

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.3216 of 2017 and
CMP.No.19947 of 2017

United India Insurance Co. Ltd.,
Branch Office, No.5-E/11, SBI Upstairs
Salem Road, Rasipuram - 637 408. .. Appellant/2nd Respondent

vs.

1. Sumanandhini
2. Minor. Deepak kumar
3. Kanchana
4. Rajendran .. Respondents/Petitioners
5. S.Muniappan .. Respondent/1st Respondent

Civil Miscellaneous Appeal has been filed against the judgment and award dated 20.01.2017 made in MCOP.No.18 of 2013, on the file of the Motor Accident Claims Tribunal (Spl. District Court) at Salem.

For appellant : Mr.T.Ravichandran
For Respondents : Mr.SP.Yuvaraj for RR1 to R4

J U D G M E N T

The Civil Miscellaneous Appeal has been filed by the Insurance Company, against the judgment and decree dated 20.01.2017 made in MCOP.No.18 of 2013, on the file of the Motor Accident Claims Tribunal (Spl. District Court) at Salem.

2 For convenience sake, the parties are referred to hereunder according to their litigative status before the Tribunal. The case of the petitioners/claimants before the Tribunal as per their claim petition is that on 14.11.2012, at about 2.30 p.m, when the deceased Manojkumar was standing near Kuranguchavadi Bus Stop, a private bus named Velmurugan Bus Service, bearing Reg.No.TN 30 AH 3699 came at high speed and dashed against the deceased, resulting in grievous injuries to him and subsequently he died in the Hospital. According to the learned counsel for the petitioners/claimants, who are the wife, son and parents of the deceased, the occurrence took place only

due to the rash and negligent driving of the first respondent bus driver. At the time of the accident, the deceased was employed as Marketing Manager in a Saraswathi Swetha Import Export Company and was drawing a monthly salary of Rs.10,000/- + allowances Rs.5,000/- per month. The learned counsel for the petitioners/claimants further contended that due to his sudden demise, the petitioners/claimants lost the sole bread winner of the family and they were all dependants on him. Hence the petitioners/claimants seeks compensation of Rs.26,00,000/- from the respondents.

3 On the other hand, opposing the claim petition, the learned counsel for the second respondent/Insurance Company contended that the deceased was the sole reason for the accident and not the first respondent bus driver. The learned counsel disputed the manner of the accident as alleged by the petitioners/claimants. It is stated by the learned counsel that the deceased who was travelling in the first respondent's bus, tried to get down from the moving bus, fell down and suffered injuries, resulting in his death. The first respondent bus driver drove the bus at a normal speed only by observing all the traffic Rules. Since the negligence of the deceased alone caused the accident, the respondents are not liable to pay any compensation. The learned counsel for the second respondent/Insurance Company disputed the age, avocation and income of the deceased stated in the claim petition. Thus the learned counsel for the respondents seeks dismissal of the claim petition.

4 Before the Tribunal the petitioners/claimants examined P.W.1 to P.W.3 and documents Ex.P1 to Ex.P17 were produced to prove their claim. The respondents also examined R.W.1 to R.W.3 and produced documents Ex.R1 to Ex.R3. The eye witness of the occurrence, who deposed as P.W.2 states that while he was standing in the Kuranguchavadi Bus Stop, the private bus bearing Registration No.TN 30 AH 3699 came at high speed in a rash and negligent manner and dashed against the deceased, who was waiting in the Bus Stop. The F.I.R registered by the Suramangalam Traffic Police was marked as Ex.P.1, states that the deceased was standing on the side of the road and at that time, the first respondent bus came at high speed and dashed against the deceased resulting in grievous injuries which caused death of the said Manojkumar. Even though the second respondent/Insurance Company disputed the same, examined the driver of the bus as R.W.1, who stated that the deceased tried to get down from the running bus, fell down and suffered injuries. The said statement of R.W.1, has not been corroborated by any other material. Even assuming that the statement of R.W.1 is true, it is the duty of the crew of the bus, to be cautious and prevent the passengers of the bus from getting down of the

running bus. In such circumstances, it is very clear from the Ex.P.1 FIR, and the evidence of the P.W.2, that the accident occurred only due to careless driving of R.W.1/first respondent driver. Hence this Court is of the view that the finding of the Tribunal in that regard is just and proper.

5 The learned counsel for the petitioners/claimants states that the deceased was aged about 29 years at the time of accident. The same is evident from Ex.P.2 Post-mortem report, Ex.P.3 Death Certificate and other documents filed by the petitioners/claimants.

6 The Tribunal by relying on the School Transfer Certificate of the deceased Manojkumar Ex.P.11, calculated the age of the deceased as 30 years. The deceased was stated to have been employed as a Marketing Manager in a Private Company and he was earning monthly salary of Rs.10000/- + allowances Rs.5000/-. His salary slip is produced as Ex.P.9. On the basis of available evidence, the Tribunal fixed the monthly salary of the deceased as Rs.10000/-. However considering the salary certificate Ex.P.9, it would be appropriate to fix the monthly income of the deceased as Rs.9500/- instead of Rs.10000/- fixed by the Tribunal. Since the deceased was aged about 30 years at the time of his demise the multiplier to be applied is 17. Taking into account the age of the deceased, towards future prospectus, 40% of the salary is to be added (i.e.) $9500 \times 40 / 100 = 3800$ totally Rs.13,300/-. As there are four dependants, $1/4$ of the amount is to be deducted towards personal expenses of the deceased (i.e.) $13300 \times 1/4 = 3325$ - 13300 totally Rs.9775/-. Thus the loss of income due to the demise of the deceased is calculated as $9700 \times 12 \times 17 = \text{Rs.}19,78,800/-$. The learned counsel for the petitioners/claimants produced the medical report of the deceased as Ex.P.8 to Ex.P.11 and also the medical bills as Ex.P.6. It is evident from the same that the petitioners/claimants have spent Rs.64,485/- towards medical expenses. The petitioners/claimants are entitled for the same amount. Further, following the Apex Court decision reported in 2017 (2) TN MAG 609 (SC) NATIONAL INSURANCE CO. LTD., Vs. PRANAY SETHI AND OTHERS, towards loss of estate, loss of consortium and funeral expenses, this Court is inclined to modify the compensation as under:-

