



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE: 13 .12.2017

CORAM:

**THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
AND
THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI**

C.M.A(MD)Nos.509 of 2014 and 1376 of 2016
and
M.P.(MD)No.3 of 2014
and
C.M.P.(MD)No.11468 of 2016

C.M.A(MD)No.509 of 2014:

Divisional Manager,
Royal Sundaram Alliance Insurance
Company Limited,
T.V.S.Co-operative Building,
37,Krishnarayar Tank Street,
Madurai - 625 001.

... Appellant/2nd Respondent

Vs.

1.K.Thangam
2.K.Muralikannan
3.K.Vignesh

... Respondents 1 to 3/Petitioners 1 to 3

4.S.Madheswaran
5.M.Viswanathan

... 4th Respondent/1st Respondent

... 5th Respondent/3rd Respondent

6.M/s. United India Insurance Company Ltd.,,
Represented by its Divisional Manager,
Divisional Office, Opposite Railway Station,
TVS Building, 7-A, West Veli Street,
Madurai - 625 001.

... 6th Respondent/4th Respondent

PRAYER: Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988, against the fair and decreetal order dated 15.10.2012 made in M.C.O.P.No.39 of 2010, on the file of the Motor Accident Claims Tribunal cum IV Additional District Judge, Madurai.

For Appellant	: Mr.M.E.Elango
For Respondents 1-3	: Mr.J.Gunaseelan Muthiah
For Respondents 4&5	: No appearance
For 6 th Respondent	: Mr.A.S.Mathialagan

**C.M.A(MD)No.1376 of 2016:**

Royal Sundaram Alliance Insurance
Company Limited,
Mangalam Building,
Omalur Main Road,
Four Road, Salem.

... Appellant/2nd Respondent

Vs.

1.K.Murugesan
2.S.Madheswaran
3.M.Viswanathan

... 1st Respondent/Petitioner
... 2nd Respondent/1st Respondent

4.United India Insurance Company Ltd.,,
Salem, Office at
AKM Tower, 1st Floor,
397/1, Junction Main Road,
Salem - 636 004.

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

PRAYER: Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988, against the fair and decreetal order dated 17.12.2014 made in M.C.O.P.No.1000 of 2010, on the file of the Motor Accident Claims Tribunal (Principal Subordinate Judge), Madurai.

For Appellant	: Mr.S.Srinivasa Raghavan
For 1 st Respondent	: Mr.T.Antony Arul Raj
For Respondents 2&3	: No appearance
For 4 th Respondent	: Mr.N.Sivakumar

COMMON JUDGMENT

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

CMA(MD)No.509 of 2014 has been filed challenging the fair and decreetal order dated 15.10.2012 made in M.C.O.P.No.39 of 2010, on the file of the Motor Accident Claims Tribunal (IV Additional District Judge), Madurai whereas CMA(MD)No.1376 of 2016 has been filed against the fair and decreetal order dated 17.12.2014 made in M.C.O.P.No.1000 of 2010, on the file of the Motor Accident Claims Tribunal (Principal Subordinate Judge), Madurai.

2.For the sake of convenience, the parties are referred to according to their litigative status before the Tribunal.

3. **M.C.O.P.No.39 of 2010:-** This is a case of fatal, in which the accident that took place on 04.10.2009 at about 15.15 hours, while the deceased was travelling as a passenger in the third



respondent's Bus bearing Registration No.KA-49-A-9999, on Dharmapuri-Krishnagiri Main road from Bangalore to Madurai on the left side of the road near Kuntalpatty Om Sakthi Rice Mill, the driver of the first respondent's lorry bearing Registration No. TN-52-9155 coming on the opposite direction in a rash and negligent manner and dashed against the Bus. On the said impact, the deceased sustained multiple grievous injuries all over the body and died on the spot and in the same accident, the claimant in M.C.O.P.No.1000 of 2010, sustained multiple grievous injuries all over the body and he was taken to Government Hospital, Dharmapuri and admitted in Madurai Apollo Hospital for further treatment as inpatient upto 12.10.2009.

4.The legal heirs of the deceased filed M.C.O.P.No.39 of 2010, on the file of the Motor Accident Claims Tribunal cum IV Additional District Judge, Madurai and the injured claimant has filed in M.C.O.P.No.1000 of 2010 on the file of the Motor Accident Claims Tribunal (Principal Subordinate Judge), Madurai, seeking compensation. In both the appeals the second respondent Insurance Company denied the averments made in the claim petitions.

5.Before the Tribunal, in M.C.O.P.No.39 of 2010 on the side of the claimants, P.W.1 to P.W.3 were examined and Exs.P.1 to P.8 were marked. On the side of the respondents R.W.1 was examined and no document was marked and in M.C.O.P.No.1000 of 2010, on the side of the claimant P.W.1 to P.W.3 were examined and Exs.P.1 to P.13 were marked and on the side of the respondents R.W.1 and R.W.2 were examined and Exs.R.1 and R.2 were marked.

