

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :21.07.2016

CORAM

THE HON'BLE MR. JUSTICE T.MATHIVANAN

C.M.A.No.751 of 2006
&
Cross Objection No.97 of 2014

C.M.A.No.751 of 2006

The New India Assurance Company Ltd.,
Cost Coast Chambers
G.N.Chetty Street
T.Nagar
Chennai

.. Appellant

Vs.

1.Nachimuthu
2.Palaniammal
3.Karuppusamy

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 11.04.2005 and made in M.C.O.P.No.1186 of 2003 on the file of the Motor Accident Claims Tribunal (Additional District Court, Fast Track Court No.5), Coimbatore at Tiruppur.

For Appellant : Mr.S.Manohar

For Respondents: Mr.N.Manoharan
for Mr.R.Prabakar

Cross Objection No.97 of 2014

1.Nachimuthu
2.Palaniammal

... Cross Objectors

Vs.

1. The New India Assurance Company Ltd.,
Cost Coast Chambers
92, G.N.Chetty Street
T.Nagar, Chennai

Cross Objection filed under Order 41 Rule 22 CPC to enhance the award dated 11.04.2005 and made in M.C.O.P.No.1186 of 2003 on the file of MACT (Additional District Court, FTC No.5), Coimbatore at Tiruppur.

For Cross-objectors : Mr.N.Manoharan

For Respondents : Mr.S.Manohar for R1

COMMON JUDGMENT

Questioning the quantum of compensation, the appellant Insurance Company, who is the second respondent in the claim petition in M.C.O.P.No.1186 of 2003, has preferred the Civil Miscellaneous Appeal in C.M.A.No.751 of 2006.

2. The respondents 1 and 2 herein, being the claimants, having been not satisfied with the award of the Tribunal to the extent of Rs.11,33,396/-, have filed the cross objection in Cross Obj. No.97 of 2014, seeking enhancement of compensation.

3. With the issue involved in both the appeal as well as the cross-objection is one and the same and the parties to the appeal and the cross-objection are also one and the same, they have been consolidated together, heard jointly and disposed of in this common judgment.

4. It is manifested from the records that on 11.12.2003, at about 01.30pm, the mini auto bearing Registration No.TN38-T-1702 had hit against the two wheeler bearing Registration No.TN40 5220 driven by the deceased Myilsamy, who is none other than the son of the respondents 1 and 2/claimants, near Periya Kattu Thottam, Natchipalayam Privu, Kovai to Trichy Road. On account of the said accident, the deceased had sustained severe injuries and subsequently died on 13.12.2003, while he was on treatment.

5. Claiming totally a sum of Rs.5,00,000/-, the respondents/claimants had moved the Motor Accident Claims Tribunal (Additional District Court, Fast Track Court No.5), Coimbatore at Tiruppur with a claim petition in M.C.O.P.No.1186 of 2003. While the first respondent, being the owner of the vehicle, remained ex parte, the appellant, who is the second respondent in the claim petition, had contested the claim. However, the Tribunal, on evaluating the evidences, both oral

and documentary, had awarded a sum of Rs.11,33,396/- under the following heads:

Loss of dependency of the family	:	Rs.10,80,000.00
Loss of love and affection (Rs.10,000/- each)	:	Rs. 20,000.00
Funeral Expenses	:	Rs. 3,000.00
Medical Expenses (As per Ex.P5)	:	Rs. 30,396.00

Rs.11,33,396.00

6. When the appeal is taken up for hearing Mr.S.Manohar, learned counsel appearing for the appellant has contended that the monthly income of the deceased as determined by the Tribunal was absolutely wrong as there was no acceptable evidence to support the claim of the respondents/claimants with reference to income at Rs.5000/-. He would further submit that without any basis, the Tribunal had determined the monthly income of the deceased at Rs.7500/-, which was not all sustainable and was liable to be discarded. Apart from the above submission, the learned counsel has also adverted that the compensation granted by the Tribunal on the other heads also seemed to be on the higher side and exorbitant and hence he has urged to set aside the award.

7. On the other hand, Mr.N.Manoharan, learned counsel appearing for the cross-objectors / claimants has contended that since the deceased was a bachelor at the relevant point of time, as per the decision of the Apex Court in Sarla Verma & Ors vs Delhi Transport Corp.& Anr reported in (2009) 6 SCC 121, while calculating the pecuniary loss of the family, 50% of the monthly income ought to have been added towards future prospects for quantifying the just compensation. He would further submit that the deceased was working in a company and was earning a sum of Rs.5000/- per month and since there was no contrary evidence adduced on the side of the appellant Insurance Company, the Tribunal was right in fixing the monthly income of the deceased at Rs.5,000/-.

