

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 12.10.2017

CORAM:

THE HONOURABLE MR.JUSTICE C.T.SELVAM
AND

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Civil Miscellaneous Appeal No.1696 of 2014
and

Cross Objection No.86 of 2014

C.M.A.No.1696 of 2014

M/s.HDFC Ergo General Insurance Co. Ltd.,
II Floor, New No.528, Old No.559,
Annasalai, Teynampet,
Chennai - 600 018 .. Appellant/2nd Respondent

Vs

1.S.Arasu
W/o.Late M.Selvamani

2.K.Desammal @ Desarani
W/o.D.Karthick ..Respondents 1&2/Claimants

3.S.Durga Devi ..3rd Respondent/1st Respondent

Civil Miscellaneous Appeal filed u/s.173 of the Motor
Vehicles Act, 1988, against the judgment and decree of Motor
Accident Claims Tribunal, II Court of Small Causes, Chennai,
passed in MCOP No.5177 of 2012 on 23.01.2014.

For Appellant :Ms.Harini for Mr.M.B.Gopalan
For Respondents:Ms.P.T.Salim Fathima [R1 & R2]

Cross Objection No.86 of 2014

1.S.Arasu
W/o.Late M.Selvamani

2.K.Desammal @ Desarani
W/o.D.Karthick .. Cross Objectors

Vs

1.M/s.HDFC Ergo General Insurance Co. Ltd.,
II Floor, New No.528, Old No.559,
Annasalai, Teynampet,
Chennai - 600 018.

2.S.Durga Devi .. Respondents

Cross Objection filed under Order 41, Rule 22 of the Civil Procedure Code to enhance the compensation from Rs.17,31,056/- to Rs.24,00,000/- with higher rate of interest.

For Cross-Objectors : Ms.P.T.Salim Fathima
For Respondents : Ms.Harini
for Mr.M.B.Gopalan [R1]

C O M M O N J U D G M E N T

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

This Civil Miscellaneous Appeal arises against the judgment and decree of Motor Accident Claims Tribunal, II Court of Small Causes, Chennai, passed in MCOP No.5177 of 2012 on 23.01.2014.

2. Cross Objection No.86 of 2014 has been filed seeking enhancement of compensation from Rs.17,31,056/- to Rs.24,00,000/- with higher rate of interest.

2. Appellant is the Insurance Company. Cross Objectors are legal heirs of deceased. The deceased who was a specialised worker engaged in sea diving, died on 02.10.2012 at 02.30 p.m. while on duty.

3. Before the Tribunal, on the side of cross objectors/claimants, 2 witnesses were examined and 7 exhibits were marked. None were examined on the side of appellant insurance company nor were any exhibits marked. On appreciation of materials before it, Tribunal, under judgment dated 23.01.2014, found that the death has occurred owing to the rash and negligent driving of the Crane and accordingly, afforded compensation as follows:

(a)	Pecuniary Loss	:	Rs.14,56,056/-
	[(10,000+30%) - 4333)*12*14]		
(b)	Loss of consortium	:	Rs. 1,00,000/-
(c)	Loss of expectation of life	:	Rs. 1,00,000/-
(d)	Loss of love and affection	:	Rs. 50,000/-
(e)	Funeral Expenses	:	Rs. 25,000/-

			Rs.17,31,056/-

The said sum of Rs.17,31,056/- was directed to be paid together with interest at 7.5% p.a. from the date of petition till the date of deposit.

4. Heard learned counsel for appellant and learned counsel for cross objectors.

5. Learned counsel for appellant insurance company submits that having made a provision for future prospects of deceased, Tribunal fell into error in awarding a large sum of Rs.1,00,000/- towards loss of expectation of life.

6. Learned counsel for cross objectors/claimants, on the other hand, submits that the deceased was a specialised worker and in proof thereof, claimants have produced Ex.P6, 'Sea King' under water diving worker Identity Card and hence, Tribunal ought to have placed the monthly earning of the deceased at a higher sum instead of Rs.10,000/- determined by it.