6.The Tribunal, after considering the pleadings, oral and documentary evidence and arguments of the counsel appearing on either side and also appreciating the evidence on record, held that the accident had occurred only, due to the rash and negligent driving of the driver of the offending vehicle and directed the appellant/Insurance Company to pay a sum of Rs.20,97,100/- as compensation to the claimants in C.M.A(MD)No.509 of 2014 under the following heads:-

for loss of income	: Rs. 20,51,016/-
for loss of love and affection	: Rs. 30,000/-
for funeral expenses	: Rs. 5,000/-
for transport to hospital	: Rs. 5,000/-
for loss of estate	: Rs. 5,000/-
for damage of cloth	: Rs. 1,000/-

Total Rs. 20,97,016/- rounded off
to Rs. 20,97,100/-

and in respect of C.M.A.(MD)No.1376 of 2016, the Tribunal awarded a sum of Rs.1,09,277/- as compensation under the following heads:-



for loss of income : Rs. 4,000/-
for transport expenses : Rs. 7,000/-
for extra nourishment : Rs. 5,000/-
for damage to cloth
and articles : Rs. 1,000/-

for Medical attendance : Rs. 3,000/-

for pain and sufferings : Rs.10,000/-

for Medical expenses : Rs. 3,277/-

for Partial Permanent
Disability : Rs.76,000/-

Total -----
Rs.1,09,277/-

7.Challenging the above said judgment and decree, the appellant/Insurance Company has filed the present Civil Miscellaneous Appeals.

8.The learned counsel appearing for the appellant submitted that the award of the Tribunal is on the higher side.

9.The learned counsel for the respondents/claimants argued that the award passed by the Tribunal deserves no interference and therefore, the appeals filed by the appellant Insurance Company is liable to be dismissed.

10.This Court considered the rival submissions made on either side and perused the materials available on record.

11.In the case of fatal accident, the claimants examined P.W.3, who is the Branch Manager of the Kumaram State Bank of India. P.W.3 in her evidence admitted that according to the entries in their voucher, the monthly salary of the deceased is Rs.11,600/-. Hence the monthly salary of the deceased was fixed at Rs.11,600/-. Since the age of the deceased is 27 years at the time of accident, she is entitled to 40% of future prospects in addition to the monthly salary of the deceased. Hence, the monthly income of the deceased is fixed at Rs.16,240/-. For arriving loss of income to the family, the age of the mother of the deceased can be taken as the deceased died as a bachelor and her age was shown as 49 at the time of accident. For the age group of 49, the appropriate multiplier is "13". After deducting 50% towards personal expenses, the monthly income would be Rs.8120/- Rs.(16240x50%). Hence, the loss of income of the deceased is Rs.12,66,720/-. (Rs.8120 x 12 x 13). Rs.30,000/- awarded towards loss of love and affection is confirmed and the award on other heads are required to be enhanced



and this Court awards Rs.15,000/- towards funeral expenses; Rs.10,000/- towards Transportation; Rs.15,000/- towards loss of estate and Rs.3,000/- towards damage of clothes. In *toto*, the claimants are entitled to a sum of Rs.13,39,720/- which is rounded off to **Rs.13,40,000/-** as compensation.

12. In the result, C.M.A.(MD)No.509 of 2014 is partly allowed by reducing the compensation awarded by the Tribunal in M.C.O.P.No.39 of 2010, from Rs.20,97,100/- to **Rs.13,40,000 /-** with 7.5% interest p.a. from the date of claim petition till the date of deposit. The first claimant is entitled to receive a sum of Rs.13,00,000/- with accrued interest and costs and the claimants 2 and 3 are entitled to receive a sum of Rs.20,000/- each with interest and costs. Insofar as C.M.A.(MD)No.1376 of 2016 is concerned, as we find no infirmity or irregularity in the award passed by the Tribunal, the judgment and decree in M.C.O.P.No.1000 of 2010, dated 17.12.2014 is confirmed. Consequently, C.M.A.(MD) No.1376 of 2016 is dismissed. The appellant/Insurance Company is directed to deposit the entire award amount with accrued interests and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit being made, the claimants are permitted to withdraw their respective share amount with accrued interests and costs as apportioned, without filing any formal petition. No Costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (P&A)

/True Copy/

Sub Assistant Registrar

To

1. The IV Additional District Judge,
Motor Accident Claims Tribunal, Madurai.
2. The Principal Subordinate Judge,
Motor Accident Claims Tribunal, Madurai.
3. The Record Keeper, V.R.Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

- + 1 CC TO Mr.N.SIVAKUMAR, ADVOCATE IN SR No. 92943
- + 1 CC TO Mr.S.SRINIVASA RAGHAVAN, ADVOCATE IN SR No. 92855
- + 1 CC TO Mr.T.ANTONY ARUL RAJ, ADVOCATE IN SR No. 92759
- + 1 CC TO Mr.M.E.ILANGO, ADVOCATE IN SR No. 92558

GSP/ER

TE/SV-MMS/SAR-1 : 05/04/2018 : 5P/9C