8. Considering the submissions made on behalf of both sides, this Court is of view that the monthly income of the deceased fixed by the Tribunal at Rs.5,000/- can be maintained and since the deceased was aged 30 years at the time of occurrence, as submitted by Mr.N.Manoharan, a sum of Rs.2500/- is to be added towards future prospects. Since the deceased was a bachelor, 50% deduction is to be given towards his personal and living expenses. After giving 50% deduction, the remaining balance

would be Rs.3750/-. For the age group of 30 years, the appropriate multiplier would be '17'. Accordingly, the pecuniary loss of the family is calculated at Rs.7,65,000/- (Rs.3750/-x12x17). Apart from this, this Court is of view that the compensation at Rs.10,000/- each awarded by the Tribunal under the head of loss of love and affection is very meagre and therefore it is hereby increased to Rs.25,000/- each. A sum of Rs.3,000/- awarded by the Tribunal under the head of Funeral expenses also appears to be very lesser and the same is hereby increased to Rs.25,000/-. This court, on perusal of the award, finds that the Tribunal has not awarded any amount towards pain and suffering and transportation. Considering the nature of the case, a sum of Rs.30,000/- is awarded under the head of pain and suffering as the deceased had succumbed to injuries on 13.12.2003 i.e, after two days from the date of accident while he was on treatment. Besides this, a sum of Rs.15,000/- is awarded under the head of Transportation. The Tribunal, as per Ex.P5, has granted a sum of Rs.30,396/- under the head of Medical Expenses, which does not warrant any interference. Accordingly, a sum of Rs.11,33,396/- granted by the Tribunal is hereby reduced to Rs.9,40,396/- as detailed hereunder:

Pecuniary loss of the family - Rs.7,65,000.00
(Rs.3750/- *12*17)

Loss of Love and Affection-	Rs.	75,000.00
Funeral Expenses	-	Rs. 25,000.00
Pain and Suffering	-	Rs. 30,000.00
Transportation	-	Rs. 15,000.00
Medical Expenses	-	Rs. 30,396.00

Total		Rs.9,40,396.00

In the result,

i) Civil Miscellaneous Appeal is partly allowed and the amount of Rs.11,33,396/- granted by the Tribunal is hereby reduced to Rs.9,40,396/-. The said amount shall be apportioned among respondents 1 and 2/claimants equally. It is brought to the notice of this Court that the entire amount awarded by the Tribunal was already deposited to the credit of the claim petition in M.C.O.P.No.1186 of 2003. Since the award amount has been reduced to Rs.9,40,396/-, the appellant Insurance Company is permitted to withdraw the excess amount deposited by them along with accrued proportionate interest. The cross-objectors / claimants are also entitled to withdraw the award amount with interest at the rate of 9% per annum from the date of petition till the date of realization.

ii) Cross-objection No.97 of 2015 filed by the claimants is dismissed.

No costs.

Sd/-
Assistant Registrar(CS VII)

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Sub Assistant Registrar

gpa

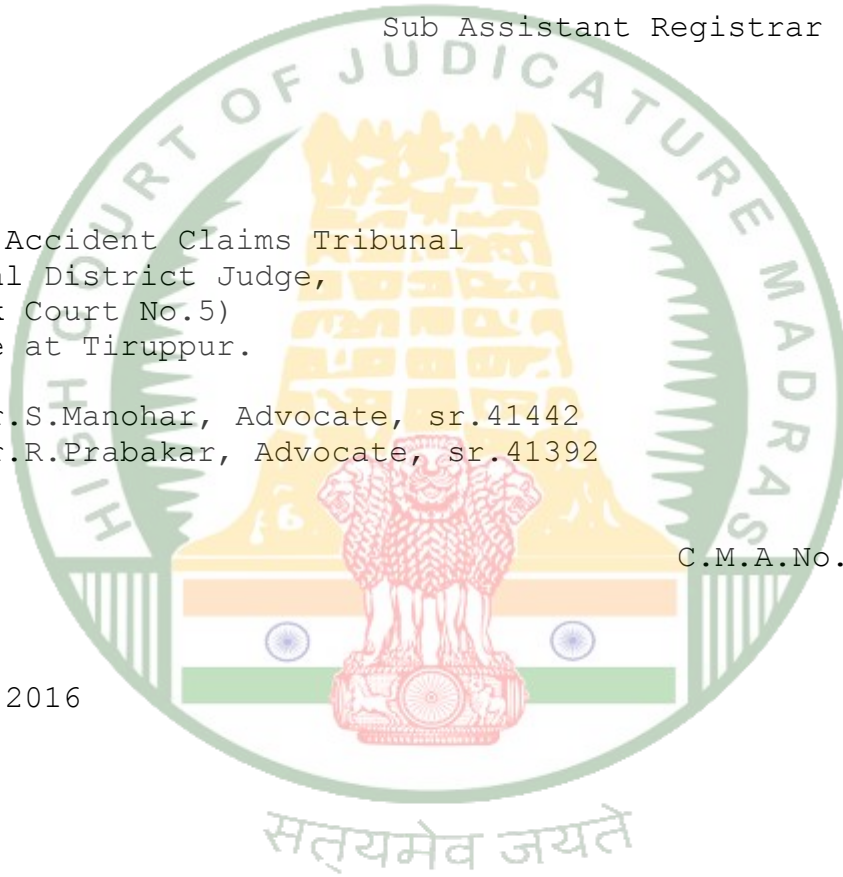
To

The Motor Accident Claims Tribunal
(Additional District Judge,
Fast Track Court No.5)
Coimbatore at Tiruppur.

1 cc to Mr.S.Manohar, Advocate, sr.41442
1 cc to Mr.R.Prabakar, Advocate, sr.41392

C.M.A.No.751 of 2006

rj co
kra 26.09.2016



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