

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on	21.12.2017
Orders Pronounced on	20.02.2018

CORAM

THE HONOURABLE DR.JUSTICE S.VIMALA

C.M.A.No.2200 of 2016 and C.M.P.Nos.2437,
2438/17 and 15706 of 2016 and Cros.Obj.80 of 2016

C.M.A.No.2200 of 2016

M/s.New India Assurance Co. Ltd.,
Motor Third Party Cell, 5th Floor,
No.45, Moore Street,
Chennai-600 001. Appellant/2nd Respondent

-vs-

1. T.Vijaya
2. T.Srinivasan
3. T.Ramesh
4. T.Suresh Respondents 1 to 4/Petitioners 1 to 4
5. T.Anandi 5th Respondent/5th Petitioner
6. M/s.Ucal Fuel Systems Ltd.,
Raheja Towers, Dela Wing,
Unit No.505, No.177, Anna Salai,
Chennai-600 002. 6th Respondent/1st Respondent

Prayer:

Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the decree and judgment passed in MCOP No.3256 of 2013 dated 27.03.2015 on the file of the learned Motor Accident Claims Tribunal (II Judge), Small Causes Court, Chennai - District.

For Appellant : Mr.J.Chandran
for Mr.V.Richard Suresh Kumar

For R1 to R5 : Mr.N.Nanmaran

Cros.Obj.80 of 2016 in
C.M.A.No.2200 of 2016

1. T.Vijaya
2. T.Srinivasan
3. T.Ramesh
4. T.Suresh
5. T.Anandi

... Cross Objectors in CMA/Respondents 1 to 5
in CMA 2200/16

-vs-

1. M/s.New India Assurance Co. Ltd.,
Motor Third Party Cell, 5th Floor,
No.45, Moore Street,
Chennai-600 001. ...1st respondent/Appellant in
CMA.2200 of 2016
2. M/s.Ucal Fuel Systems Ltd.,
Raheja Towers, Dela Wing,
Unit No.505, No.177, Anna Salai,
Chennai-600 002. ... 2nd Respondent/6th Respondent/ in
CMA.2200 of 2016

Prayer: Cross Objection filed under Order 41 Rule 22 of C.P.C.
to set aside the order and decreetal order passed in MCOP
No.3256 of 2013 by the Motor Accidents Claims Tribunal, II
Judge, Small Causes Court, Chennai dated 27.03.2015 and enhance
the award amount in the interest of justice.

For Cross Objectors : Mr.N.Nanmaran
for Mr.V.Richard Suresh Kumar

For R1 : Mr.J.Chandran

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

Compensation of Rs.17,91,000/- has been awarded in
respect of the death of 50 year old person, by name,
Mr.D.Thulasingham @ Duraisingam in favour of the wife, sons and
daughter respectively. Challenging the liability as well as
quantum, the appellant / 2nd respondent has filed the appeal. The
claimants have also filed Cross Objection under Order 41 Rule
22, challenging the award as grossly inadequate.

2. The specific contention raised is that when
documentary evidence has been let in through Ex.Ps.14, 15 and
17, showing that the deceased had been earning a sum of
Rs.16,000/- per month by doing embroidery work, the Claims

Tribunal is not right in fixing the income at Rs.10,000/-. If the monthly income is fixed at Rs.16,000/- and if 30% is added towards future prospects, the monthly income would be Rs.20,800/-.

3. Fixing the income of the deceased at Rs.10,000/- adding 30% towards future prospectus and deducting 1/4 and applying multiplier of 13, the loss of dependency has been calculated at Rs.15,21,000/- The breakup details of the award on other heads including pecuniary loss reads as under:

Heads	Amount
Pecuniary Loss	Rs.15,21,000/-
Funeral expenses	Rs. 25,000/-
Consortium	Rs. 1,00,000/-
Love and Affection	Rs. 75,000/-
Medical Expenses	Rs. 70,000/-
Total	Rs.17,91,000/-

4. The main contention raised by the learned counsel for the appellant is that the accident itself occurred due to the negligence of deceased himself and therefore, the compensation ordered is un-sustainable and in any event, it is grossly disproportionate.

