

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.08.2017

CORAM :

THE HONOURABLE MR. JUSTICE R.SUBBIAH

and

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

CMA.No.1447 of 2014

and MP.Nos.1 and 4 of 2014

and Cross Obj.No.58 of 2014

CMA.No.1447 of 2014

The New India Assurance Company Ltd.,

No.514 and 515 Gandhi Road,

Kancheepuram.

... Appellant/3rd respondent

Vs.

1.V.S.Ekambaram

2.E.Gayathri

3.C.R.Sugumar

4.Magesh

... 1 & 2 Respondents/Petitioner

R2 declared as major and R1 discharged from

guardianship vide order of Court dated 12.11.2014

made in MP.Nos.2 & 3 of 2014 in CMA.1447 of 2014.

... Respondents 3 & 4/Respondents 1 & 2

PRAYER : Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 15.03.2013 made in MCOP.No.265 of 2004 on the file of the Motor Accident Claims Tribunal, Subordinate Judge, Kancheepuram.

For appellant : Mr.R.Neethe Perumal

For respondents m: Mr.Mr.M.Nirmal Kumar for R1 and R2.

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Cross Obj.No.58 of 2014

1.V.S.Ekambaram

2. Minor E.Gayathri

rep by father V.S.Ekambaram... cross objectors/Respondents 1&2

Vs.

1.The New India Assurance Company Ltd.,
No.514 and 515 Gandhi Road,
Kancheepuram.

...1st respondent/appellant

2.C.R.Sugumar

3.Mahesh

... Respondents 2&3/Respondents 3 & 4

PRAYER : Cross Appeal is filed under Order 41 Rule 22 of CPC to enhance the compensation amount awarded in the judgment and decree dated 15.03.2013 made in MCOP.No.265 of 2004 on the file of the Motor Accident Claims Tribunal, Subordinate Judge, Kancheepuram by allowing this cross appeal in CMA.No.1447 of 2014.

For cross objectors : Mr.M.N.Nirmal Kumar.

For respondents : Mr.R.Neethe Perumal for R1.

JUDGMENT

(Judgment of this Court was made by P.VELMURUGAN, J.)

The Civil Miscellaneous Appeal is filed against the order dated 15.03.2013 made in MCOP.No.264 of 2004 on the file of the Motor Accident Claims Tribunal, Subordinate Judge, Kancheepuram.

2. The case of the claimant before the trial Court that on 01.06.1999 at about 4.30pm when the petitioner was proceeding to Pondicherry from Kancheepuram in a Tata sumo car bearing Reg.No.TN21 J 9999 along with her mother, brother and other family members, near Thimmavaram Village, Modern Rice Mill, Chengalpattu Taluk at about 4.30pm, the tanker lorry bearing Reg.No.TDV 3727 (i.e, the 1st respondent) belongs to the 2nd respondent driven the vehicle in a rash and negligent manner and collided with the said Tata Sumo, thereby caused death of the Saravanan and others on the spot. The Chengalpattu Taluk Police registered a case in Cr.No.334 of 1999. The deceased was aged about 14 years and he was studying at Brindavan Public School at Kodaikanal and doing family business and earning a sum of Rs.20,000/-per month. Hence, the father of the deceased and the sister filed the claim petition restricting the claim to the tune of Rs.75,00,000/-.

3. The case of the appellant/insurance company before the trial Court is that the owners of the vehicle bearing Registration Nos. TDV 3727 & TN-21 J 9999 i.e, the respondents 1 and 2/respondents 3 & 4 remains exparte. The first respondent/first petitioner is the father of the deceased Minor Saravanan and the second respondent/second petitioner is the sister of the deceased and she does not comes

under the category of Class I legal heir. The accident held on 01.06.1999 at 4.30pm is unsustainable either in law or on facts, the allegations contained in the claim petition are false and the claimant has not produced any documents for proof of income of the deceased. The allegations stated in the petitions are false and invented for the purpose of claiming higher compensation from the respondents. At the time of accident, the first respondent is not having any valid licence and insurance policy and hence, the appellant is not liable to pay the compensation. The claimant without any materials or any documentary proof claimed the compensation to the tune of Rs.75,00,000/- and the claim is purely imaginary, highly excessive, unsustainable and exorbitant one.

4. In order to prove the case of the claimants, they have examined four witnesses viz., PW1 to PW4 and marked Ex.1 to Ex.64 and the related document is Ex.64/Postmortem certificate of minor Saravanan. On the side of the respondent neither oral nor documentary evidence have been produced. Considering the materials placed before the Tribunal and the oral and documentary evidence, awarded a compensation of Rs.5,60,000/-. Aggrieved against the above said compensation, the 3rd respondent/insurance company filed the present appeal before this Court.

5. At the time of accident, the deceased was minor and he was 14years old student, therefore the father and the sister of the deceased filed the claim petition for compensation.

