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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.06.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.Nos.471 to 474 of 2004

The New India Assurance Co.Ltd.,
NKN Complex,
I Floor, Bed Ford Circle, Coonoor,
(Policy No.31/721 001/19171/97).

... Appellant in all the appeals /
2nd Respondent

Vs

1.Mariyayee

2.K.Murthy
(set exparte before the Trial Court)

... Respondents in C.M.A.No.
471 of 2004 / Respondent /
/Petitioner/1st Respondent

1.Sujatha

2.Minor Mahalakshmi
rep.by guardian mother
Sujatha, the first respondent

3.Chinthamani

4.B.K.Nanjan

5.K.Moorthy
(5th respondent in the CMA is
the first respondent before the
Lower Court and he was set
ex-parte).

... Respondents in C.M.A.No.
472 of 2004 / Respondents /
Petitioner 1 to 4, 1st Respondent



1.Janaki

2.K.Murthy

(Set exparte before the Trial Court)

... Respondents in C.M.A.No.
473 of 2004 / Respondents/
Petitioner / 1st Respondent

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1.Chinnammal

2.Vasantha

3.Selvakumar

4.Vijayarani

5.Sasikala

6.K.Moorthy

(6th respondent in the CMA is
the first respondent before the
Lower Court and he was set
ex-parte).

... Respondents in C.M.A.No.
474 of 2004 / Respondents/
Petitioner 1 to 5/1st Respondent

C.M.A.No.471 of 2004 filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 22.11.2002 made in MCOP No.969 of 1998 on the file of the Motor Accidents Claims Tribunal (Sub Court), Tiruppur.

C.M.A.No.472 of 2004 filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 22.11.2002 made in MCOP No.970 of 1998 on the file of the Motor Accidents Claims Tribunal (Sub Court), Tiruppur.

C.M.A.No.473 of 2004 filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 22.11.2002 made in MCOP No.971 of 1998 on the file of the Motor Accidents Claims Tribunal (Sub Court), Tiruppur.

C.M.A.No.474 of 2004 filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 22.11.2002 made in MCOP No.972 of 1998 on the file of the Motor Accidents Claims Tribunal (Sub Court), Tiruppur.

For Appellant
in all appeals

: Mr.C.Ramesh Babu



COMMON JUDGMENT

The case of the claimants herein, in brief, is as follows:

On 29.04.1998 at about 6.00 hours, the son of the first respondent in CMA No.471 of 2004, the husband of the first respondent in CMA No.472 of 2004, the first respondent in CMA No.473 of 2004 and the husband of the first respondent in CMA No.474 of 2004, along with others, were travelling in a van bearing Regn.No.TN-41-A-0309 from Kallakurichi towards Chennai. The van was driven by its driver in a rash and negligent manner without adhering to the traffic rules and dashed against a lorry bearing Regn.No.TDB-4993 which was stopped in the opposite direction, due to which the van got capsized. Due the said impact, the son of the first respondent in CMA No.471 of 2004, the husband of the first respondent in CMA No.472 of 2004 and the husband of the first respondent in CMA No.473 of 2004, died and the first respondent in CMA No.473 of 2004 sustained grievous injuries.

2.The injured as well as the legal heirs of the deceased have filed claim petitions before the Tribunal.

3.On considering the materials available on record, the Tribunal gave a finding that only the driver of the van was responsible for the accident. In respect of MCOP No.969 of 1998, the Tribunal awarded a sum of Rs.3,40,000/- towards loss of income, Rs.2,000/- towards funeral expenses and Rs.5,000/- towards loss of love and affection and thus awarded a total compensation of Rs.3,47,000/- rounded off to Rs.3,00,000/-. In respect of MCOP No.970 of 1998, the Tribunal awarded a sum of Rs.4,08,000/- towards loss of income, Rs.2,000/- towards funeral expenses and Rs.5,000/- towards loss of love and affection and thus awarded a total compensation of Rs.4,15,000/- rounded off to Rs.3,50,000/-. In respect of MCOP No.971 of 1998, the Tribunal awarded a sum of Rs.1,56,000/- towards loss of income and Rs.5,000/- towards pain and suffering and thus awarded a total compensation of Rs.1,61,000/- rounded off to Rs.1,50,000/-. In respect of MCOP No.972 of 1998, the Tribunal awarded a sum of Rs.1,20,000/- towards loss of income, Rs.2,000/- towards funeral expenses and Rs.5,000/- towards loss of love and affection and thus awarded a total compensation of Rs.1,27,000/-. The compensation have been awarded with interest at the rate of 9% per annum from the date of petition.

4.Challenging the awards, the present appeals have been filed by the appellant - Insurance Company.

5.The learned counsel for the appellant Insurance Company has submitted that the Tribunal went wrong in fixing the age of



the deceased by relying upon the post mortem certificate; that since there were no birth certificates to show the correct age of the deceased at the time of accident, the multiplier adopted by the Tribunal went wrong; that in the absence of any evidence as regards the income of the deceased, the Tribunal ought to have invoked the provisions of II Schedule of the Motor Vehicles Act.

6. Heard the learned counsel for the appellant.

7. The appeals were admitted by this Court on 19.04.2004. Thereafter, the matter has been kept pending for a very long time. The appellant - Insurance Company has not taken any steps to serve papers to the other side. On considering the oral and documentary evidences adduced, the Tribunal has passed the awards by a common judgment, which in the considered opinion of this Court, does not require any interference. In fact, the Tribunal has rounded off the compensation from Rs.3,47,000/- to Rs.3,00,000/- in respect of MCOP No.969 of 1998. In respect of MCOP No.970 of 1998, the Tribunal has rounded off the compensation from Rs.4,15,000/- to Rs.3,50,000/-. In respect of MCOP No.971 of 1998, the Tribunal rounded off the compensation from Rs.1,61,000/- to Rs.1,50,000/-. Even though this Court is not agreeing for such a round-off, the difference being Rs.47,000/- in MCOP No.969 of 1998, Rs.65,000/- in MCOP No.970 of 1998 and Rs.11,000/- in MCOP No.971 of 1998, this Court, at this length of time, is not interfering with the same. The appeals filed by the Insurance Company lack merit and accordingly the same are dismissed. No costs. The appellant Insurance Company is directed to deposit the award amounts as ordered by the Tribunal with interest, after deducting the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment.

8. The accident occurred in the year 1998 and therefore, the second respondent in CMA No.472 of 2004, would have attained majority now. Hence, on such deposit being made, all the claimants are permitted to withdraw their respective shares, on making proper application before the Tribunal.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

KM



To

1. The Motor Accidents Claims Tribunal (Sub-Court),
Tiruppur.

2. The Section Officer,
VR Section, Madras High Court.

+4 ccs to Mr.C.Ramesh Babu, Advocate, S.R.No.44548 to 44551

C.M.A.Nos.471 to 474 of 2004

SPD(CO)
SSM(21/10/2019)