



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 08.11.2017

PRONOUNCED ON : 24.11.2017

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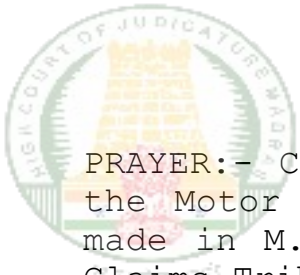
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A(MD)No.1147 of 2011
and M.P(MD)No.1 of 2011

New India Assurance Company Limited,
Attingal - 695 101,
Kerala State,
Rep. By its Branch Manager of Nagercoil Branch,
Having Office at Opp. To Anna Stadium,
Balamore Road,
Nagercoil, Nagercoil Village,
Agasteeswaram Taluk,
Kanyakumari District. ... Appellant/Respondent No.3

vs.

- 1.Mathew
- 2.Theresimma
- 3.Vinitha K.Mathew ... Respondents 1 to 3/Petitioners
- 4.Sudhamani ... 4th Respondent/1st Respondent
- 5.P.Prasad ... 5th Respondent/2nd Respondent
- 6.Procurator,
Diocese of Marthandam,
Bishop House,
Marthandam - 629 165,
Kanyakumari District. ... 6th Respondent/4th Respondent
- 7.Rev.Fr.Celestin,
S/o.Ponnu Nadar,
Kottagathu Vilai House,
Marthandam North,
Kanyakumari District. ... 7th Respondent/5th Respondent
- 8.United India Insurance Company Limited,
Nagercoil,
Rep. by its Branch Manager,
Assisi Buildings, Veppamoodu Junction,
Nagercoil Village,
Agasteeswaram Taluk,
Kanyakumari District. ... 8th Respondent/6th Respondent



PRAYER:- Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the award dated 04.02.2011 made in M.C.O.P.No.15 of 2005, on the file of the Motor Accident Claims Tribunal-cum-Chief Judicial Magistrate, Nagercoil.

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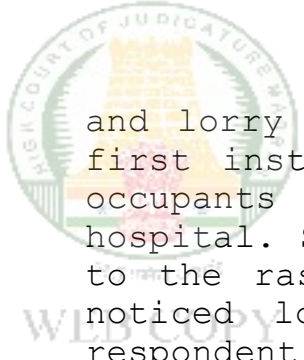
For Appellant : Mr.D.Sivaraman
For RR 1 to 3 : Mr.S.Nates Raja
For R - 8 : Mr.S.Royce Immanuel
For RR 4 to 7 : No appearance

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellant/New India Assurance Company against the award, dated 04.02.2011 made in M.C.O.P.No.15 of 2005, on the file of the Motor Accident Claims Tribunal-cum-Chief Judicial Magistrate, Nagercoil.

2.The brief facts of the claim petition are that on 07.08.2001 at about 10.00 a.m., when the deceased-Bineesh Mathew was travelling in a Jeep bearing Registration No.TN-74-Z-7832 owned by the fourth respondent, which was driven by the fifth respondent, while nearing I.R.T Polytechnic at Jothipuram, the second respondent driving the lorry bearing Registration No.KL-07-7551, in the opposite side came in a rash and negligent manner and dashed against the jeep. In the accident, the deceased-Bineesh Mathew had sustained fatal injuries all over the body and he died on the spot. The deceased was working as a driver-cum-Personal Assistant to Rev.Fr.Jaya Paul, St.George Malankara Catholic Church and earned a sum of Rs.6,000/- per month. The claimants 1 to 3, who are the parents and sister of the deceased, have claimed an amount of Rs.10,00,000/- as compensation.

3.The appellant/third respondent-New India Assurance Company filed a counter-affidavit and denied the manner of accident. The deceased along with some other persons travelled in the Jeep bearing Registration No.TN-74-Z-7832, owned by the fourth respondent, driven by the fifth respondent towards Tirunelveli from Nagercoil in the opposite side. At that time, one lorry coming behind in the same direction ie., from South to North, dashed on the backside of the Jeep. Due to the impact, the Jeep hit and dashed against a stationed bus bearing Registration No.TN-45-N-1520 and had a collusion with the second respondent lorry. At that time, the second respondent was driving the lorry bearing Registration No.KL-02-C-7551 towards Nagercoil in a slow speed and the Jeep hit the lorry of the second respondent. Since all the incidents were taken place within a split of a second, he was unable to stop the vehicle which was fully loaded. In that event, ~~and the consequences of the Jeep sustained injuries and two of them subsequently succumbed to the injuries. Since the accident has occurred due to the rash and negligent act of the fifth respondent~~



and lorry driver, who dashed on the backside of the Jeep at the first instance and the driver of the bus, the deceased and the occupants of the Jeep sustained injuries and was taken to the hospital. Since the proximate cause of the accident was solely due to the rash and negligent driving of the fifth respondent, unnoticed lorry driver and the bus driver, the appellant/third respondent is not liable to pay compensation.

4.The sixth respondent-United India Insurance Company filed a counter-affidavit and denied the averments made in the claim petition and stated that the respondents 4 to 6 are made as formal parties and further stated that the claimants have to prove the negligence on the driver, owner and insurer of the Jeep bearing Registration No.TN-74-Z-7832 and they are not liable to any compensation.

5.Before the Tribunal, on the side of the claimants, two witnesses viz., P.W.1 and P.W.2 were examined and seven documents viz., Exs.P.1 to P.7 were marked and on the side of the respondents, one witness viz., R.W.1 was examined and two documents viz., Ex.R.1 and Ex.R.2 were marked.

