

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.08.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CMA No.2040 of 2016 and
CMP No.14896 of 2016

The Oriental Insurance Co. Ltd.,
Rep. by its Branch Manager,
Branch Office, Girish Complex,
First Floor, Agrahara Street,
Chamaraja Nagar,
Karnataka State 571 313. ... Appellant/2nd Respondent

-vs-

1.B.S.Ramamoorthy
2.B.S.Lalitha
3.B.R.Kathyayini ... Respondents 1to3/Claimants
4.R.Saravana Kumar ... 4th Respondent/1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of the
Motor Vehicles Act, 1988 against the judgment and decree dated
30.07.2013 made in M.A.C.T.O.P.No.7 of 2013 on the file of the
Motor Accident Claims Tribunal (District Judge, Special Court
for Motor Accident Claims Cases) at Krishnagiri.

For Appellant : Mr.M.Krishnamoorthy

For Respondents: No appearance

J U D G M E N T

[Judgment of the Court was delivered by
R.SUBRAMANIAN, J.]

The Insurance Company is the appellant. The challenge is
to the Award of the Motor Accident Claims Tribunal,
Krishnagiri granting a sum of Rs.13,34,000/- for the death of
one B.R.Sivagnana Prasath, aged about 28 years in a motor
accident that occurred on 27.04.2011.

2. The case of the claimants was that while the deceased
was driving on the Krishnagiri - Hosur Highway, a tipper lorry
owned by the 4th respondent herein, insured with the appellant
Insurance Company suddenly took a 'U' turn without signal,
which resulted in the deceased dashing against the tipper
lorry. The claimants also contended that the deceased was

earning a sum of Rs.15,000/- per month as temple priest. The claimants being parents of the deceased had suffered mental agony as well as monetary loss.

3. The claim was resisted by the Insurance Company by contending that there was negligence on the part of the deceased which was the cause of the accident. The Driver of the lorry was examined as R.W.1. He had deposed that while he was taking a "U" turn after proper indication, the deceased, who drove the vehicle in a rash and negligent manner dashed against the rear portion of the lorry. According to the learned counsel for the appellant, the very fact that the impact was on the rear portion of the lorry would show that the deceased was negligent. P.W.2, who was an eye witness to the accident has deposed that when the tipper lorry took "U" turn without signal, the deceased came from rear and hit the lorry.

4. Mr.M.Krishnamoorthy, learned counsel for the Insurance Company would contend that the Tribunal must have apportioned certain amount towards contributory negligence on the deceased also.

5. We have considered the submissions of the learned counsel for the appellant. None appears for the respondents 1 to 3.

6. On an analysis of the evidence on record, we are of the opinion that the deceased had also contributed to the accident and hence, we fix contributory negligence at 10% on the part of the deceased.

7. On the quantum, Mr.Krishnamoorthy, learned counsel would contend that the Tribunal has taken Rs.9,000/- as monthly income and deducted 1/3 towards personal expenses. According to him, the fixation of Rs.9,000/- as monthly income is on the higher side and the deceased being a bachelor, the Tribunal should have deducted 50% of the amount towards his personal expenses.

8. From the Award of the Tribunal, we find that the Tribunal has not awarded any amount towards future prospects. The deceased being self employed, as per the judgment of the larger bench judgment of the Hon'ble Supreme Court in National Insurance Co. Ltd., v. Pranay Sethi and others [2018 (1) L.W. 331], future prospects should be taken as 40%. If monthly income is taken as Rs.9,000/- and 40% is added towards future prospects, the monthly income would be Rs.12,600/- if 50% of the amount is deducted towards personal expenses, the monthly loss of dependency would be Rs.6,300/-. The Tribunal has taken Rs.6,000/- as monthly contribution. We do not think that the same warrants interference at our hands.

9. The Tribunal has awarded a sum of Rs.12,24,000/- towards Loss of dependency (Rs.6000 x 12 x 17). The Tribunal has awarded Rs.75,000/- towards loss of Love and Affection; Rs.10,000/- towards Transportation and Rs.25,000/- towards Funeral Expenses. In all, the Tribunal has awarded Rs.13,34,000/- as compensation. We do not find any ground to interfere with the quantum of compensation awarded by the Tribunal. Since we have fixed contributory negligence at 10% on the part of the deceased, the compensation payable to the claimants works out to Rs.12,00,600/-, which is rounded off to Rs.12,00,000/-.

