

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 06.11.2017

CORAM:

THE HONOURABLE MR.JUSTICE C.T.SELVAM
AND

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Civil Miscellaneous Appeal Nos.1288 & 1289 of 2011
and

CROS.OBJ.No.61 of 2015 & M.P.No.1 of 2011

C.M.A.No.1288 of 2011

United India Insurance Company Limited,
Rep. By its Divisional Manager,
First Floor, T.K.M.Complex,
46-51, Katpadi Road,
Vellore-632 001. .. Appellant/3rd Respondent

- Vs -

1. M.Senthil Vadivu
W/o.Late.Yoganathan

2. S.Krishnaveni

3. Minor Y.Chandraduth
Rep. By his Mother first respondent

4. N.P.Jayakumar

5. N.Meganathan. .. Respondents/1to3 petitioner
and 1st and 2nd respondent

C.M.A.No.1289 of 2011

United India Insurance Company Limited,
Rep. By its Divisional Manager,
First Floor, T.K.M.Complex,
46-51, Katpadi Road,
Vellore-632 001. .. Appellant/3rd Respondent

- Vs -

1. C.Gandhi

2. N.P.Jayakumar

3. N.Meganathan. .. Respondents/Petitioner
and 1st and 2nd Respondent

CROS.OBJ.No.61 of 2015

2. Minor Y.Chandraduth
Rep. By his Mother/First Appellant

... Cross Appellants/
1st and 3rd Respondent

- Vs -

1. United India Insurance Company Limited,
Rep. By its Divisional Manager,
First Floor, T.K.M.Complex,
46-51, Katpadi Road,
Vellore-632 001.

2. S.Krishnaveni

3. N.P.Jayakumar

4. N.Meganathan. ... Respondents/Appellant &
RR2,4,5

Prayer in CMA.1288/2011:- Civil Miscellaneous Appeal filed u/s.173 of the Motor Vehicles Act, 1988, against the judgement and decree dated 30.06.2010 made in M.C.O.P.No.30 of 2007 on the file of the Motor Accident Claims Tribunal, (Additional District & Sessions Judge), (Fast Track Court) at Vellore.

Prayer in CMA.1289/2011:- Civil Miscellaneous Appeal filed u/s.173 of the Motor Vehicles Act, 1988, against the judgement and decree dated 30.06.2010 made in M.C.O.P.No.309 of 2007 on the file of the Motor Accident Claims Tribunal, (Additional District & Sessions Judge), (Fast Track Court) at Vellore.

Prayer in CROS.OBJN.No.61/2015:- Cross Appeal filed Order 41 Rule 22 of Civil Procedure Code, against the judgement and decree dated 30.06.2010 made in M.C.O.P.No.30 of 2007 on the file of the Motor Accident Claims Tribunal, (Additional District & Sessions Judge), (Fast Track Court) at Vellore.

For Appellant
in CMA.1288 & 1289/2011: Mr.S.Arun Kumar

For Respondents:Mr.I.Jenklin Williams
For RR1 & 3 in CMA.1288/2011
Mr.C.Prabakaran
For R2 in CMA.1288/2011
R4 & R5 in CMA.1288/2011 - Ex-parte
R1 in CMA.1289/2011-No Appearance
R2 & R3 in CMA.1289/2011 - Ex-parte

For Cross Objectors : Mr.I.Jenklin Williams

For Respondents : Mr.S.Arun Kumar For R1
in Cross Objection Mr.C.Prabakaran For R2
: R3 & R4 - Ex-parte

COMMON JUDGMENT

[Judgment of the Court was delivered by C.T.SELVAM, J.]

These Civil Miscellaneous Appeals arise against the judgement and decree dated 30.06.2010 made in M.C.O.P.Nos.30 & 309 of 2007 on the file of the Motor Accident Claims Tribunal, (Additional District & Sessions Judge), (Fast Track Court) at Vellore.

2. Appellant in both Civil Miscellaneous Appeals is the Insurance Company. Respondents 1 to 3 in C.M.A.No.1288 of 2011 are the legal heirs of deceased and first respondent in C.M.A.No.1289 of 2011 is the claimant. On 07.05.2006 at about 5.30.p.m the deceased Yoganathan was travelling along with his wife in a Maruthi Car bearing Registration No.TSH 9636, which belongs to first respondent in C.M.A.No.1289 of 2011 viz., Gandhi, who was driving the vehicle on the Vellore-Arni Road and when the car was nearing Bagayam, a lorry bearing Registration No.TN-23-8120, which belongs to fourth respondent in C.M.A.No.1288 of 2011/second respondent in C.M.A.No.1289 of 2011, which was driven by its driver in a rash and negligent manner, dashed against the car, owing to which, deceased sustained fatal injuries and passed away on the way to hospital. The first respondent in C.M.A.No.1288 of 2011, who was the driver of Maruthi Car, sustained fractures of her left of Mandible and on the Shaft of left humerus and he underwent a major operation on his left leg.

