

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.09.2018

CORAM:

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

CMA Nos.2672 and 3498 of 2017,
CMP No.22243 of 2017 and 2439 of 2018

1.P.Vijaya
2.P.Abirami (Minor) Rep. by mother and NF 1st appellant
3.P.Visithra
4.P.Mookkayee
5.P.Pichayee

.... Appellants in
CMA No.2672/2017 and
Respondents 1 to 5 in
CMA No.3498/2017
(Claimants/Claimants)

-vs-

1.M.C.Natarajan
(Set exparte in the Trial Court)

...1st respondent in
CMA No.2672/2017 and
6th Respondent in
CMA No.3498/2017
(1st Respondent/1st Respondent)

2.Oriental Insurance Co. Ltd.,
Motor Third Party Claims - HUB
No.216, Prakasam Salai, Broadway,
Chennai - 600 108.

... 2nd Respondent in
CMA No.2672/2017 and
the appellant in
CMA No.3498/2017
(2nd Respondent/2nd Respondent)

Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 23.03.2017 made in M.A.C.T.O.P.No.1917 of 2013 on the file of the Motor Accidents Claims Tribunal, II Court of Small Causes, Chennai.

Ms.P.T.Saleem Fathima : For Appellant
in CMA No.2672 of 2017 and
For Respondents 1 to 5
in CMA No.3498 of 2017

Mr.R.Mohan Babu
for Mr.N.Vijayaraghavan: For Second Respondent
in CMA No.2672 of 2017 and
For Appellant
in CMA No.3498 of 2017

R1 in CMA.2672/17 : Exparte
R6 in CMA.3498/11 : NA

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

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

Challenging the Award granting a sum of Rs.22,92,000/- as compensation for the death of one P.Pongaswamy, who was working as a Village Assistant, in a motor accident that occurred on 12.01.2013, the Insurance Company has come forward with CMA No.3498 of 2017. The legal representatives of the deceased have filed CMA No.2672 of 2017, seeking enhancement.

2. We have heard Mr.R.Mohan Babu, learned counsel for the appellant -Insurance Company in CMA No.3498 of 2017 and Ms.P.T.Saleem Fathima, learned counsel for the appellants in CMA No.2672 of 2017. The owner of the vehicle who is the first respondent in CMA No.2672 of 2017 and the 6th respondent in CMA No.3498 of 2017 had remained ex parte before the Tribunal and hence, notice to the said respondent is dispensed with.

3. Mr.R.Mohan Babu, learned counsel appearing for the appellant - Insurance Company in CMA No.3498 of 2017 would contend that inasmuch as the accident had happened due to the negligence of the deceased, the Insurance Company should not have been made liable to pay the compensation. He would also point out that the First Information Report has been lodged only against the deceased. It is a case of collision between two vehicles. Admittedly, the vehicle belonging to the first respondent in CMA No.2672 of 2017 was parked on the road and the deceased, who was riding a two-wheeler dashed against it from the rear. The deceased sustained severe head injuries and was in fact unconscious. The First Information Report was lodged by the driver of the Paddy Harvester vehicle, insured with the appellant - Insurance Company in CMA No.3498 of 2017.

4. The Tribunal on an analysis of evidence regarding negligence and more particularly on the evidence of the eye witness concluded that the accident occurred due to the negligent act of parking the vehicle on the road by the Driver of the Paddy Harvester. It was also found that there was no

indication regarding parking of the vehicle on the road. It was also brought out in the evidence that the road is a narrow two-way road. We therefore find no reason to interfere with the finding of the Tribunal on the negligence.

5. As regards the quantum, the Tribunal has taken the salary of the deceased at Rs. 11,090/- per month as per the Salary Certificate. There is no dispute regarding the quantum of salary since the deceased was a Government employee. The Tribunal adding 30% towards future prospects and after deducting 1/4 towards his personal expenses adopted the multiplier of "14" and determined the Pecuniary Loss at Rs.18,16,584/-. The Tribunal awarded a sum of Rs.1 lakh towards Loss of Consortium and Rs.3 lakhs towards Loss of Love and Affection. These amounts, according to the learned counsel for the appellant in CMA No.3498 of 2017 are on the higher side.

6. In view 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], the Award under the head Loss of Consortium is reduced to Rs.40,000/- and the Award under the Head Loss of Love and Affection is reduced to Rs.1,00,000/- (Rs.40,000/- each to two children viz., respondents 2 and 3 and Rs.20,000/- to the mother of the deceased viz., 4th respondent). The 5th respondent is the step-mother of the deceased. Therefore, she is not entitled to any compensation for loss of Love and Affection. The Tribunal has awarded Rs.25,000/- towards Funeral Expenses and the same is confirmed. The Tribunal has awarded Rs.50,000/- towards Loss of Estate and the same is reduced to Rs.15,000/-. The deceased was an inpatient in the hospital between 12.01.2013 and 15.01.2013. Considering the fact that he must have undergone pain and suffering during the period of treatment, we grant a sum of Rs.30,000/- towards Pain and Suffering.

7. Thus, the total compensation works out as follows:-

i) Loss of Pecuniary Benefits :	Rs.18,16,584/-
ii) Loss of Love and Affection:	Rs. 1,00,000/-
iii) Loss of Estate	: Rs. 15,000/-
iv) Loss of Consortium	: Rs. 40,000/-
v) Funeral Expenses	: Rs. 25,000/-
vi) Pain and Suffering	: Rs. 30,000/-
Total Compensation	: Rs.20,26,584/-
Rounded off to	: Rs.20,25,000/-

8. In the result, the C.M.A.No.3498 of 2017 is allowed in part as follows:-

(i) The award of the Tribunal is modified and reduced from Rs.22,92,000/- to Rs.20,25,000/-.

(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 first respondent - wife of the deceased will be entitled to Rs.7,00,000/- with proportionate interest and entire costs.

b) The respondents 2 and 3 - children of the deceased will be entitled to Rs.5,00,000/- each with proportionate interest.

c) The fourth respondent - mother of the deceased will be entitled to Rs.3,25,000/- with proportionate interest.

iv) It is stated that the Insurance Company has deposited Rs.15,00,000/-. The appellant Insurance Company is directed to deposit the remaining amount as per the modified award along with interest within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit, the major claimants are permitted to withdraw their share of the compensation.

v) The share of the minor is directed to be deposited in any one of the nationalised banks in an interest bearing Fixed Deposit till she attains majority. The first respondent - the mother of the minor is permitted to withdraw the quarterly interest from out of the Fixed deposit for the maintenance of the minor.

vi) The direction given by the Tribunal to pay and recover the amount from the first respondent is sustained, in view of the fact that the Driver was not having a valid driving license.

The appeal in CMA No.2672 of 2017 is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To
The Motor Accidents Claims Tribunal,
II Court of Small Causes, Chennai.

+2cc to Mr.N.Vijayaraghavan, Advocate sr.no.63198, 63199
+1cc to Mr.M.Swamikkannu, Advocate sr.no.63004

CMA Nos.2672 and 3498 of 2017

nm(co)
nr 20/11/2018



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