

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.12.2018

CORAM

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

CMA.Nos.286 and 287 of 2006

CMA.No.286 of 2006 in

D.Mary Esther

.. Appellant/Third Party

..Vs..

1.Santha

2.Tamilselvi

3.Juilee

4.Abdul Rahim

5.D.Kannammal

6.The Oriental Insurance Company Limited

Gandhipuram Branch,

Coimbatore 641 012.

.. Respondents/Claimants 1 to 3,
Respondents 1 & 2

CMA.No.287 of 2006 in

D.Mary Esther

.. Appellant/Claimant

..Vs..

1.Abdul Rahim

2.D.Kannammal

3.The Oriental Insurance Company Limited

Gandhipuram Branch

Coimbatore 641 001.

.. Respondents/Respondents

Prayer in CMA.No.286 of 2006: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 03.01.2003 in M.C.O.P.No.1258 of 1996, on the file of the Motor Accidents Claims Tribunal-cum-Additional District Court, Fast Track Court No.I, Coimbatore.

Prayer in CMA.No.287 of 2006: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the

decree and judgment dated 03.01.2003 in M.C.O.P.No.1353 of 1996, on the file of the Motor Accidents Claims Tribunal-cum-Additional District Court, Fast Track Court No.I, Coimbatore.

For appellant in
CMA.No.286/2006 : Mr.T.M.Naveen for
Mrs.D.Kamatchi

For respondents in
CMA.No.286/2006 : R1 to R3 & R5- No appearance
Mr.S.Manohar for R6

For appellant in
CMA.No.287/2006 : Mr.T.M.Naveen for
Mrs.D.Kamatchi

For respondents in
CMA.No.287/2006 : Mr.S.Manohar for R3
R1 and R2-Dispensed with
vide Court order dated 17/08/2016

C O M M O N J U D G M E N T

CMA 287 of 2006

1. The appellant is the claimant in MCOP.No.1353/1996 on the file of the Additional District Judge, Motor Vehicle Accident Claims Tribunal, Fast Track Court No.I, Coimbatore. She filed the claim petition under Section 166 of the Motor Vehicles Act, for the death of her husband in a road accident that took place on 15.06.1996.

2. The brief case of the appellant/claimant is as follows:-

On 15.06.1996, the deceased Jebagnanam was riding his two wheeler Silver Plus bearing Registration No.TN-37-B-2353 along Gokula Street, Coimbatore. At about 23.30 hours, when he was nearing Aasai Jewellery, a speeding lorry bearing Registration No.TA-B-5859 belonging to the first respondent hit the two wheeler as a result of which, the deceased sustained head injuries and died in the hospital on 19.06.1996. According to the claimant, the rash and negligent driving of the driver of the lorry was the cause of the accident and that since the said lorry was insured with the second respondent, both of them are jointly and severally liable to pay compensation of Rs.5,00,000/- to her. Another claim petition under Section 166 of the Motor Vehicles Act, was filed in MCOP.No.1258/1996 by four claimants contending that they are also the legal heirs of the deceased Jebagnanam. Therefore, the learned Additional District Judge, Fast Track Court No.I, Coimbatore tried MCOP.Nos.1258/1996 and 1353/1996 jointly and after analysing the evidence on record, awarded a compensation of Rs.2,26,000/-

together with interest at the rate of 9% per annum from the date of petition till the date of deposit. It was further held that the present appellant was entitled to a sum of Rs.1,00,000/- and the balance amount of Rs.1,26,000/- should be given to the claimants 2 and 3 in MCOP.No.1258/1996 after they file a Succession Certificate.

3. Not satisfied with the quantum of compensation awarded by the trial Court, the claimant in MCOP.No.1353/1996 has filed the present appeal seeking for enhancement of compensation.