Loss of love and affection	=	Rs.40,000.00
Loss of Estate	=	Rs.15,000.00
Funeral Expenses	=	Rs.15,000.00

7 Accordingly, the compensation granted by the Tribunal is modified as follows:-

S1 No	Heads	Amount awarded by the Tribunal	Awarded by this Court
1.	Loss of income	20,40,000.00	19,78,800.00
2.	Funeral expenses	25,000.00	15,000.00
3.	Loss of Estate	-	15,000.00
4.	Loss of love and affection (for all dependents)	1,10,000.00	40,000.00
5.	Medical expenses	64,485.00	64,485.00
	Total	22,39,485.00	21,13,285.00

8 In view of the above modification, the civil miscellaneous appeal is partly allowed and the award is reduced as stated above. No costs. Consequently, connected miscellaneous petition is closed. The second respondent/ Insurance Company is directed to deposit the entire modified award amount of Rs.21,13,285/- with interest at the rate of 7.5% p.a. after deducting the amount that has already been deposited by them if any within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the petitioners/claimants except 2nd petitioner are permitted to withdraw the entire award amount with proportionate interest and costs, by filing necessary application before the Tribunal. On such deposit, the first and second petitioners/claimants are entitled to 40% each of the award amount and the third and fourth petitioners/claimants entitled to 10% each of the award amount. The Minor 2nd petitioner share amount shall be deposited in any one of the Nationalized Bank till he attain majority. The (*) **third** petitioner is entitled to withdraw the accrued interest once in three months.

Sd/-

Assistant Registrar(CS III)

06.03.2018

(*) Amended as per Order dated 06.02.2020 made in CMP.No.22784 of 2019 in CMA.No.3216 of 2017.

Sd/-

Assistant Registrar(CS IV)
25.02.2020

//True Copy//

Sub Assistant Registrar

To

1. The Motor Accident Claims Tribunal
(Spl. District Court) at Salem

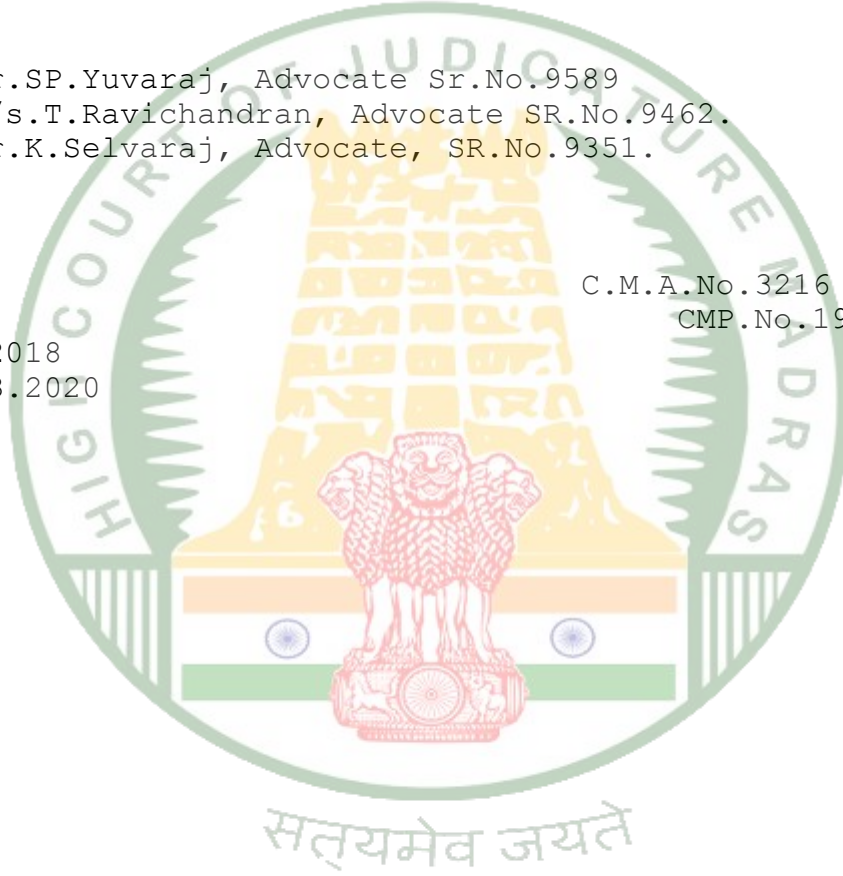
To be substituted
to the order copy
already despatched on
09.04.2018

2. The Section Officer,
V.R. Section, High Court, Madras.

+1cc to Mr.SP.Yuvaraj, Advocate Sr.No.9589
+1cc to M/s.T.Ravichandran, Advocate SR.No.9462.
+1cc to Mr.K.Selvaraj, Advocate, SR.No.9351.

sm:21.03.2018
CSR: 19.03.2020

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CMP.No.19947 of 2017



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