3. Before the Tribunal, on the side of respondents 1 to 3 in CMA.1288 of 2011 and first respondent in CMA.1289 of 2011/claimants, 4 witnesses were examined and 31 exhibits were marked. On the side of appellant/Insurance Company, one witness was examined and one exhibit was marked.

4. Heard learned counsel for appellant and learned counsel for respondents.

5. Learned counsel for appellant/Insurance Company submits that Tribunal has erred in failing to note that in the present case, the accident involved a lorry and car insured by appellant. It was a head on collision and both vehicles suffered damage to the right front ends. Therefore, Tribunal ought to have considered the aspect on contributory negligence and fixed liability for the accident also on the driver of the car. Learned counsel also submitted that while the claimant/wife of the deceased/first respondent in CMA.No.1288 of 2011 had informed of her having been at the wheel of the car thereof, the Tribunal ought to have taken into consideration the contention of the appellant that it was the deceased, who was behind the wheel.

7. Learned counsel for respondents 1 & 2 in CMA.1288 of 2011/cross objectors submitted that Tribunal had failed to take into consideration that the deceased held a Doctorate in Philosophy in Zoology and had been in gainful employment at National Science and Technology Development Agency (NSTDA), Thailand. He further submitted that Tribunal had failed to consider the future earning prospects of the deceased.

8. We have considered the rival submissions.

9. We are unable to accept the submissions of learned counsel for appellant, when the motor vehicle report relating to the car has not been produced before Tribunal and the driver of the lorry has not been examined. We have no difficulty in accepting the submission of respondents/cross objector that she was at the wheel and her husband suffered death upon being thrown out of his seat and falling on the opening of the car door as a passenger seated beside her. We also accept the submission of learned counsel that some provisions ought to have been made towards future earning prospects of the deceased. Even as we take note of the fact that the Tribunal adopted the multiplier 18, while the correct multiplier to be adopted in keeping with the decision of the Apex Court in Sarala Verma & Others Vs. Delhi Transport Corporation & Another [CDJ 2009 SC 779], would be 17, we would not interfere with such aspect of the order under challenge as we are making a lesser provision of 25% towards future earning prospects considering the nature of overseas employment. Funeral expenses shall be placed at Rs.10,000/-.

10. Learned counsel for appellant/Insurance Company submitted that Tribunal has erred in directing the payment of Rs.1,00,000/- towards loss of estate.

11. We would accept the submission of learned counsel for appellant/insurance company and the sum of Rs.1,00,000/- towards loss of estate shall stand deleted.

12. Accordingly, the compensation shall be as follows:-

Head	Awarded by Tribunal (Rs.)	Awarded by this Court (Rs.)
Loss of dependency [(35795.4+25%)X12-1/3X18]	51,54,537.60	64,43,172
Love and affection	1,00,000	1,00,000
Loss of estate	1,00,000	0
Loss of consortium (R1)	1,00,000	1,00,000
Funeral expenses	2,000	10,000
Total	54,56,538	66,53,172

13. We find no reason to interfere with the award of Tribunal under other heads.

14. The Civil Miscellaneous Appeals and Cross Objection are disposed of with the above modification. Appellant/Insurance Company is directed to deposit the enhanced compensation amount less that already deposited, within a period of eight weeks from the date of receipt of a copy of this judgment. First and second respondents/claimants in CMA No.1288 of 2011 are at liberty to withdraw the amount on due application as apportioned by Tribunal. Sum payable to third respondent/minor in CMA No.1288 of 2011 shall be held in deposit with a nationalised bank during the period of his minority. First respondent may withdraw the interest on such deposit once in three months towards defraying the expenses of third respondent. Deficit Court fee, if any payable, by respondents 1 to 3 in CMA.1288 of 2011 in keeping with the quantum awarded by this Court, shall be paid within two months of the receipt of this judgment.

Sd/-

Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

kmi

To

1. The Additional District & Sessions Judge,
Fast Track Court,
Motor Accident Claims Tribunal,
Vellore.

2. The Section Officer, सत्यमेव जयते
V.R.Section,
High Court, Madras-104.

+ 2 ccs Mr.C.Prabakaran, Advocate Sr.78415, 78416
+ 1 cc toMr. I. Jenklin Williams, Advocate 78399
+ 1 cc to Mr.S. Arunkumar, Advocate Sr.78385

CMA.Nos.1288 and 1289 of 2011

NM(CO)
EU(29/11/2017)