

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED: 17.07.2017

CORAM:

WEB COPY

THE HONOURABLE MRS.JUSTICE J.NISHA BANU**CMA(MD)No.368 of 2015****and****M.P(MD) .No.1 of 2015**

The Branch Manager,
The Oriental Insurance Company Limited,
Palakad, Kerala State. ... Appellant/3rd Respondent

Vs.

1.Valangaiappan
2.Kaliammal
3.Minor Inthumathi
4.Minor Sarumathi
5.Nandagopal ...Respondents/Petitioners
(Minor Respondents 3 and 4
are represented through their
grandfather Respondent No.1)
6.M.Ravishankar ...Respondent No.6/Respondent No.1
7.M.Rajendran ...Respondent No.7/Respondent No.2

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act 1988, against the judgment and decree in M.C.O.P.No.321 of 2008, dated 28.11.2011 on the file of the Motor Accident Claims Tribunal, Sub Court, Palani.

For Appellant : Mr.C.Ramachandran
For R1, R2 & R5 : Mr.D.Venkatesh
R3 and R4 represented by R1
For R6 & R7 : No appearance

J U D G M E N T

The Civil Miscellaneous Appeal has been filed by the appellant/Oriental Insurance Company Limited against the award dated 28.11.2011, passed in M.C.O.P.No.321 of 2008 by the Motor Accident Claims Tribunal, Sub Court, Palani.

2. It is a case of fatal accident took place on 26.06.2008 at about 3.20 p.m., at Palani - Tharapuram Road, in which, the driver of the sixth respondent vehicle viz., TATA ACE bearing



Registration No.T.N.67-E-6555, drove the vehicle in a rash and negligent manner and dashed against Gopal @ Gopalakrishnan and caused the accident. As a result of which, Gopala Krishnan sustained multiple injuries and had taken treatment as an in-patient and thereafter, he died. Therefore, the claimants filed an application in M.C.O.P.No.321 of 2008 on the file of the Motor Accident Claims Tribunal, Sub Court, Palani, seeking compensation.

3. Before the Tribunal, the respondents/claimants examined two witnesses as P.Ws.1 and 2 and marked 5 documents as Exs.P1 to P5. On the side of the appellant, no witness was examined and no document was marked.

4. The Tribunal, after considering the pleadings, oral and documentary evidence and arguments of the counsel for the appellant and claimants and also appreciating the evidence on record, held that the accident occurred only due to the rash and negligent driving of the driver of the sixth respondent vehicle and directed the appellant to pay a sum of Rs.6,73,000/-, as compensation. Challenging the same, the appellant/Oriental Insurance Company Limited preferred this appeal on the ground of quantum.

5. The learned counsel for the appellant questioned the quantum of compensation granted by the Tribunal on the ground that the multiplier adopted by the Tribunal is excessive. In fact, the deceased was 28 years of age at the time of accident and he was in occupation of painter. He would further submit that the Tribunal was wrong in holding that the notional income of the deceased as Rs.4,500/- per month, while assessing the loss of earning of the deceased.

6. Such being the case, this Court is of the opinion that the award of the Tribunal is not excessive and in fact, the Tribunal has adopted the procedure while fixing the compensation which do not deserve any reconsideration. Accordingly, the order passed by the Motor Accident Claims Tribunal, Sub Court, Palani in M.C.O.P.No.321 of 2008 dated 28.11.2011 is confirmed and the Civil Miscellaneous Appeal is dismissed.

7. In view of the dismissal of the appeal, the appellant/Oriental Insurance Company is directed to deposit the entire award amount with accrued interests and costs within a period of four weeks from the date of receipt of a copy of this order, if not already deposited. On such deposit being made, the claimants are permitted to withdraw their share as apportioned by the Tribunal, with accrued interests and costs. The Tribunal is directed to deposit the share of the minor claimants in any one of the Nationalised Banks in a fixed deposit scheme, till they attain majority. The first respondent, who is the grandfather and guardian of the minor claimants, is permitted to withdraw the



accrued interest once in three months directly from the Bank only for the welfare of the minors. No Costs. Consequently, the connected Miscellaneous Petition is closed.

WEB COPY

Sd/-

Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar

To

1. The Sub Judge,
Motor Accident Claims Tribunal,
Palani.

Copy to:

The Record Keeper,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

- +1cc to M/S. C.RAMACHANDRAN, Advocate, SR.No.66241.
+1cc to M/S. D.VENKATESH, Advocate, SR.No.65808.

C.M.A (MD) No.368 of 2015
17.07.2017

akv

SDS/SV/SAR 2/01.09.2017/3P/5C