and Science, Paramathy Velur Taluk and was drawing a salary of Rs.40,000/- per month. The wife and children made a claim for compensation of Rs.50,00,000/-.

3. The Tribunal based on the available evidence before it, held that the accident occurred solely due to the negligent driving of the driver of the 4th respondent herein and further held that the appellant herein being the insurer of the 4th respondent's vehicle, both 4th respondent herein and National Insurance Company are jointly and severally liable to pay compensation. On such finding, the Tribunal granted the following amounts as compensation with interest at 7.5% per annum:-

Sl. No.	Head	Amount granted by the Tribunal
1	Loss of Pecuniary benefits	Rs.27,20,000/-
2	Loss of love and affection	Rs. 50,000/-
3	Funeral expenses	Rs. 10,000/-
4	Loss of consortium	Rs. 10,000/-
5	Future Prospects of 30% of income of Rs.27,20,000/-	Rs. 8,16,000/-
6	Future Paper Valuation income calculated at the rate of Rs.6,000/- per annum upto 58 years	Rs. 1,38,000/-
	Grand Total	Rs. 37,44,000/-

4. The learned counsel for the appellant-Insurance Company submitted that the Tribunal, after granting a sum of Rs.27,20,000/- towards loss of income, also awarded Rs.8,16,000/- towards future prospects by calculating 30% of

income of Rs.27,20,000/- and the same are not disputed, however, a further sum of Rs.1,38,000/- awarded by the Tribunal under the head Paper Valuation income calculated at the rate of Rs.6,000/- per annum upto 58 years, could not be sustained. The learned counsel also submitted that she is not disputing the quantum of compensation granted under other conventional heads.

5. Heard the learned counsel for the respondents 1 to 3 on the above submissions of the learned counsel for the appellant.

6. This court, after careful perusal of the submissions made on both sides and material papers, confirm the compensation granted under conventional heads, keeping in view that the same are just and reasonable. At the same time, we feel it appropriate to delete the compensation of Rs.1,38,000/- granted by the Tribunal under the head Paper Valuation income, which is solely based on the premise that the deceased would have earned, if he would have been alive. Further, this court feels it appropriate to modify the compensation granted under the head loss of consortium by adding Rs.10,000/- and thus, now, the wife, for the loss of consortium would get Rs.20,000/-. The modified award granted by this court is as follows:-

Sl. No.	Head	Amount granted by the Tribunal	Amount granted by this Court
1	Loss of Income	Rs.27,20,000/-	Rs.27,20,000/-
2	30% future prospects	Rs. 8,16,000/-	Rs. 8,16,000/-
3	Loss of consortium	Rs. 10,000/-	Rs. 40,000/-
4	Loss of love and affection	Rs. 50,000/-	Rs. 50,000/-
5	Funeral expenses	Rs. 10,000/-	Rs. 12,000/-
	Total	Rs. 37,44,000/-	Rs. 36,38,000/-

There is no serious objection with regard to grant of interest at 7.5% per annum.

7. Accordingly, this Civil Miscellaneous Appeal is partly allowed as follows:

- (i) The award of the Tribunal is reduced to Rs.36,38,000/- from Rs.37,44,000/-;
- (ii) The interest granted by the Tribunal at 7.5% per annum is confirmed.

(iii) The claimants are permitted to withdraw the modified award amount with accrued interest as per the apportion given by the Tribunal and respondents 5 and 6 are entitled to get Rs.2,69,000/- each.

(iv) The appellant Insurance Company is at liberty to withdraw the excess amount, if any, deposited before the Tribunal.

(v) There will be no order as to costs in this appeal.

(vi) Consequently, connected miscellaneous petition is closed.
nvsri

-s/d-

Assistant Registrar (CS-II)

True Copy

Sub-Assistant Registrar

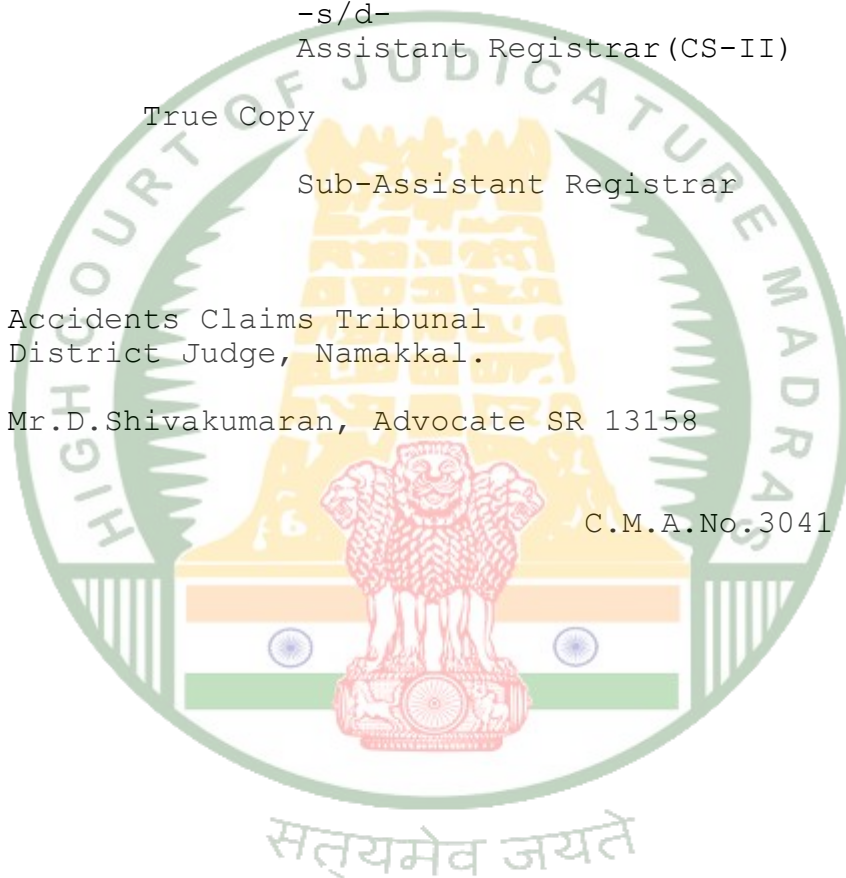
To

The Motor Accidents Claims Tribunal
Principal District Judge, Namakkal.

+ 1 cc to Mr.D.Shivakumaran, Advocate SR 13158

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C.M.A.No.3041 of 2012



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