6. According to the claimant, the deceased was a minor and earning a sum of Rs.20,000/-p.m. The Tribunal considered the notional income of the deceased minor as Rs.15,000/-p.a. and comes to the conclusion by considering the age of the deceased as 14 and adopted the multiplier 15 as per Section 163A of the Motor Vehicle Act, $15,000 \times 15 = \text{Rs.}2,25,000/-$ is awarded under the head of pecuniary loss and loss of dependency. Rs.10,000/- for funeral expenses, Rs.4,000/- for transportation expenses, Rs.10,000/- for damages to clothes and Rs.20,000/- for love and affection to both the claimants (Rs.10,000/- each). Further, in the award passed by the Tribunal, the Tribunal has held that if the deceased is alive he would have got good education, good job and could have earned more income in future and would have supported the claimants. But, due to the accident the expectation of the deceased's parents is wrecked. Considering the above facts and circumstances, the Tribunal has awarded the compensation of Rs.3,00,000/- towards future expectation of life. In all, the Tribunal has awarded a total compensation of Rs.5,60,000/- along with interest at 7.5%p.a. from the date of petition. The compensation awarded by the Tribunal is not just

and fair compensation and the same is very low, for which the claimants have filed cross objection, therefore the appeal has to be dismissed and cross objection has to be allowed.

7. The learned counsel for the appellant/insurance company would submit that the award passed by the Tribunal is on higher side. At the time of accident the deceased is only minor aged about 14years and school going student and the claimants have not proved that the deceased was looking after family business and earning Rs.20,000/-p.m. Therefore, the insurance company has filed the present appeal for reducing the compensation.

8. On perusal of the records, oral and documentary evidences produced by the claimants before the Tribunal and the Award passed by the Tribunal, grounds of appeal filed by the appellant, cross objection filed by the claimants and submissions made by both the learned counsel for the parties. It is admitted fact that at the time of accident the victim/deceased was aged about 14years. He was the only son to first claimant and he died due to fatal accident. Considering the education provided by the parents of the deceased, and the deceased is the only son to his parents. No pecuniary award can be replaced the mental sufferings of the parents when they lost their only son. Under the said circumstances, we are of the view, the award passed by the Tribunal is not higher side and the same is just and reasonable. Therefore, the award passed by the Tribunal does not warrant any interference and the appeal filed by the appellant/insurance company is liable to be dismissed.

9. In the result, the Civil miscellaneous appeal stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed. In view of the judgment passed in CMA.No.1447 of 2014, the cross objection filed by the claimant in Cross Obj.No.58 of 2014 is dismissed.

सत्यमेव जयते
Sd/-

Assistant Registrar

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Sub Assistant Registrar

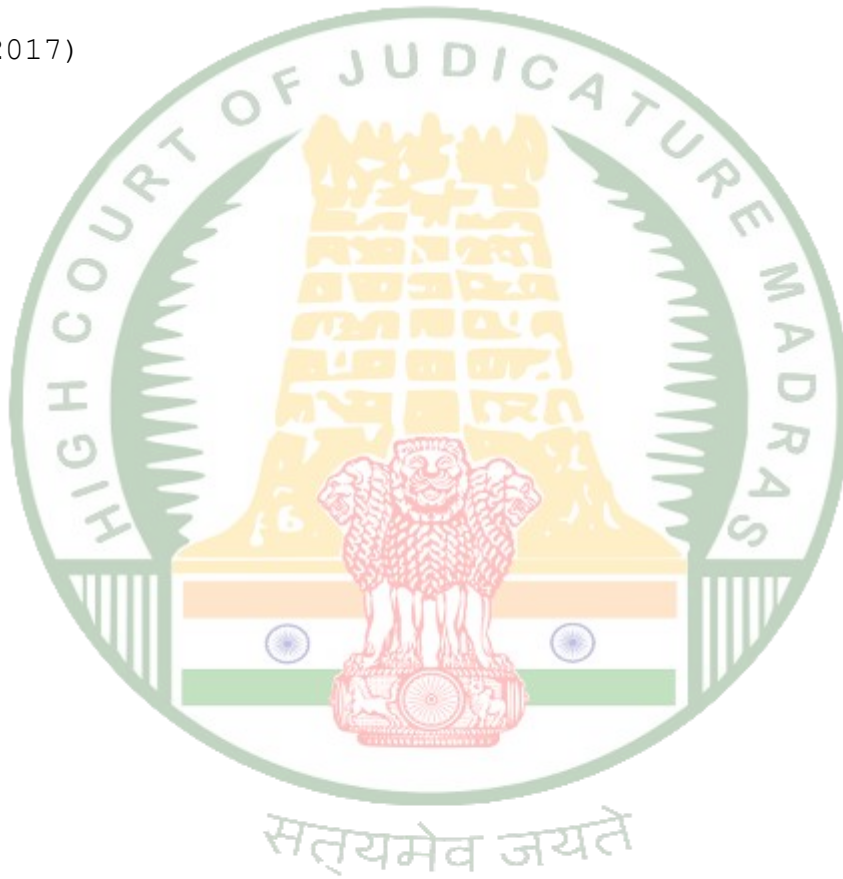
tsh

To
The Motor Accident Claims Tribunal,
Subordinate Judge, Kancheepuram.

+1cc to Mr.R.NEETHI PERUMAL, Advocate, S.R.No. 61371/17
+2cc to Mr.M.NIRMALKUMAR Advocate, S.R.No. 61774/17

CMA.No.1447 of 2014
and Cross Obj.No.58 of 2014

NRJK (CO)
TR(30/11/2017)



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