



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.12.2017

CORAM :

WEB COPY

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

CMA (MD) No.1578 of 2013

and

CMA (MD) No.952 of 2017

The New India Assurance Company Ltd,
Munnar,
Kerala State.

... Appellant in CMA (MD) No.1578 of 2013
& 2nd Respondent in CMA (MD) No.952 of 2017

Vs.

1. R.Vigneswari

2. Minor B.Madhu Bala
(Minor is rep.by her mother,
1st respondent)

3. T.Saroja

...1 to 3 Respondents in
CMA (MD) No.1578 of 2013 &
... Appellants in
CMA (MD) No.952 of 2017

4.T.Dennison

...4th respondent in
CMA (MD) No.1578 of 2013 &
...1st respondent in
CMA (MD) No.952 of 2017

Prayer: Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 10.04.2013 made in MCOP.No.58 of 2012 on the file of the Motor Accident Claims Tribunal, I Additional District Court, Tuticorin.

For Appellant in
CMA (MD) No.1578 of 2013 &

For 2nd Respondent in

CMA (MD) No. 952 of 2017

: Mr.D.Sivaraman

For 1 to 3 respondents in

CMA (MD) No.1578 of 2013 &

For Appellants in

CMA (MD) No. 952 of 2017

: Mr.S.Siva Thilakar

No appearance for R4 in CMA (MD) No.1578 of 2013 &
1st respondent in CMA (MD) No.952 of 2017

**JUDGMENT**

One Balasubramanian was riding a two wheeler along with his friend Mayakannan on 06.04.2011 at about 09.40 A.M., on the side of the Kovilpatti - Sattur road by pass road. The deceased was riding his two wheeler from South to North. He should therefore have been travelling on the Western side. Unfortunately, he was going on the wrong side that is Eastern side. The Indica car insured with the New India Assurance Company Limited was coming in the opposite direction dashed against the said two wheeler. In the resulting accident, the said Balasubramanian died. His wife, minor children and parents have filed MCOP.No.58 of 2012 on the file of the Motor Accident Claims Tribunal / I Additional District Judge, Thoothukudi. The Tribunal awarded a sum of Rs.10,69,200/- as compensation payable to the claimants. Contending that the Tribunal ought to have fastened the entire negligence on the deceased, the insurer has filed CMA(MD)No.1578 of 2013. The claimants have filed CMA(MD)No.952 of 2017 seeking enhancement of the compensation.

2.Mr.D.Sivaraman, learned counsel appearing for the insurer pointed out that in the counter, the entire F.I.R averments have been extracted. The F.I.R was given by none other than the pillion rider. In fact, in the F.I.R it was the deceased who was shown who has caused the accident. It is beyond dispute that the deceased was travelling on the wrong side of the highway. He had invited the accident. But, the Tribunal did not give any finding on the aspect of negligence.

3.Even though the deceased was on the wrong side of the highway, I am of the view that the car driver ought to bear major portion of the blame. This is because the accident took place at 09.45 A.M. The driver of the car could have very well seen the two wheeler that was coming in the opposite direction. Therefore, I would fix 80% negligence on the car driver and 20% on the deceased.

4.Coming to quantum of compensation, it is seen that the deceased was an Electrician. He was aged about 30 years at the time of the accident. He died in the year 2011. Therefore, even though no income proof was furnished, the monthly income can be taken as Rs.6,500/-. Adding future prospects at the rate of 40% and applying the relevant multiplier, the pecuniary loss would come to Rs.11,64,800/-. A sum of Rs.1,20,000/- can be awarded towards loss of love and affection. A sum of Rs.15,000/- can be awarded towards funeral expenses. The compensation payable to the claimants can be quantified at Rs.12,99,800/-. This can be rounded off to Rs.13,00,000/-.

5.Since 20% negligence has been fastened on the deceased, the compensation payable to the claimants will be Rs.10,40,000/-. The award dated 10.04.2013 made in MCOP.No.58 of 2012 on the file of the Motor Accident Claims Tribunal, I Additional District Court,



Tuticorin is modified.

6. The New India Assurance Company Limited is directed to deposit the sum of Rs.10,40,000/- with interest at the rate of 7.5% from the date of petition, till the date of realization and costs, within a period of eight weeks from the date of receipt of a copy of this judgment, less the amount already deposited, if any. On such deposit, the wife and mother of the deceased are entitled to withdraw their share as apportioned by the Tribunal, less the amount already withdrawn by them, if any. The share of the minor child shall be deposited in any one of the nationalized banks and the natural guardian/mother is permitted to withdraw the interest once in three months directly from the bank till the minor attains majority.

7. The appeal filed by the insurer is partly allowed. The appeal filed by the claimants is dismissed. No costs.

Sd/-

Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar

To

1. The First Additional District Judge,
Motor Accident Claims Tribunal, Tuticorin.

2. The Record Keeper, V.R. Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+ 2 CC TO Mr.D.SIVARAMAN, ADVOCATE IN SR No. 92292 & 92291

+ 1 CC TO Mr.S.SIVATHILAKAR, ADVOCATE IN SR No. 92331

SKM

TE/SV-MMS/SAR-4 : 31/05/2018 : 3P/7C

CMA(MD)No.1578 of 2013 and

CMA(MD)No.952 of 2017

12.12.2017