

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.09.2019

CORAM

THE HONOURABLE MRS. JUSTICE T.KRISHNAVALLI

C.M.A. No.335 of 2006

1. S.Palanisamy

2. The New India Assurance Co., LTD.,

- Divisional Office,

- Kumaran Shopping Complex,
Kuaran Road, Tiruppur

... Appellants/Respondents 2 & 3 in Trial Court
Versus

- 1. S. Nachimuthu (died)

- 2. N. Kanniammal

- 3. N. Thenmozhi ... Respondents

- 4. P.R. Muthusamy

- 5. V. Shanmugam

- 6. M/s. Samraj & Company,

- 390 A, 100 Feet Road, Tatabad,

- Coimbatore 641 012.

7. United India Insurance Company,

Divisional Office, Bank of Baroda,

Buildings, State Bank Road,

Coimbatore.

... Respondents/Petitioners & Respondents 4,5 & 6
in Trial Court

(RR2 & 3 recorded as LRS of the deceased R1 vide order
of the Court dated 25/02/14 made in CMA 335/06 Memo in
USSR No.619 dated 24/01/14)

Prayer: This Appeal is filed under Section 173 of Motor
Vehicles Act, 1988 to set aside the Decree and Judgment dated
7th day of October, 2003 made in M.C.O.P.No. 474 of 1995 on the
file of Motor Accident Claims Tribunal and Additional District
Court (Fast Track Court No.5) Coimbatore at Tiruppur.

For Appellant : Mr.K.Vinoth

For Respondents 2 and 3 : Mr.Ma.P.Thangavelu

For Respondent 6 : Mr.S.Kesavan

For Respondent 7 : Mrs.V.S.Sowmiya for Rosi Maidu

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

: Died

RR4, 5

: Given up vide in EB in CMA 335/06

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the award, dated 04.10.2003 made in M.C.O.P.No. 474 of 1995 passed by the Motor Accident Claims Tribunal (Additional District Court/FTC-V), Coimbatore at Tiruppur.

2.The brief facts of the case, are that on 02.03.1995 at about 06.00 pm, when the deceased Easwaramoorthy was travelling in NRT Bus bearing Registration No: TN-39-A-3443 from Palladam to Coimbatore, a lorry bearing Registration No:TN-37-E-8944 came in the opposite direction and dashed the deceased. In that process, the deceased sustained grievous injuries and died on the spot.

3.The accident occurred due to the negligent attitude of the driver of the bus/4th respondent and the driver of the lorry/5th respondent. Hence, the legal heirs of the deceased, who are the respondents 1 to 3 herein filed MCOP No.474 of 1995 on the file of the Court of Sub Judge, Tiruppur, seeking compensation for a sum of Rs.20,00,000/-.

4.The Tribunal, on consideration of oral and documentary evidence, awarded compensation of Rs.6,26,000/- together with interest @ 9% per annum. Challenging the said award, the appellants are before this court.

5.The learned counsel for the 2nd appellant/New India Insurance Company Limited contended that the driver of the bus obeyed the traffic rules and in anyway, he is not responsible for the accident and the liability fixed on to them is not fair and hence, prays to set aside the award passed by the Tribunal and fix the entire liability to the Insurer of the Lorry.

6.The learned counsel for the United India Assurance Company Limited/7th respondent herein contended that even though the vehicle was insured with them, the accident occurred due to the lethargic attitude of the driver of the bus and prays to reduce the liability fixed on them.

7. Heard both sides and perused the materials available on record. The dispute is with regard to quantum only.

8. It is seen from the records that at the time of accident the deceased was aged about 23 years and he was working as Pattern Master and earning Rs.5,000/- per month. To prove the income of the deceased, the Manager of Saran Garaments was examined as PW18 and he deposed that the deceased working in his company and thereby he was earning Rs.3,000/- per month. Hence, this court has taken monthly income of the deceased as Rs.3,000/- per month. Since, the deceased died at the age of 24 years, the proper multiplier is 18 and 40% has to be added towards future prospects and since the deceased is a bachelor, 50% has to be deducted towards personal expenses. By doing so, the annual income of the deceased is fixed at Rs.4,53,600/-. With regard to the Loss of Love and affection

for the reason that the 1st respondent/S. Nachimuthu was died on 22.10.2013, the number of dependent is two and hence, by awarding Rs.30,000/- per dependent, Rs.60,000/- is awarded under the head of loss of love and affection for two dependents. Further, the tribunal has awarded Rs.2,000/-, towards funeral expenses, which according to this court is very low and hence, this court awards Rs.15,000/- under the head of funeral expenses. Further, the tribunal has not awarded awarded loss of estate, transpotation and damages to cloths. Hence, this court awarded some reasonable amount under the above heads.

