



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.03.2016

CORAM:

THE HONOURABLE MS. JUSTICE V.M.VELUMANI

C.M.A. (MD) Nos. 364 and 365 of 2015

and

M.P. (MD) Nos. 1 and 2 of 2015

C.M.A. (MD) No. 364 of 2015:

The Branch Manager,
The Oriental Insurance Company Limited,
First Floor, DDJ Centre,
Opp to Vadeseri Bus Stop,
Vadaseri, Nagercoil. ... Appellant/2nd Respondent

Vs.

1. Elisa Steaban
2. Sivaraj
3. Kingslin Ravikumar ... Respondents/Petitioner & Respondents 1&3

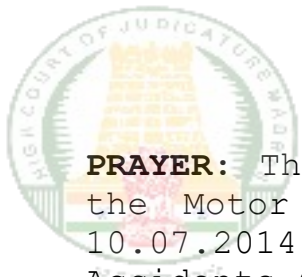
PRAYER: The Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 10.07.2014 made in M.C.O.P.No.311 of 2012 on the file of the Motor Accidents Claims Tribunal cum Sub Judge, Valliyoor.

C.M.A. (MD) No. 365 of 2015:

The Branch Manager,
The Oriental Insurance Company Limited,
First Floor, DDJ Centre,
Opp to Vadeseri Bus Stop,
Vadaseri,
Nagercoil. ... Appellant

Vs.

1. Elisa Steaban
2. Jenis
3. Minor Jenose
(rep by his father and guardian 1st Respondent
Viz., Elisa Steaban)
4. Sivaraj (Ex-parte in lower court)
5. Kingslin Ravikumar
(R2 declared as major and discharged from guardianship vide order dated 17.12.2015 in M.P. (MD) No. 2 of 2015 in C.M.A. (MD) No. 365 of 2015) ... Respondents/Petitioner 1 to 3 & 1st Respondent & 3rd Respondent



PRAYER: The Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 10.07.2014 made in M.C.O.P.No.312 of 2012 on the file of the Motor Accidents Claims Tribunal cum Sub Judge, Valliyoor.

For Appellant : Mr.K.Bhaskaran

For Respondents : Mr.M.P.Senthil for R1 & R2

COMMON JUDGMENT

These Civil Miscellaneous Appeals are filed by the appellant / Insurance Company challenging the award dated 10.07.2014 in M.C.O.P.Nos.311 & 312 of 2012 passed by the Motor Accidents Claims Tribunal cum Sub Judge, Valliyoor.

2.The appellant / Insurance Company is the 2nd respondent before the Tribunal. The injured claimant in C.M.A.(MD)No.364 of 2015 claimed a sum of Rs.15,00,000/- as compensation for the injuries sustained by him in a road accident and the claimants in C.M.A.(MD)No.365 of 2015 claimed a sum of Rs.20,00,000/- as compensation for the death of the deceased before the Tribunal. The 3rd respondent in claim petition is Insurance Company, which insured the motor cycle driven by the claimant.

3.The facts of the case are as follows: -

It is the case of the respondents / claimants before the Tribunal that on 28.09.2012 at 7.00 p.m., the injured claimant namely, Elisa Steaban was proceeding in a motor cycle bearing registration No.TN-20 / V-5773 along with the deceased namely, Gnana Nava Rose, who travelled as pillion rider. At that time, a car bearing registration No.TN-69 / J-1121 driven in a rash and negligent manner dashed against the said motor cycle. Due to the impact, Elisa Steaban and Gnana Nava Rose were sustained grievous injuries all over the body. Immediately, they were taken to Nagercoil Manuvel Ortho Hospital. Gnana Nava Rose died in the hospital and Elisa Steaban was admitted as patient from 28.09.2012 to 03.12.2012 for taking treatment. According to the claimants, due to the rash and negligent driving of the driver of the car belonging to the 1st respondent, the accident had occurred. The said car was insured with appellant.

