

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

and

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.No. 679 of 2017

and

C.M.P.No.3807 of 2017

The Divisional Manager,

The New India Assurance Co. Ltd.,

Divisional Office - 710500/710501,

East Coast Chamber, I Floor,

No.92, G.N.Chetty Road,

T.Nagar, Chennai - 17.

... Appellant/2nd Respondent

versus

1. Mrs.Lakshamma

2. Mrs.Nagaveni

3. Minor Yogesh

4. Minor Dharshan

5. Muneer Ahmed

... Respondents

[Minors 3 and 4 are represented by their mother and next friend,
the 2nd respondent]

[5th respondent set exparte in Lower Court]

Prayer: Civil Miscellaneous Appeal is filed, under section 173
of Motor Vehicle Act against the judgment and decree in
M.C.O.P.No.237 of 2007, dated 04.07.2011, on the file of the
Motor Accident Claims Tribunal, [Subordinate Judge], Hosur.

For Appellant : Mr.N.Vijayaraghavan

For Respondents 1 to 4: Mr.R.Pandian

JUDGMENT

(Judgment of the Court was made by S.MANIKUMAR ,J.)

Being aggrieved by the judgment and decree in M.C.O.P.No.237
of 2007, dated 04.07.2011, on the file of the Motor Accident
Claims Tribunal, [Subordinate Judge], Hosur, by which, a sum of
Rs.16,50,000/-, has been awarded as compensation, with interest,
at the rate of 6% per annum, from the date of claim, till the
date of realisation and costs, to the legal representatives of
the deceased, M/s.New India Assurance Company Limited, has
preferred the present appeal.

2. Facts as deduced from the material on record and the impugned judgment are that on 31.10.2006, when the deceased Srinivas, a Swaraj Mazda Tempo Owner-cum-Driver, was taking boards load from Bangalore to Chennai, in his Swaraj Mazda Tempo bearing Regn.No.Ka-19-A-7378, on the National Highways between Arcot and Ranipet, about 3.00am, a Lorry bearing Reg.No.KA-07-4659, owned by the 5th respondent herein and insured with the appellant Insurance company, coming in the opposite direction, in high speed and driven in a rash and negligent manner by its driver, dashed against the abovesaid Swaraj Mazda Tempo. As a result, the deceased sustained injuries to head and other vital parts of body. He died on the spot. In this regard, a criminal case in Cr.No.1136 of 2006 under Sections 279 and 304 (A) IPC has been registered against the driver of the lorry. Autopsy was conducted in Government Hospital, Arcot. Contending inter alia that at the time of accident, the deceased was aged 25 years and being a Driver cum Owner of Swaraj Mazda Tempo, earned Rs.25,000/- per month. Legal representatives of the deceased viz., wife, mother and two minor sons aged about 4 and 2 years, respectively, claimed compensation of Rs.30,00,000/- under various heads.

3. Before the claims tribunal, appellant-Insurance Company, has filed a counter affidavit denying, the manner of accident. Without prejudice to the above, the company has also disputed the age, avocation and income of the deceased, and the quantum of compensation claimed under various heads.

4. On behalf of the claimants, wife of the deceased examined herself as PW1 and reiterated the averments made in the claim petition. One Mr.Marappa, eye witness has been examined as PW2 and Exhibits P1 to P11, have been marked. Insurance company neither filed any document nor examined any witness.

5. On evaluation of pleadings and evidence, the Claims Tribunal, held that the accident occurred only due to rash and negligent act of the driver of the Lorry bearing Regn.No.KA-07-4659 and insured with the appellant-insurance company. Considering the age, avocation, income and other parameters, required to be taken into consideration, the Claims Tribunal, fixed the monthly income of the deceased as Rs.10,000/-. By applying multiplier '18', and after deducting 1/4 towards the personal and living expenses, computed the loss of contribution as Rs.16,20,000/-. That apart, the claims tribunal has awarded compensation of Rs.20,000/-, to the mother, wife and minor sons of the deceased, towards mental agony, loss of consortium and love of love and affection. A further sum of Rs.5,000/- each

has been awarded under the heads funeral expenses and transportation charges. In all, the claims tribunal has quantified the compensation at Rs.16,50,000/-, with interest, at the rate of 6% per annum, from the date of claim, till the date of realisation and costs.