7. On consideration of rival submissions and on a perusal of papers, this Court finds that claimants have informed of deceased earning between Rs.13,000/- and Rs.15,000/- p.m. Sea diving is a specialised job. Therefore, this Court is the view that the Tribunal ought to have accepted the claim of the deceased earning a higher sum. This Court also finds merit in the submission of learned counsel for appellant insurance company that the quantum awarded for loss of expectation of life is on the higher side. Accordingly, fixing the monthly earning of deceased at Rs.13,000/-, this Court would hold as follows:

(1) Pecuniary loss $[(13,000 + 30\% - 5633 \times 12 \times 14)]$	:	Rs.18,92,856/-
(2) Loss of consortium	:	Rs. 1,00,000/-
(3) Loss of love and affection	:	Rs. 50,000/-
(4) Loss of expectation of life	:	Rs. 50,000/-
(5) Funeral Expenses	:	Rs. 25,000/-

Total	:	Rs.21,17,856/-

The said sum of Rs.21,17,856/- shall be payable together with interest at 7.5% from the date of petition till the date of realization.

Accordingly, the Civil Miscellaneous Appeal and the Cross Objection are disposed of. 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 this judgment. Cross Objectors/claimants are at liberty to withdraw the amount on due application as apportioned by Tribunal. Deficit Court fee, if payable, by Cross Objectors in keeping with the quantum awarded by this Court shall be paid within two months of the receipt of this judgment. No costs.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

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To

The Motor Accident Claims Tribunal,
II Court of Small Causes,
Chennai.

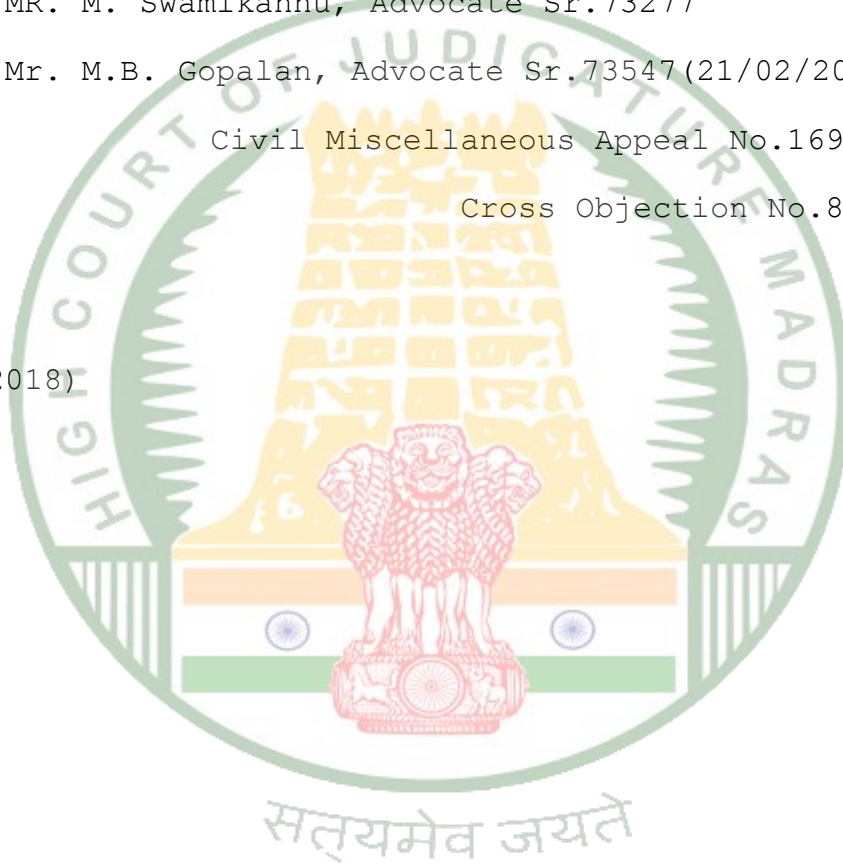
Copy to: The Section Officer,
VR Section, High Court, Madras.

+ 1 cc to MR. M. Swamikannu, Advocate Sr.73277

+ 1 cc to Mr. M.B. Gopalan, Advocate Sr.73547(21/02/2018)

Civil Miscellaneous Appeal No.1696 of 2014
and
Cross Objection No.86 of 2014

(CS-Iv)
EU(21/02/2018)



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