10. In the result, the Civil Miscellaneous Appeal is Partly Allowed as follows:-

(i) The award of the Tribunal is modified and reduced from Rs.13,34,000/- to Rs.12,00,000/-

(ii) The award amount will carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit with proportionate costs.

(iii) The compensation is apportioned as follows:-

a) The 2nd respondent - mother of the deceased will be entitled to Rs.6,00,000/- with proportionate interest and entire costs.

b) Respondents 1 and 3 - father and sister of the deceased will be entitled to Rs.3,00,000/- each with proportionate interest.

(iv) It is stated that the appellant - Insurance Company has deposited the entire award amount. The claimants are permitted to withdraw the entire amount as per the modified award passed by this Court by filing proper application before the Tribunal. The Tribunal shall pass appropriate directions for the disbursement of the amount as stated supra on filing of such application.

No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-IV)

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Sub Assistant Registrar

To

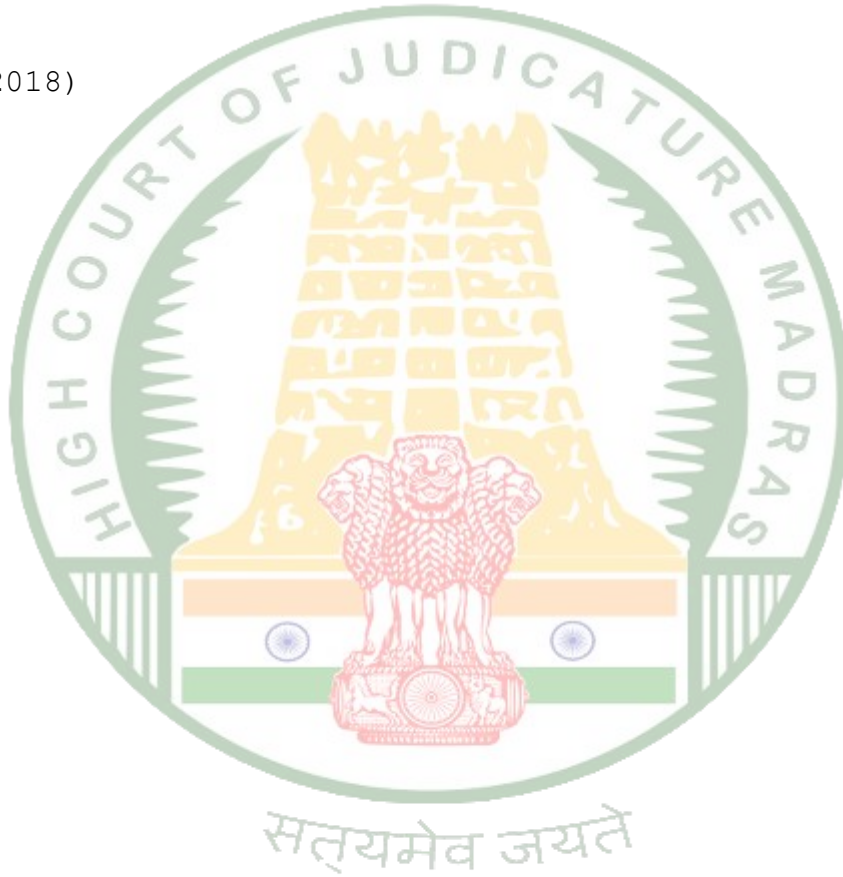
The Motor Accident Claims Tribunal
(District Judge,
Special Court for Motor Accident Claims Cases)
at Krishnagiri.

+ 1 cc to Mr. M. Krishnamoorthy, Advocate Sr.59370

+ 1 cc to MR. Mukunth R. Pandian, Advocate Sr.59856

CMA No.2040 of 2016

KGK (CO)
EU(31/10/2018)



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