4.1. In order to appreciate this contention, it is necessary to look into the mode of accident. On 21.03.2006 at about 3:30pm, when the deceased was standing on the GST road, a Toyota Qualis Car bearing Reg.No.TN-01 W 7767 came from Chennai to Chengalpet in a very rash and negligent manner and hit against the deceased and it is stopped after hitting against the centre median. The injured was admitted in the hospital and later succumbed to injury on 12.04.2006.

4.2. The contention of the appellant / insurance company was that the deceased attempted to cross the road without noticing the Qualis Car in a place, which was not meant for pedestrian cross and thus, it is an invited accident and therefore, the insurance company is not liable. It is also contended that the deceased himself is the contributor of the accident and he is also liable for contributory negligence on any event.

5. The learned counsel for the appellant would submit that the happening of the accident itself is doubtful, as the claim petition itself had been filed after a period of six years, i.e. in the year 2013, even though the accident was in the year 2006 (date of accident: 21.03.2006). Though the stand taken is not fair, still in the light of number of fake cases

being filed, this Court felt that this contention has to be tested in the light of the merits available.

5.1. Immediately, after the accident, the injured had been admitted at the Government Hospital, Chengalpet; thereafter, he has been referred to the G.H., Chennai; thereafter, he has been sent to Sri Balaji Hospital for further management. It is pointed out by the learned counsel for the appellant that the initial medical document from Government Hospital, Chengalpet has not been produced and even though discharge summary from Balaji Hospital is filed, initial admission file is not filed and therefore, this Court, by order dated 13.09.2017 directed the production of the Accident Register and copy of other connected records pertaining to it from the concerned hospitals, namely, The Government Hospital, Chengalpattu, The Government Hospital Chennai and Balaji Hospital, Guindy. This Court was waiting for the records. In the meantime, the appellant themselves had filed an affidavit seeking receipt of additional documents, which is A.R. Copy in respect of the deceased Thulasingham by the Government Hospital. In this document, it has been mentioned that the deceased was admitted in the hospital by his wife; the deceased was hit by a Qualis Car, while travelling in an Auto and the details of the injury suffered and also the details regarding treatment in the Balaji Hospital. This document is marked as Ex.C1.

5.2. It is contended by the learned counsel for the appellant that according to claimants, the accident took place while the deceased was walking as a pedestrian, whereas in the accident register copy, it is mentioned that he is travelling in an Auto. Under normal circumstances, this Court would have given opportunity for the appellant to examine somebody connected with the accident register, but the accident itself is of the year 2006 and already, twelve years have elapsed. Moreover, the appellant is taking inconsistent defences. This document gives sufficient proof for the fact that there was an accident, which is now disputed by the appellant, taking advantage of the delay in filing the claim petition.

6. The primary question to be considered is, whether the accident was on account of negligence on the part of the insured vehicle or on the part of the deceased. The perusal of the award would go to show that the Tribunal has relied upon Ex.A1 / FIR, which was lodged by one Thimmiah on 23.03.2006 and the evidence of PW2, which corroborated the averments made in the FIR as well as the averments made by the claimants with regard to the negligence.

7. The best evidence available has not been made available to the Claims Tribunal, in the sense that the driver

of the offending vehicle has not been examined. There is no contra evidence to the evidence adduced on the side of the claimants. Under such circumstances, the Tribunal has rightly held that the accident took place only on account of the negligence of the offending vehicle.

8. The next issue to be considered is, whether the quantum of compensation awarded is excessive as claimed by the appellant or it is inadequate as claimed by the Cross Objectors.