6. Though, Mr.N.Vijayaraghavan, learned counsel for the appellant insurance company assailed the correctness of the award contending inter alia that the tribunal erred in fixing an higher income of Rs.10,000/-pm and thereby awarded Rs.16,20,000/- under the head loss of income and further contended that the tribunal ought to have taken the notional income, we are not inclined to interfere with the award for the reason that the income fixed as Rs.10,000/- for a driver-cum-owner of a Swaraj Mazda Tempo, aged 25 years, at the time of accident, is not on the higher side. Moreover, though tribunal has not considered the aspect of future prospects, no separate amount has been added under the said head.

7. Further, perusal of the award shows that the tribunal has awarded a meagre sum of Rs.20,000/- towards loss of love and affection to the mother, who has lost his son aged 25 years and also to minor sons, who are just aged 4 and 2 years, respectively. It is to be noted that the said sum includes loss of consortium and also. Award under the heads transportation and funeral expenses, is also less.

8. Though, we are of the view that the award of the tribunal is less, as no appeal has been filed by the claimants seeking enhancement, award of the tribunal is sustained and the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

9. The appellant-Insurance Company is directed to deposit the entire award amount with accrued interest and costs to the credit of M.C.O.P.No.237 of 2007 on the file of the Motor Accident Claims Tribunal, [Subordinate Judge], Hosur, within a period of four weeks from the date of receipt of a copy of this order, if not deposited earlier.

10. On such deposit, except the minor respondents, others viz., respondents 1 and 2 are permitted to withdraw their shares, as apportioned by the tribunal, with proportionate accrued interest and costs, by making necessary applications. The share of the minors/respondents 3 and 4 shall be deposited in any one of the Nationalised Banks in fixed deposit under the reinvestment scheme initially for a period of three years. The interest accruing on the share of the minors / respondents 3 and

4, shall be paid to the mother of the minors, the 2nd respondent herein viz., Mrs.Nagaveni, once in three months, till they attain majority.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

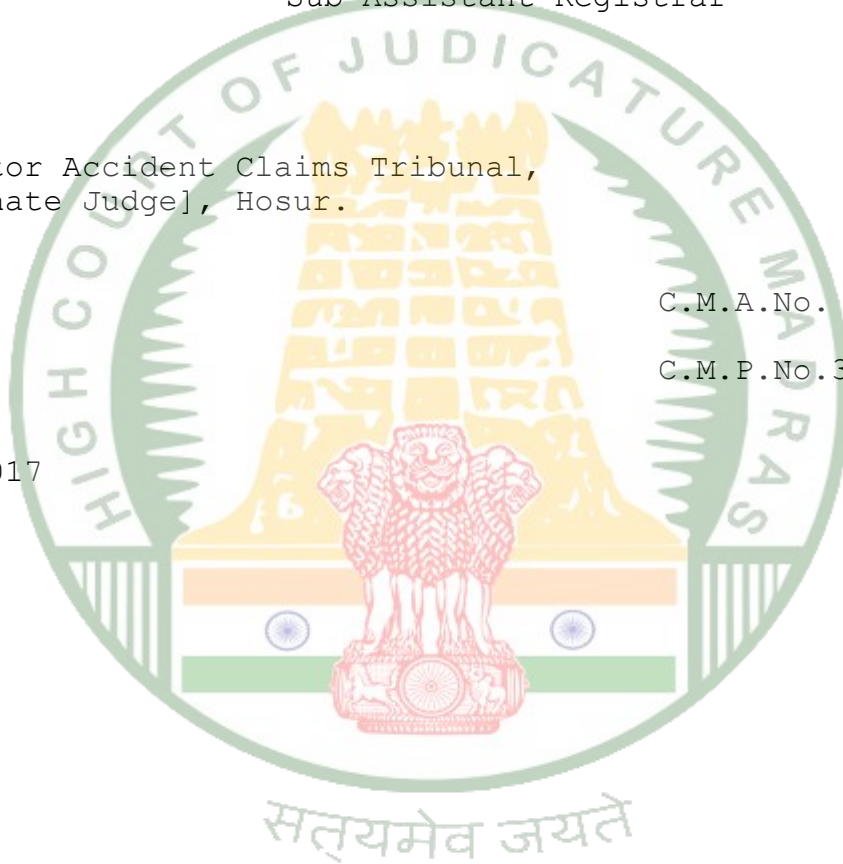
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To

1. The Motor Accident Claims Tribunal,
([Subordinate Judge], Hosur.

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and
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