6.The Tribunal, after considering the pleadings, both oral and documentary evidence and the arguments of the learned counsel appearing on either side and also appreciating the evidence on record totally awarded a sum of Rs.3,47,000/- as compensation to the respondents 1 to 3/claimants and directed the appellant/third respondent, who is the insurer of the fourth respondent/first respondent, to pay the amount.

7.Against the Judgment and Decree, the appellant/New India Assurance Company has filed the present appeal.

8.Heard the learned counsel appearing for the appellant/New India Assurance Company and the learned counsel for the respondents 1 to 3/claimants and perused the materials available on record.

9.The learned counsel appearing for the appellant/third respondent-New India Assurance Company submitted that the Tribunal had erred in mulcting the appellant to pay the compensation in favour of the claimants and the Tribunal failed to note that the 'causa proxima' for the accident was hit by unknown lorry against the jeep from behind and the driver of the lorry bearing Registration No.Kl-01-7551 was not at all responsible for the accident and the compensation amount awarded by the Tribunal is highly excessive and inordinate and prayed for dismissal of the claim petition.

<https://hcservices.ecourts.gov.in/hcservices/>

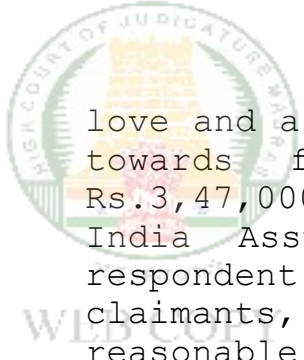
10.The learned counsel for the respondents 1 to 3/claimants would submit that based on the available oral and documentary



evidences, the Tribunal has rightly come to the conclusion and arrived at a correct compensation under various heads and the same has to be sustained.

11. On perusal of the materials available on record, it is seen that the first respondent/first claimant, who is the father of the deceased, was examined as P.W.1 and he deposed that his son met with a road accident and died and he is not an eye-witness to the occurrence. P.W.2, who is an eye-witness to the occurrence, has stated that on the fateful day, when he and others were travelling in a Jeep driven by the fifth respondent from Nagercoil to Tirunelveli, near I.R.T Polytechnic in a careful manner keeping the left side of the road, at that point of time, on the opposite direction, a lorry tried to overtake a bus and dashed against the jeep and stated that the accident had happened only due to the negligent act of the driver of the said lorry. The police had registered a case in Crime No.199 of 2001 against the second respondent under Sections 279, 337, 330 and 304(A) I.P.C, which is marked as Ex.P.1. In Ex.P.1-F.I.R, it is seen that, as if the accident had happened not only due to the negligence of the driver of the lorry, but at first instance, a lorry coming behind the Jeep had hit the Jeep and in the impact, the driver of the Jeep, lost the control and dashed against the transport bus and the lorry of the second respondent. In respect of the accident, police registered a case, after investigation had filed a final report and the copy of the final report is marked as Ex.P.5 and it support the case of the claimants, as deposed by P.W.2. Furthermore, the driver of the lorry/second respondent therein admitted his guilt and paid the fine before the criminal Court and the copy of the Judgment is marked as Ex.P.8. In these circumstances, since the evidence of P.W.2 is supported by Ex.P.5 and further, in the absence of any contra evidence let in on the side of the contesting respondent, it is determined that the accident had happened due to the rash and negligent driving of the driver of the lorry/second respondent therein. Hence, the finding of the Tribunal is correct and the same does not require any interference.

12. Further, it is seen that the deceased was a bachelor, aged about 22 years at the time of accident and was working as a Driver-cum-Personal Assistant in St. George Malankarai Catholic Church, Chellankonam and earned a sum of Rs.6,000/- per month. On the claimants' side, to establish the income of the deceased, no one from the said Church has been examined and no register has been produced to show that the deceased was a driver and he earned a sum of Rs.6,000/- per month. Hence, the Tribunal has fixed the income of the deceased at Rs.3,000/- per month and deducted one-third amount for the personal expenses and awarded a sum of Rs.2,000 X 12) per annum and adopted multiplier '13' and awarded a sum of Rs.3,12,000/- (Rs.24,000 X 13) for loss of income to the deceased, a sum of Rs.10,000/- each towards loss of



love and affection to the claimants 1 to 3 and a sum of Rs.5,000/- towards funeral expenses and totally, awarded a sum of Rs.3,47,000/-, and directed the appellant/third respondent-New India Assurance Company, who is the insurer of the first respondent therein, to pay the compensation amount to the claimants, which in the considered opinion of this Court is reasonable and the same are confirmed.

13. In view of the above, this Court is of the considered opinion that there is no error in the finding of the Tribunal and the Tribunal has awarded a just and reasonable compensation. Hence, there is no infirmity or irregularity in the award passed by the Tribunal. Therefore, this Civil Miscellaneous Appeal deserves to be dismissed.

14. In the result, this Civil Miscellaneous Appeal is dismissed and the award dated 04.02.2011 made in M.C.O.P.No.15 of 2005 on the file of the Motor Accident Claims Tribunal-cum-Chief Judicial Magistrate, Nagercoil, is hereby confirmed. The appellant/New India Assurance Company is directed to deposit the award amount, along with accrued interests and costs, within a period of eight weeks from the date of receipt of a copy of this order, if not already deposited and on such deposit being made, the claimants are directed to withdraw their respective shares as apportioned by the Tribunal, along with accrued interest and costs, by filing necessary petition before the Tribunal. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar

To

1. The Chief Judicial Magistrate,
Motor Accident Claims Tribunal, Nagercoil.
 2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court, Madurai.
- +1cc to M/S.D.Sivaraman, Advocate SR.No. 89901
+1cc to M/S.S.Royce Immanuel, Advocate SR.No. 89566

C.M.A(MD) No.1147 of 2011
and M.P(MD) No.1 of 2011
24.11.2017