4.The case of the claimants was resisted by the 2nd respondent / Insurance Company by filing a counter affidavit. According to the respondent / Insurance Company, the driver of the car had driven the vehicle carefully by following the traffic rules. It is stated that at the time of accident, the claimants were not having valid licence. It is further stated that the claimants have to prove the occupation, income and the injuries sustained in the accident. The claimants sustained only simple injuries and hence, the amount claimed as compensation is on higher side and prayed for the dismissal of the claim petition.



5.The 3rd respondent filed a counter affidavit stating that the accident had occurred due to rash and negligent driving of the driver of the car and as against the 3rd respondent, there is no compensation is claimed by the claimants and the claim is made only as against the driver of the 1st respondent and hence, the 3rd respondent prayed for the dismissal of the claim petition.

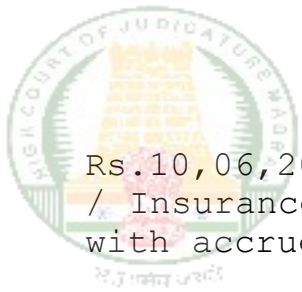
6.Before the Tribunal on the side of the claimant, as many as 25 documents were marked as Exs.P1 to P25 and P.Ws.1 and 2 were examined as witnesses. On the side of the respondents, no document was marked and D.W.1 Dr.Manivel was examined. After considering the oral and documentary evidence, in M.C.O.P.No.311 of 2012 the Tribunal has awarded a sum of Rs.10,06,200/- as compensation with 7.5% interest per annum and in M.C.O.P.No.312 of 2012 a sum of Rs.12,27,600/- as compensation with 7.5% interest per annum. Aggrieved over the same, the present appeals are filed by the appellant / Insurance Company.

7.The learned counsel for the appellant / Insurance Company submitted that the appeals are filed by questioning the finding rendered by the Tribunal in directing the appellant / Insurance Company to pay the compensation amount. The learned counsel for the appellant / Insurance Company raised objections with regard to the manner of accident and the income of the deceased. The learned counsel contended that Tribunal failed to properly appreciate the oral and documentary evidence and erroneously held that the accident took place only due to rash and negligent driving by Driver of car. He further contended that the finding of the Tribunal, has to be set aside.

8.The learned counsel for the 1st respondent contended that the claimants have proved by cogent and acceptable evidence that the accident took place only due to rash and negligent driving by Driver of car. The Tribunal correctly fixed the salary, nature of injuries, age and multiplier and awarded just compensation and prayed for dismissal of appeals.

9.Heard the learned counsel for the appellant / Insurance Company and the learned counsel for the 1st respondent in C.M.A. (MD)No.364 of 2015 and the respondents 1 to 3 in C.M.A. (MD)No.365 of 2015.

10.I have considered the submissions made on behalf of the learned counsel on either side and carefully gone through the entire materials available on record, I do not find any infirmity in the award in M.C.O.P.No.311 of 2012 passed by the Tribunal in directing the appellant/Insurance Company to pay the compensation amount of Rs.10,06,200/- with 7.5% interest per annum. The Tribunal has properly appreciated the facts and awarded just compensation. Hence, the claimant is entitled for a sum of



Rs.10,06,200/- with 7.5% per annum as compensation. The appellant / Insurance Company is directed to deposit the entire award amount with accrued interest and costs, if not already deposited.

(*)11."The first respondent/claimant in C.M.A(MD)No.364 of 2015 is permitted to withdraw the entire compensation amount awarded in MCOP.No.311 of 2012 , by the learned Subordinate Judge, Valliyoor , with accrued interest and costs, by making necessary application before the Tribunal.

12.In the result, the award dated 10.07.2014 made in M.C.O.P.No.311 of 2012 passed by the learned Motor Accidents Claims Tribunal cum Sub Judge, Valliyoor, is hereby confirmed and the Civil Miscellaneous Appeal in C.M.A.(MD)No.364 of 2015 is dismissed. No costs.

