

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.09.2018

CORAM:

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.3132 of 2010

1.R.Maheswari
2.R.Boomadevi
3.R.Soundararajan
4.Minor.R.Ilanchezhian
5.Minor.R.Gargil
6.Minor.R.Lakshanya
(Appellant Nos.4 to 6 are minors
rep. by their mother R.Maheswari) ...Appellants/Petitioner

Vs

1.A.Jamal
2.The New India Assurance Company Ltd.,
Motor Accident Third Party Claim Cell,
No.45, Moore Street, Parrys,
Chennai - 600 001. ...Respondents/Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree passed in M.C.O.P.No.525 of 2007 dated 30.07.2010 on the file of the Motor Accident Claims Tribunal, (Fast Track Court) at Ponneri.

For Appellants : Mr.V.Sivakumar

For Respondents : R1- Not Ready in notice
Mr.S.Manohar for R2

JUDGMENT

The instant appeal has been filed by the claimants seeking enhancement of compensation under the impugned Award dated 30.07.2010 passed by the Motor Accident Claims Tribunal (Fast Track Court at Ponneri) in M.C.O.P.No.525 of 2007.

The brief facts leading to the filing of the instant appeal are as follows:

2. One Ramar died on 16.05.2007 as a result of an accident caused by a tractor bearing Registration No.TN-21-Y-8616 owned by the first respondent and insured with the second respondent. The

Appellants who are the dependents of the deceased Ramar, preferred a claim before the Motor Accident Claims Tribunal in M.C.O.P.No.525 of 2007 seeking a compensation of Rs.17,73,000/-, which was restricted to Rs.14,00,000/-. The Motor Accident Claims Tribunal assessed the compensation payable to the Appellants at Rs.19,40,560/-, but since the Appellants made a claim only for Rs.14,00,000/-, the Tribunal restricted the compensation payable to the Appellants to Rs.14,00,000/- only, under the impugned Award. The instant appeal has been filed seeking for payment of the balance compensation of Rs.5,40,560/- as assessed by the Tribunal under the impugned Award. The Appellants have paid court fee for the said balance amount of Rs.5,40,560/- in the instant appeal.

3. Heard, Mr.V.Sivakumar, learned counsel for the Appellants and Mr.S.Manohar, learned counsel for the second respondent. The first respondent has remained ex parte both before the Tribunal as well as before this Court.

4. According to the learned counsel for the Appellants, even though the Tribunal has assessed the compensation payable to the Appellants at Rs.19,40,560/-, the Tribunal under the impugned Award has restricted the compensation to Rs.14,00,000/- only, since the Appellants had valued the claim only at Rs.14,00,000/- in the claim petition and paid court fee only for that amount before the Tribunal.

5. The learned counsel for the Appellants would further contend that no appeal has been filed by the second respondent Insurance Company against the findings given by the Tribunal under the impugned Award. The learned counsel for the Appellants also drew the attention of this Court to the judgment of Honourable Supreme Court in the case of Nagappa Vs Gurudayal singh and others reported in (2003) 2 Supreme Court Cases 274 and he referred to paragraph 7 and 21 and submitted that the Tribunal has got powers to grant compensation in excess of the claim amount mentioned in the claim petition. The paragraphs 7 and 21 are extracted hereunder:

" 7. Firstly, under the provisions of the Motor Vehicles Act, 1988, (hereinafter referred to as "the MV Act") there is no restriction that compensation could be awarded only up to the amount claimed by the claimant. In an appropriate case, where from the evidence brought on record if the Tribunal/court considers that the claimant is entitled to get more compensation than claimed, the Tribunal may pass such award. The only embargo is - it should be "just" compensation, that is to say, it should be neither arbitrary, fanciful nor unjustifiable from the evidence. This would be

clear by reference to the relevant provisions of the MV Act. Section 166 provides that an application for compensation arising out of an accident involving the death of, or bodily injury to, persons arising out of the use of motor vehicles, or damages to any property of a third party so arising, or both, could be made (a) by the person who has sustained the injury; or (b) by the owner of the property; or (c) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or (d) by any agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be. Under the proviso to sub-section (1), all the legal representatives of the deceased who have not joined as the claimants are to be impleaded as respondents to the application for compensation. The other important part of the said section is sub-section (4) which provides that "the Claims Tribunal shall treat any report of accidents forwarded to it under sub-section (6) of Section 158 as an application for compensation under this Act". Hence, the Claims Tribunal in an appropriate case can treat the report forwarded to it as an application for compensation even though no such claim is made or no specified amount is claimed.

21. For the reasons discussed above, in our view, under the MV Act, there is no restriction that the Tribunal/court cannot award compensation amount exceeding the claimed amount. The function of the Tribunal/court is to award "just" compensation which is reasonable on the basis of evidence produced on record. Further, in such cases there is no question of claim becoming time-barred or it cannot be contended that by enhancing the claim there would be change of cause of action. It is also to be stated that as provided under sub-section (4) to Section 166, even the report submitted to the Claims Tribunal under sub-section (6) of Section 158 can be treated as an application for compensation under the MV Act. If required, in appropriate cases, the court may permit amendment to the claim petition."