9. So far as quantum of compensation is concerned, the appellant claims that the award is excessive, but the learned counsel for the claimants claims that the deceased had been doing embroidery work, in which he has been earning enormously and with available document, it is possible to fix the income at Rs.10,000/- per month. Needless to point out that the nature of business is such that the Court cannot expect a steady income from the business. There may not be income for some season also. Under the circumstances, the Tribunal had fixed the monthly income rationally. Therefore, the compensation awarded cannot be said to be either high or low. Therefore, this Court deem it appropriate to confirm the order passed by the Claims Tribunal.

10. In the result, both the Appeal and the Cross Objection are dismissed, confirming the award dated 27.03.2015 passed by the learned Motor Accident Claims Tribunal (II Judge), Small Causes Court, Chennai District in M.C.O.P.No.3256 of 2013. No costs. Consequently, connected miscellaneous petitions are closed.

11. The appellant / Insurance Company is directed to deposit the amount along with interest at 7.5% per annum from the date of petition till the date of deposit, less the amount already deposited, to the credit of claim petition, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal shall transfer the same directly (as apportioned by it) to the Bank Account of the claimants through RTGS within a period of two weeks thereafter.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

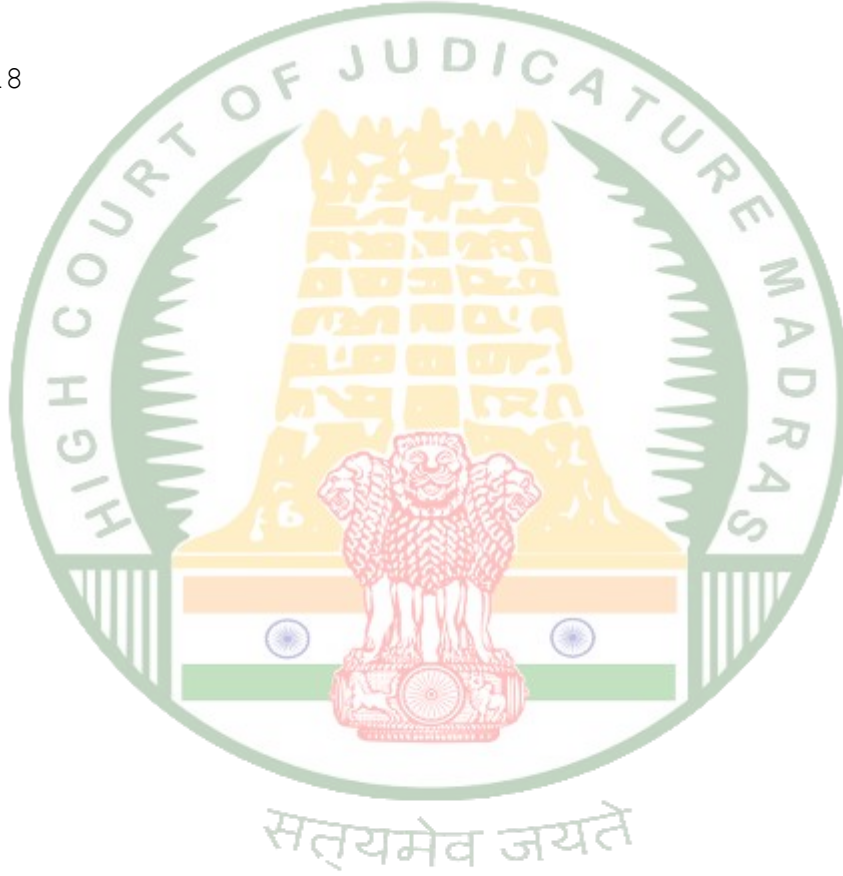
1. The Motor Accidents Claims Tribunal,
II Judge, Small Causes Court,
Chennai.

+1cc to Mr.J.Chandran, Advocate, S.R.No.13585

+1cc to Mr.N.Nanmaran, Advocate, S.R.No.12989

C.M.A.No.2200 of 2016 and C.M.P.Nos.2437,
2438/17 and 15706 of 2016 and Cros.Obj.80 of 2016

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cs/14/03/18



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