13.Insofar as the C.M.A.(MD)No.365 of 2015 is concerned, the learned counsel for the appellant / Insurance Company even though raised many grounds, he restricted his claim only with regard to the income of the deceased. He further submitted that in the absence of valid documentary evidence with regard to the income of the deceased, the Tribunal erroneously fixed the monthly income of the deceased as Rs.7,500/-. Hence, the same should be reduced.

14.The claimants submitted that the deceased was an agricultural cooli and earning a sum of Rs.9,000/- per month. However, no documentary evidence was produced to prove the income of the deceased. It is seen that the wife of the deceased and his two minor children are the dependents of the deceased. At the time of accident, the deceased was 39 years. Considering the nature of work done by the deceased and judgments of the Hon'ble Apex Court and this Court, I am of the opinion that a sum of Rs.6,000/- as monthly income of the deceased will be reasonable instead of Rs.7,500/- as fixed by the Tribunal. Therefore, the loss of monthly income is fixed at Rs.6,000/- and applying multiplier as 15 and after deducting one third, the loss of income of the claimants due to death of deceased is Rs.7,20,000/- (i.e., $6,000 \times 12 \times 15 \times 1/3 = 7,20,000/-$). In respect of compensation under other heads, the same are confirmed. The claimants are entitled for the compensation as follows:

S. No	Description	Amount awarded by		Award confirmed / enhanced /granted
		Tribunal	this Court	
1.	Loss of income	12,27,600	7,20,000	Enhanced
2.	Loss of love and affection	1,50,000	1,50,000	Confirmed
3.	Funeral expenses	25,000	25,000	Confirmed



4.	Loss of estate	2,500	2,500	Confirmed
5.	Pain & sufferings	40,000	40,000	Confirmed
6.	Medical expenses	1,10,083	1,10,083	Confirmed
Total compensation		12,27,600	10,47,583	1,80,017 (reduced)

Hence, the claimants are entitled for a sum of Rs.10,47,583/- with 7.5% per annum as compensation. The appellant / Insurance Company is directed to deposit the entire award amount with accrued interest and costs, if not already deposited.

(*)15 Insofar as C.M.A.(MD)No.365 of 2015 is concerned, the respondents 1 to 3 / claimants are entitled to the modified compensation of Rs.10,47,583/- with accrued interest and costs, in the ratio as apportioned by the Tribunal. Out of the said amount, the respondents 1 and 2 / major claimants are permitted to withdraw their respective shares with proportionate accrued interest and costs, less the amount, if any, already withdrawn, by making necessary application before the Tribunal. Insofar as the third respondent / minor claimant is concerned, his share shall be deposited in any one of the Nationalized Banks, in a Fixed Deposit, till he attains majority. The interest accrued thereon is permitted to be withdrawn by the first respondent - father of the minor, once in three months directly from the Bank."

16.In the result, the award dated 10.07.2014 made in M.C.O.P.No.312 of 2012 passed by the learned Motor Accidents Claims Tribunal cum Sub Judge, Valliyoor is hereby modified and the Civil Miscellaneous Appeal in C.M.A.(MD)No.365 of 2015 is partly allowed. No costs. Consequently, connected M.Ps.are closed.

Sd/-

Assistant Registrar(AE)

(*)CORRECTED ORDER ISSUED DATED

29/06/2016

/True Copy/

Sub Assistant Registrar

To

(*)TO BE SUBSTITUTED FOR THE ORDER ALREADY DESPATCHED ON 29/4/2016

The Motor Accidents Claims Tribunal cum Sub Judge, Valliyoor.

+2cc to Mr.K.BHASKARAN,Advocate Sr.No.12572 & 12573

+2cc to Mr.M.P.SENTHIL,Advocate Sr.No.12546 & 12547

NBJ

AA/SKS-RR/28.04.2016/5p-6c

RL/6C/5P/SKS/RR/SARI/30/6/2016