

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.08.2018

CORAM

THE HONOURABLE Mr.JUSTICE K.K. SASIDHARAN
AND
THE HONOURABLE Mr.JUSTICE R. SUBRAMANIAN

CM.A.Nos.1753 & 1754 of 2018 in
CMP.Nos.13549 & 13550 of 2018

M/s. Oriental Insurance Company Limited,
No. 159, Kumaran Road,
Tiruppur.

.. Appellant
(in both appeals)

Vs

1. Pavithra
2. Neelavathi

.. Respondents
(in both appeals)

Common Prayer: Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and Decree made in MCOP Nos.586 and 587 of 2015 respectively, dated 28.04.2017, on the file of the Motor Accidents Claims Tribunal, II Additional District & Sessions Court, Tiruppur.

For Appellant : Mr.N. Vijayaraghavan
M.B.Gopalan Associates

For Respondent : Mr.MA.P.Thangavel for R1

COMMON JUDGMENT

(Judgment of the Court was delivered by R.SUBRAMANIAN, J.)

These appeals have been filed by the Insurance Company, the second respondent in MCOP Nos. 586 and 587 of 2015 on the file of the Motor Accident Claims Tribunal (Principal District and Sessions Judge, Tirupur), challenging the awards dated 28.04.2017 made in the said original petitions awarding a sum of Rs.14,84,400/- and Rs.13,00,000/- respectively for the death of the parents of the first respondent in a Motor Accident that occurred on 22.03.2015 at about 11.10 A.M.

2. According to the claimant, while her parents namely U.Sukumar and Mrs. Arulmozhi were traveling in a two-wheeler the bus belonging to the second respondent insured with the

appellant Insurance Company came in the opposite direction and dashed against the two-wheeler as a result of which both the said Mr. U. Sukumar and Mrs. Arulmozhi died. The first respondent had claimed a compensation of Rs.30,00,000/- each for the death of her parents. The appellant/Insurance Company resisted the claim contending that the claim of the first respondent that the accident took place due to the rash and negligent driving of the driver of the bus bearing Registration Number TN-39-B-2442 insured with the appellant company, is not correct. The Insurance Company further contended that the bus was not involved in the accident. The quantum of compensation was also claimed to be excessive.

3. The Motor Accident Claims Tribunal tried both the original petitions together and by a common award dated 24.08.2017 granted a compensation of a sum of Rs.14,84,400/- for the death of the father Mr. Sukumar and a sum of Rs. 13,00,000/- for the death of the mother Mrs. Arulmozhi. The Tribunal fixed the income of the father at Rs.10,000/- per month and after adding 30% towards future prospects the total monthly income was fixed at Rs.13,000/- after deducting 1/3rd of the amount for personal expenses the loss of dependency was fixed at Rs.8,650/- per month. Applying the multiplier of 13, the pecuniary loss was fixed at Rs.13,49,800/-. The Tribunal also granted a sum of Rs.1,00,000/- for loss of love and affection, Rs.10,000/- for transport charges, Rs.25,000/- for funeral expenses.

4. In so far as the mother Mrs. Arulmozhi is concerned, the Tribunal fixed the monthly income at Rs.8,000/- and after adding 30% to future prospects fixed Rs.10,400/- as monthly income. Deducting 1/3rd of the said amount towards personal expenses and the Tribunal arrived at Rs.6950/- as loss of income per month. Applying the multiplier of 14, the Tribunal arrived at the pecuniary loss at Rs.11,67,600/-.

5. The Tribunal awarded a sum of Rs.1,00,000/- for loss of love and affection, Rs.10,000/- for transport charges, Rs.25,000/- for funeral expenses. It is these awards that are challenged before us as excessive by the Insurance Company.

6. We have heard Mr. N. Vijayaraghavan, learned counsel appearing for the Insurance Company and Mr. MA.P. Thangavelu, learned counsel for the first respondent / claimant. Though notice was served on the second respondent she does not appear either through counsel or in person.

7. Mr. N. Vijayaraghavan learned counsel for the appellant would contend that the Tribunal was not justified in granting a sum of Rs.1,00,000/- for loss of love and affection. According to him it should have been Rs.40,000/- only. He also contended

the deduction at 1/3rd for personal expenses is also on the lower side. The learned counsel would contend that there is only one dependent and hence the Tribunal should have deducted at least half of the amount towards personal expenses.

