



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:16.03.2018

CORAM:

**THE HONOURABLE DR. JUSTICE S.VIMALA
AND
THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI**

CMA (MD)No.138 of 2018
and
C.M.P. (MD) No.2003 of 2018

The Branch Manager,
Cholamandalam M.S.General
Insurance CO. Ltd.,
Coimbatore Branch Office,
Coimbatore District.

: Appellant/2nd Respondent

Vs

1. Uma Maheswari
2. Theerthalingam
3. Minor Logendirakumar
(Minor R3 represented through
mother and next friend R1) : Respondents 1 to 3/Petitioners
4. Sivaraaj : 4th Respondent/1st Respondent

Appeal filed under Section 173 of the Motor Vehicles Act,
to set aside the fair and decretal order dated 13.06.2017 made in
M.C.O.P.No.7 of 2015 on the file of Motor Accident Claims Tribunal,
(Additional District and Sessions Judge), Theni at Periyakulam.

For Appellant : Mr.S.Srinivasa Raghavan
For R-1 to 3 : Mr.R.Shankar Ganesh
For R-4 : No Appearance

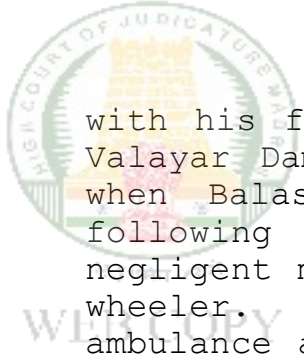
ORDER

[Judgment of the Court was delivered by S.VIMALA, J.]

This appeal has been filed by the Insurance Company
challenging the quantum of compensation awarded in M.C.O.P.No.7 of
2015 dated 13.06.2017 on the file of the Motor Accident Claims
Tribunal, (Additional District and Sessions Judge), Theni at
Periyakulam in respect of the death of one Balashanmugalingam, who
was a student at Coimbatore by an accident on 09.10.2015.

<https://hcservices.ecourts.gov.in/hcservices/>

2.At the time of accident, the deceased was travelling along



with his friends in a two wheeler. When they were returning from Valayar Dam to Kovai - Palakkad main road, at about 11.30 hours, when Balashanmugalingam was coming in front and Navaneeth was following him, a petrol tanker lorry, which came in a rash and negligent manner came and hit against the front portion of the two wheeler. Thereafter, the injured was taken to hospital in 108 ambulance and thereafter he was declared dead. It is claimed that the deceased was a bright student having multifaceted personality in the filed of Education, Computer, Games and Social Service etc.

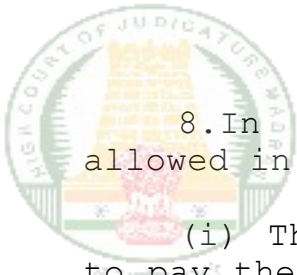
3.The Tribunal examined three witnesses and marked 14 documents on behalf of the respondents/claimants and the Driver alone has been examined on the part of the insurance company. The Tribunal gave a finding that the accident took place only on account of the negligence on the part of the driver of the petrol tanker lorry. Challenging the findings of the negligence as well as the quantum of compensation, the insurance company has filed this appeal.

4.So far as the question of negligence is concerned, the Tribunal has taken note of the averments made in the FIR, Ex.P1, Motor Vehicle Inspector's report as well as the testimony of P.W.1 and the driver concerned. The person, who was following the deceased in the another motorcycle has been examined as P.W.3. Considering the cumulative circumstances, the Tribunal rightly come to the conclusion that the accident occurred only because of the lorry driver. Therefore, the findings of negligence does not require any interference.

5.With regard to the quantum of compensation, the Tribunal fixing the monthly income at Rs.10,000/- and awarding 50% towards future prospects, fixed the monthly income as Rs.15,000/-.

6.The learned counsel for the respondents would submit that while quantifying the compensation, the Tribunal has taken the age of the mother of the deceased for computing multiplier. It is well settled law as contended by the leaned counsel for the claimants that only the age of the deceased would be the criteria for fixing multiplier. If the age of the deceased is taken into account, proper multiplier is not 14 and it should be 18. Therefore, the compensation awarded by the Tribunal has to be reworked.

7.Even though, the Tribunal has fixed the monthly income as Rs.10,000/- and awarded 50% towards towards future prospects, legally 40% towards future prospects alone can be considered. Therefore, the monthly income of the deceased would be Rs.14,000/-. After deducting his personal expenses and applying 18 as multiplier, the loss of dependency would come to Rs.15,12,000/- (Rs.14,000/- x $1/2$ x 12 x 18)). Adding award of Rs.70,000/- under other conventional heads, the compensation would come to Rs.15,82,000/-. Accordingly, the compensation awarded by Tribunal is reduced from Rs.16,00,000/- to Rs.15,82,000/-.



8. In the result, the civil miscellaneous appeal is partly allowed in the following terms.

(i) The Appellant India Insurance Company Limited is directed to pay the compensation amount as modified by this Court along with proportionate interest and costs from the date of petition till the date of realisation, less the amount already deposited, if any, to the credit of M.C.O.P.No.7 of 2015, on the file of the Motor Accident Claims Tribunal, (Additional District and Sessions Judge), Theni at Periyakulam, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit, the same shall be transferred through RTGS into the bank account of the claimants 1 and 2. The compensation amount has to be apportioned in the same ratio as directed by the Tribunal.

(ii) The Tribunal had awarded interest at 7.5% per annum from the date of filing of petition. The same is confirmed. Except the modification above, the award is confirmed in all other aspects.

(iii) The claimants 1 and 2 are permitted to withdraw their share amount that would be deposited by the Insurance Company, less the amount already withdrawn, if any, with proportionate interest and costs through RTGS by filing necessary Application before the Tribunal.

(iv) The share of the minor 3rd claimant shall be deposited in any one of the nationalised bank and the natural guardian is entitled to withdraw the interest thereon once in three months directly from the bank.

(v) If the entire amount has been already deposited, in view of reduction in compensation, the balance, if any, shall be refunded to the Insurance Company.

No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

To

1. The Additional District and Sessions Judge
Motor Accident Claims Tribunal,
Periyakulam.



2. The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+ 1 CC TO Mr.S.SRINIVASA RAGHAVAN, ADVOCATE IN SR No. 56040
+ 1 CC TO Mr.R.SHANKAR GANESH, ADVOCATE IN SR No. 55878

ARUL

TE/JC/SAR-3 : 11/06/2018 : 4P/6C

CMA (MD)No.138 of 2018 and
C.M.P.(MD) No.2003 of 2018
16.03.2018