



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.11.2017

CORAM :

WEB COPY

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A.(MD)Nos.1037 of 2016
and 1818 of 2013
and M.P.(MD).No.1 of 2015 and 1 of 2013

C.M.A. (MD)Nos.1037 of 2016

1.Mary Stella
2.Raja Pradeesh Praveen
3.Raja Pradeesh Pradeepa
4.Tharsilammal

.. Appellants/Petitioners

Vs.

1.John Rose

2.The Oriental Insurance Co. Ltd.,
Through its Branch Manager,
No.25-44-D3, Main Road,
Near CSI Mission Hospital,
Marthandam.

... Respondents/Respondents

PRAYER: The appeal filed under Section 173 of the Motor Vehicle Act, 1988, against the Judgment and Decree dated 21.06.2013 made in M.C.O.P.No.431 of 2012 on the file of the Motor Accident Claims Tribunal (III Additional District & Sessions Judge), Tirunelveli.

For Appellants: Mr.T.Selvakumaran

For R-1 : No appearance

For R-2 : Mr.K.Bhaskaran

C.M.A. (MD)Nos.1818 of 2013

The Oriental Insurance Co. Ltd.,
Through its Branch Manager,
Office at Number.25-44-D3, Main Road,
Near CSI Mission Hospital,
Marthandam.

... Appellant/2nd Respondent

Vs.

1.Mary Stella
2.Raja Pradeesh Praveen
3.Raja Pradeesh Pradeepa



4.Tharsilammal

..1to 4 Respondents/1-4
Petitioners

5.John Rose

... 5th Respondent/1st Respondent

PRAYER: The appeal filed under Section 173 of the Motor Vehicle Act, 1988, against the Judgment and Decree dated 21.06.2013 made in M.C.O.P.No.431 of 2012 on the file of the Motor Accident Claims Tribunal (III Additional District & Sessions Judge), Tirunelveli.

For Appellant	: Mr.K.Bhaskaran
For R-1 to R-4	: Mr.T.Selvakumaran
For R-5	: No Appearance

J U D G M E N T

The award passed by the Tribunal is questioned both by the claimants as well as by the insurer. One Rajan was travelling as a passenger in a Mini Bus insured with the Oriental Insurance Company Limited. On 06.02.2010, when the bus was crossing the speed breaker, the said Rajan lost his balance and fell out of the bus. He was a fish seller by avocation. He was aged 47 years. Crime No.109 of 2012 was registered in this regard on the file of the Marthandam Police Station. The Tribunal awarded a sum of Rs.7,05,884/- as compensation.

2. The monthly income of the deceased was not correctly fixed by the Tribunal and the future prospects were also not taken into account. The compensation amount payable to the claimants has to be necessarily enhanced.

The learned counsel appearing for the insurer would contend that contributory negligence will have to be fastened on the deceased because there was no involvement of another vehicle. The inquest report as well as the evidence of R.W.1 would show that the deceased often suffered from epilepsy.

3. In the present case, the insurer did not examine the conductor of the mini bus as a witness. The investigator of the Insurance Company is the only witness. Therefore, this Court cannot attach much significance to his evidence. This Court, therefore, sustains the findings of the Tribunal that the accident occurred only on account of negligence of the bus driver.

4. The specific case of the claimant is that only because the driver of the bus attempted to cross on speed breaker in rash and negligent manner, the accident occurred. It is not the case of the insurer that the deceased was travelling on foot board. This Court is not inclined to interfere with the findings regarding negligence.



5. Coming to quantum, it is an admitted fact that no income proof was furnished. The accident took place in the year 2012. Therefore the monthly income ought to have been taken as Rs.6,500/-. The deceased left behind four dependants. Therefore there can be one fourth deduction. The pecuniary loss to the family will be Rs.9,50,000/-. A further sum of Rs.50,000/- can be awarded toward loss of consortium and loss of love and affection. The claimants sought payment of Rs.10,00,000/- as compensation.

6. The compensation awarded by the Tribunal is enhanced from Rs.7,05,884/- to Rs.10,00,000/-. The compensation payable to the claimants is therefore enhanced to what was sought by them. The award dated 21.06.2013 in M.C.O.P.No.431 of 2012 on the file of the Motor Accident Claims Tribunal (III Additional District & Sessions Judge), Tirunelveli is modified accordingly.

7. The Insurance company is directed to deposit the entire compensation amount of Rs.10,00,000/- with interest at 7.5% per annum and cost from the date of petition till the date of realization within a period of eight weeks from the date of receipt of a copy of this order, less the amount already deposited, if any. On such deposit the claimants are entitled to withdraw the entire amount as apportioned by the Tribunal by filing proper application before the Tribunal, less the amount already withdrawn by them, if any. The claimants are directed to pay necessary additional court fee, if any.

8. C.M.A(MD).No.1037 of 2016 is partly allowed. C.M.A(MD).No.1818 of 2013 is dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

kmi
To

The III Additional District & Sessions Judge,
The Motor Accident Claims Tribunal,
Tirunelveli.

Copy To : The Record Keeper, Vernacular Record Section,
Madurai Bench of Madras High Court,
Madurai.



+1CC to Mr.T.Selvakumaran, Advocate Sr.No.90385

+2CC to Mr.K.Bhaskaran, Advocate Sr.No.90431 & 90470

GJM/SV/MMS/SAR-2-20.3.18-4P-7c

WEB COPY

C.M.A. (MD) Nos.1037 of 2016
and 1818 of 2013

and

M.P. (MD) .No.1 of 2015 and 1 of 2013
29.11.2017