6. Per contra, learned counsel for the second respondent Insurance Company also concedes that no appeal has been filed by the second respondent against the Award dated 30.07.2010 passed

by the Motor Accident Claims Tribunal in M.C.O.P.No.525 of 2007.

7. After considering the submissions of the respective counsels and in the light of the decisions rendered by the Honourable Supreme Court in the case of Nagappa Vs Gurudayal singh and others reported in (2003) 2 Supreme Court Cases 274 referred to supra, this Court is of the considered view that the Tribunal ought to have granted the assessed compensation of Rs.19,40,560/- to the Appellants instead of restricting the compensation to Rs.14,00,000/- only.

8. Since no appeal has been filed by the second respondent, Insurance Company, the findings of the tribunal have also become final.

9. In the result the appeal is allowed as prayed for by modifying the Award amount from Rs.14,00,000/- to Rs.19,40,560/-. However there shall be no order as to costs.

10. It is brought to the notice of this Court that the Award amount has already been deposited by the second respondent, before the Tribunal. Therefore, the second respondent is directed to deposit the enhanced amount of Rs.5,40,560/- along with interest at the rate of 7.5% per annum from the date of claim, till the date of realisation to the credit of M.C.O.P.No.525 of 2007, within a period of four weeks from the date of receipt of copy of this order. On such deposit being made, the Appellants 1 to 3 are permitted to withdraw their respective shares by filing an appropriate application. Insofar as the minor Appellant Nos.4 to 6 are concerned, their respective shares shall be deposited in any one of the Nationalised Banks till they attain majority and the 1st Appellant/mother of the minors is permitted to withdraw the interest accrued once in six months.

Sd/-

सत्यमेव जयते Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

To

1. Motor Accident Claims Tribunal,
(Fast Track Court), Ponneri.

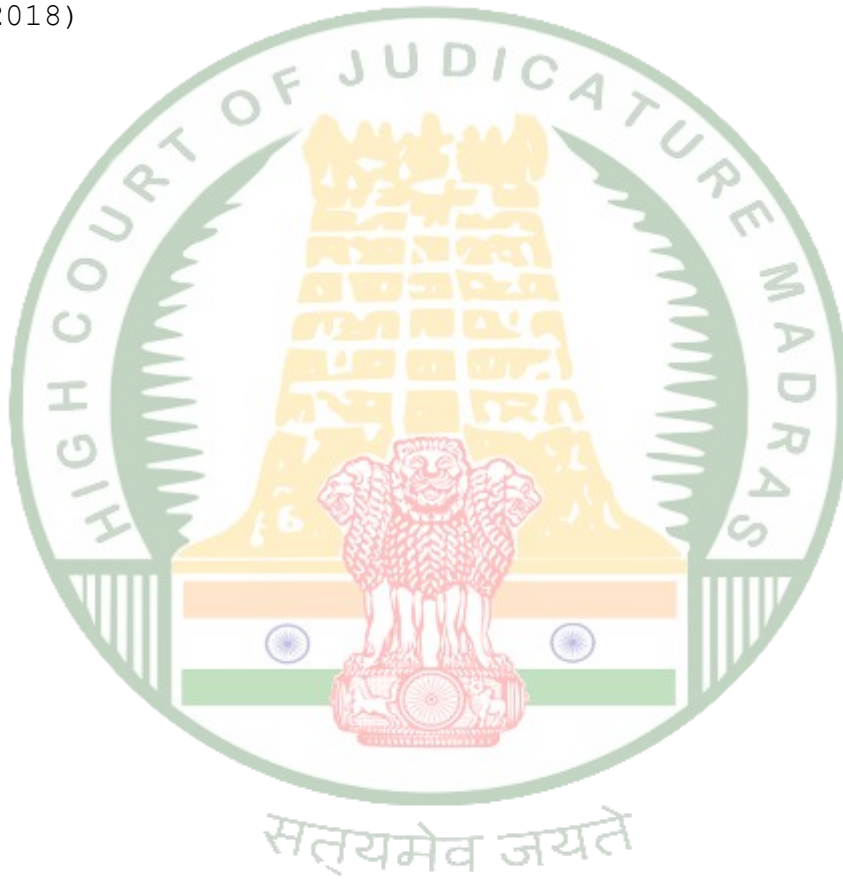
2. The Record Clerk,
Vernacular Section,
High Court, Madras.

3.The New India Assurance Company Ltd.,
Motor Accident Third Party Claim Cell,
No.45, Moore Street, Parrys,
Chennai - 600 001.

+1cc to Mr.V.Siva Kumar, Advocate, S.R.No. 67985
+1cc to Mr.S.Manohar, Advocate, S.R.No. 67614

C.M.A.No.3132 of 2010

VGII(CO)
GN(19/11/2018)



WEB COPY