

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.10.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

CMA.No.2037 of 2008

Radha

...Appellant

vs.

1.C.Nagesh
2.P.Chellapan
3.The Branch Manager,
United India Insurance Co. Ltd.,
119 B MC road,
Mandia,
Karnataka - 571 401.

4.The Branch Manager,
New India Insurance Co. Ltd.,
39 C, By Pass Road,
Dharmapuri.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 01.09.2006 passed in MCOP.No.465 of 1993 on the file of the Motor Accident Claims Tribunal / Principal Subordinate Judge, Tiruvannamalai.

For Appellant : Mr.R.Rajarajan

For Respondents : Mr.C.Paranthaman for R3
Mr.N.Manokaran for R4
No appearance for R1 and R2

J U D G M E N T

The appellant is the claimant in MCOP.No.465 of 1993 on the file of the Motor Accident Claims Tribunal / Principal Subordinate Judge, Tiruvannamalai. She filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.2,20,000/- for the death of her son in a road accident on 26.01.1993.

2. The case of the appellant / claimant in nutshell is as follows:

On 26.01.1993, the claimant and her family members

were travelling, as tourists towards Sathegala after visiting various places in Tamil Nadu, in a van bearing Registration No. KA 11 865 belonging to the first respondent and insured with the third respondent / United India Insurance Company Limited and at about 12.30 pm, when the van was nearing Pakkiripalayam, Chengam Taluk, a speeding bus bearing Registration No. TAX 5979 belonging to the second respondent and insured with the fourth respondent / New India Insurance Company Limited hit the van, as a result of which, the son of the claimant sustained injuries and died in the Hospital. According to the claimant, the rash and negligent driving of the drivers of the van and the bus was the cause of the accident and therefore, all the respondents are jointly and severally liable to pay compensation.

3. The owners of both the vehicles remained absent before the Tribunal and therefore they were set exparte. The third and fourth respondents contested the claim petition and the learned Principal Subordinate Judge / Motor Accident Claims Tribunal, Tiruvannamalai after analysing the evidence on record, awarded a compensation of Rs.1,25,000/- together with interest at the rate of 7.5% per annum from the date of claim petition. However, the learned Judge did not grant interest for the period from 01.09.1995 to 13.09.2005. Aggrieved over the orders passed by the Tribunal, the claimant has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

4. Mr.R.Rajarajan, learned counsel appearing for the appellant / claimant contended that the Tribunal without considering the fact that the deceased was aged 12 years on the date of the accident, had awarded a meagre amount of Rs.1,25,000/-. His another contention is that no interest was granted for the period from 01.09.1995 to 13.09.2005 and no reasons were also assigned for the same. He therefore prayed for enhancement of compensation.

5. No appearance on behalf of the respondents 1 and 2.

6. The learned counsels appearing for the respondents 3 and 4 contended that the Tribunal after considering all the aspects of the case, had awarded a just compensation of Rs.1,25,000/- together with interest at the rate of 7.5% per annum and therefore the same need not be disturbed at this stage.

7. In the instant case, the deceased was aged about 12 years and was studying in a school.

8. In the decision in Kishan Gopal and another v. Lala and others reported in 2013 (5) CTC 212 (SC), the Honourable Supreme Court of India has awarded compensation of

Rs.5,00,000/- for the death of a boy aged 10 years. Therefore, by applying the said principles, I am of the view that awarding compensation of Rs.5,00,000/- to the appellant / claimant would meet the ends of justice.

9. A perusal of the records shows that the claim petition was dismissed for default on 01.09.1995 and was restored to file only on 13.09.2005. Therefore, the Tribunal was justified in not granting interest for the period from 01.09.1995 to 13.09.2005.

10. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed.
No costs.

(ii) The quantum of compensation awarded by the Tribunal is enhanced from Rs.1,25,000/- to Rs.5,00,000/-. However, the appellant is not entitled to claim interest for the period from 01.09.1995 to 13.09.2005.

(iii) The appellant / claimant is directed to pay court fee for the enhanced compensation amount, if any, within a period of three weeks from the date of this order and the Registry is directed to draft the decree only after receipt of the Court fee.

(iv) The third and fourth respondents are directed to deposit the enhanced compensation amount i.e., Rs.5,00,000/- (less the amount already deposited) together with interest at the rate of 7.5% per annum (excluding the period from 01.09.1995 to 13.09.2005) to the credit of MCOP.No.465 of 1993 on the file of the Motor Accident Claims Tribunal / Principal Subordinate Judge, Tiruvannamalai within a period of four weeks from the date of receipt of a copy of this order.

(v) On such deposit being made, the appellant / claimant is at liberty to withdraw the same after following the due process of law.

Sd/-

Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

mbi

To

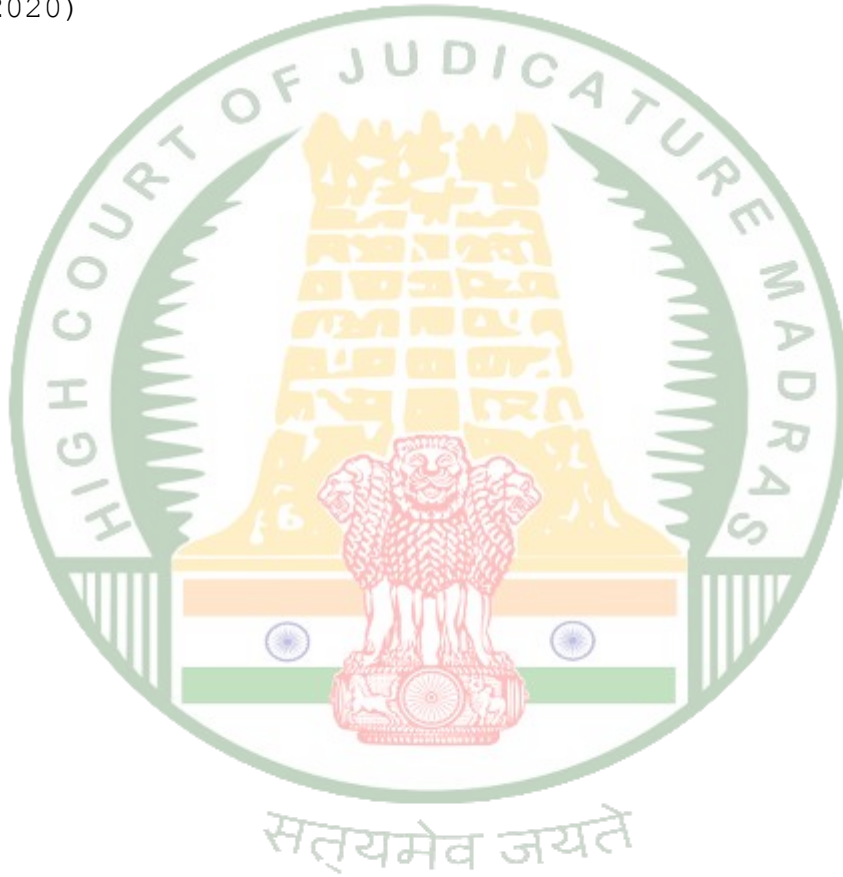
The Motor Accidents Claims Tribunal,
The Principal Subordinate Judge,
Tiruvannamalai.

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

+1cc to Mr.G.Rajan, Advocate SR.85691
+1cc to Mr.C.Paranthaman, Advocate SR.85780

CMA.No.2037 of 2008

MP (CO)
CB(18/03/2020)



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