4. Mr.T.M.Naveen, the learned counsel for the appellant would contend that the trial Court had failed to consider future prospects, income of the deceased and had also adopted the multiplier as '9' instead of '11'. According to the appellant/claimant, the age of the deceased is 55 years, on the date of the accident and he was earning a sum of Rs.1,800/- per month. As per the decision rendered in Sarla Verma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121, the proper multiplier is 11. Furthermore, as per the decision laid down in National Insurance Co. Vs. Prany Sethi and others reported in 2017 (2) TNMAC 601, 10% should be added towards future prospects and therefore, the income of the deceased taken up as Rs.1,980/- is rounded off to Rs.2,000/-. As per the claim petition, there are three dependents depending on the income of the deceased and hence, 1/3rd has to be deducted towards personal expenses of the deceased. Therefore, the contribution to the family would be Rs.1,334/-. Thus the loss of dependency is calculated as Rs.1334/- X 12 x 11 = 1,76,088/-.

5. Apart from the above amount, the appellant is entitled to a sum of Rs.40,000/-, 15,000/- and Rs.15,000/- towards loss of consortium, loss of estate and funeral expenses respectively. The award passed under various heads is extracted hereunder:

S.Nos.	Heads	Amount granted
1.	Loss of dependency	1,76,088/-
2.	Loss of estate	15,000/-
3.	Loss of consortium	40,000/-
4.	Funeral expenses	15,000/-
Total		Rs.2,46,088/-

6. Thus, the appellant/claimant is entitled to a sum of Rs.2,46,088/- together with interest at the rate of 7.5% per annum from the date of filing the claim petition till the date of deposit.

CMA No.286 of 2006

7. The appellant is the claimant in MCOP No.1353 of 1996 on the file of the Additional District Judge, Motor Vehicle Accidents Claims Tribunal, Fast Track Court No.1, Coimbatore and she filed the present appeal under Section 173 of the Motor Vehicles Act, 1988 seeking for dismissal of the claim petition in MCOP No.1258 of 1996 filed by the petitioners therein, who are the respondents 1 to 3 herein and praying to award entire compensation to this appellant.

8. The learned counsel appearing for the appellant would contend that the present appellant alone is the legally wedded wife of the deceased and that the claimants in MCOP.No.1258/1996 are not entitled to any compensation amount.

9. A perusal of the records shows that the deceased had two children through his second wife and the learned Tribunal after considering the evidence adduced on both sides had directed the claimants in MCOP.No.1258/1996 to file a suit before competent Court of law for a declaration that they are the legal heirs of the deceased Jebagnanam within a period of six months.

10. The learned counsel appearing for the appellant as well as the Oriental Insurance Company brought to the knowledge of this Court that a Civil Suit was filed by the claimants in MCOP.No.1258/1996 and that the claimants 2 and 3 were declared to be the legal heirs of the deceased Jebagnanam. It is also contended by them that they had also withdrawn the amount deposited by the Oriental Insurance Company in the same proportion as mentioned by the Additional District Judge, Fast Track Court No.I, Motor Accidents Claims Tribunal, Coimbatore.

11. In the facts and circumstances, the CMA.No.286 of 2006 it has become infructuous and is therefore dismissed.

12. In the result,
CMA 286 of 2006

The appeal in CMA No.286 of 2006 is dismissed. No costs.

CMA No.287 of 2006

(i) The appellant/claimant is entitled to a sum of Rs.2,46,088/- together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and the appellant is directed to pay deficit court fee, if any.

(ii) The Oriental Insurance Company/third respondent is directed to deposit the enhanced compensation amount along with interest, less the amount already deposited, within a period of four weeks from the date of receipt of a copy of this order.

(iii) On such deposit being made by the insurance company, the appellant/claimant is at liberty to withdraw the same, as

per the apportionment made by the tribunal.

(iv) With the above observations, the appeal is disposed of.
No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

dna

To

1. The Motor Accidents Claims Tribunal-cum-
Additional District Court, Fast Track Court No.I,
Coimbatore.
2. The Oriental Insurance Company Limited
Gandhipuram Branch,
Coimbatore 641 012.

Copy To:
The Section Officer,
V.R.Section, High Court, Madras.

+2 cc's to M/s.D.Kamatchi, Advocate Sr.No.83521 & 83522
+2 cc's to Mr.S.Manohar, Advocate Sr.No.83532 & 83533

CMA.Nos.286 and 287 of 2006

NMI (CO)
CSL/15.02.2019

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