8. Per contra Mr. MA.P. Thangavelu, learned counsel for the claimant would contend that though the Tribunal had awarded Rs.1,00,000/- towards love and affection the income fixed by the Tribunal is on the lower side. Claiming that both the parents were qualified and the mother was working as a teacher, the learned counsel would contend that the monthly income fixed by the Tribunal is on the lower side. Therefore, according to him the overall compensation awarded by the Tribunal is just and reasonable and the same does not warrant interference at our hands.

9. We have considered the rival submissions and also perused the materials placed before us. It is found that the deceased U. Sukumar was working as a clerk and was earning about Rs.20,000/- per month. But, the Tribunal had taken his monthly income only at Rs.10,000/- and added 30% towards future prospects. We find that the fixation cannot be said to be on the higher side. Similarly in the case of the mother Mrs. Arulmozhi though it was claimed that she was working as a teacher in a Nursery School and earning Rs.12,000/- per month the Tribunal however took her salary only at Rs.8,000/- after adding 30% towards future prospects and deducting 1/3rd for personal expenses arrived at the monthly income of Rs.10,400/-. The fact that the mother was working as a teacher is not in dispute. We are of the considered opinion the pecuniary loss fixed by the Tribunal is on the lower side considering the evidence on record.

10. However, we find that overall the compensation awarded by the Tribunal is just and reasonable. Even if the compensation enhanced by increasing the monthly income, the amount granted towards loss of love and affection will have to be reduced and the result would be same. Hence, we do not think that it is a fit case for interference in our hands. Hence, these appeals are dismissed without costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS V)

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Sub Assistant Registrar

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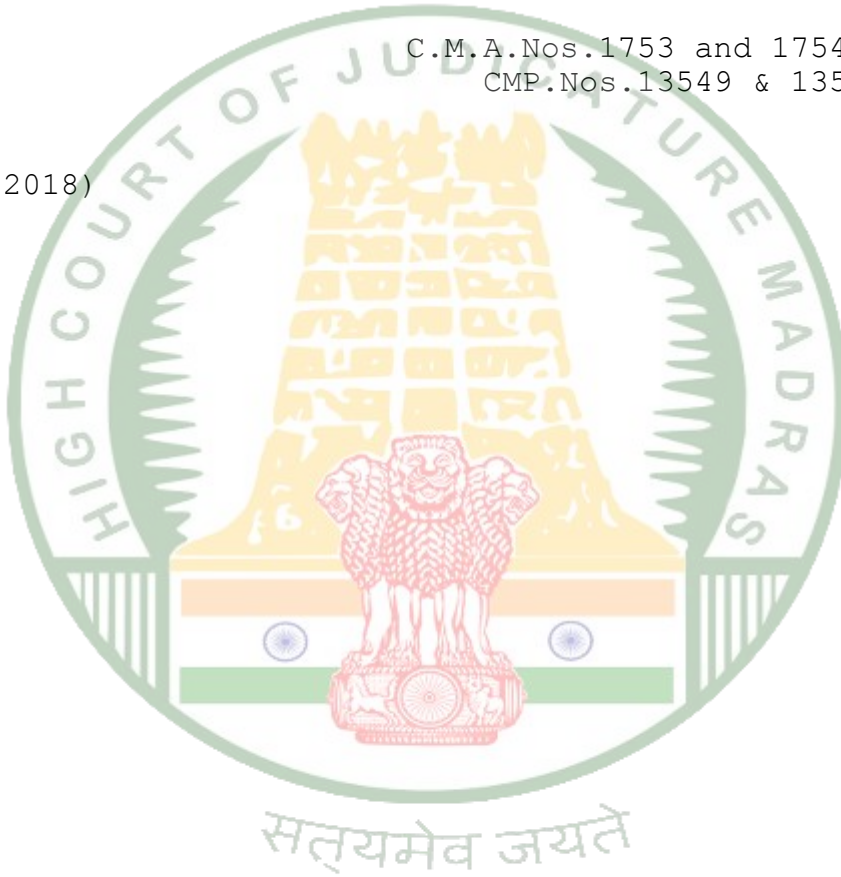
Motor Accidents Claims Tribunal,
II Additional District & Sessions Court,
Tiruppur.

+1cc to Mr.MA.P.Thangavel, Advocate, S.R.No.56034

+2cc to Mr.M.B.Gopalan Associates, Advocate, S.R.No.55764 & 55765

C.M.A.Nos.1753 and 1754 of 2018 in
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VBA (CO)
GSP (27/09/2018)



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