9. Taking note of the facts, it would be appropriate to modify the award as under:-

S.No	Particulars	Amount awarded by the Tribunal	Amount awarded by this Court
1	Loss of income	Rs.6,12,000/-	Rs.4,53,000/-
2	Loss of love and affection	Rs.12,000/-	Rs.60,000/-
3	Funeral expenses	Rs.2,000/-	Rs.15,000/-
4	Loss of Estate	-Nil-	Rs.15,000/-
5	Transportation	-Nil-	Rs.15,000/-
6	Damage to cloth	-Nil-	Rs.5,000/-
	Total	Rs.6,26,000/-	Rs.5,63,600/-

13. In the result, this appeal is partly allowed. The award is reduced to Rs.5,63,600/- from Rs.6,26,000/-. The interest awarded by the tribunal is modified to 7.5% per annum, instead of 9%. The respondent/Insurance Company is directed to deposit the modified award amount with , less the amount already deposited within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal shall transfer the same to the savings bank account of the 2 and 3 respondents/claimants through RTGS, within a period of one week thereafter. After making such deposit, the claimants are permitted to withdraw their share as per apportionment fixed by the tribunal.

Sd/-
Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

To.

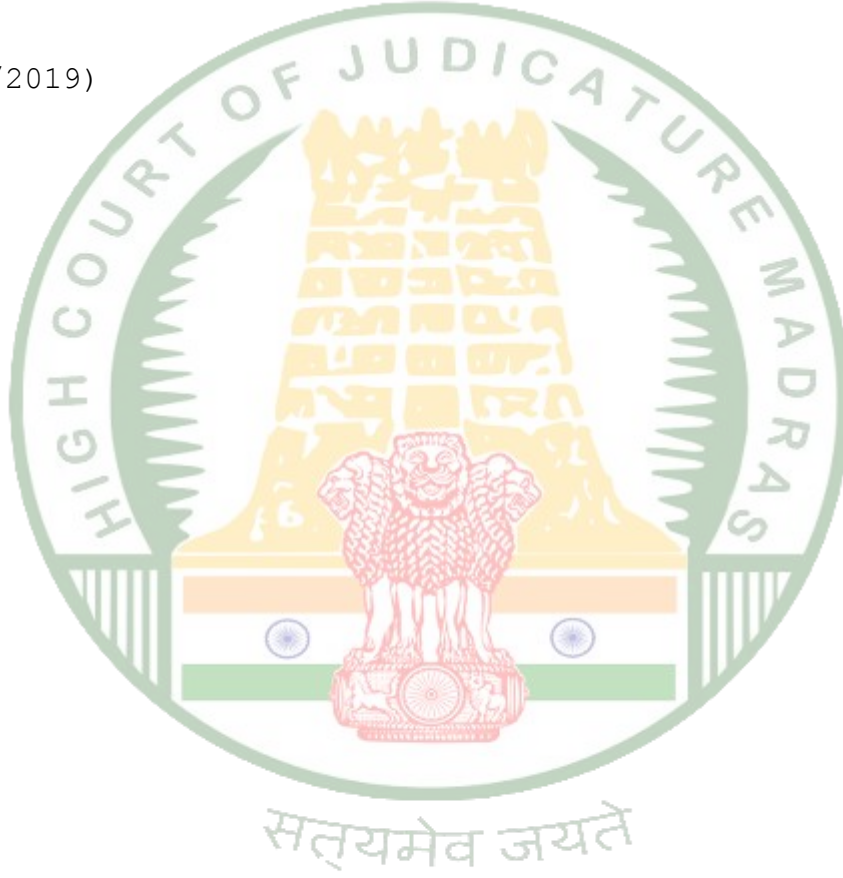
1. The Additional District Judge, FTC-V,
Coimbatore at Tiruppur.

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

+1cc to Mr.S.Manohar, Advocate SR.No.79254

C.M.A. No.335 of 2006

SR(CO)
GMY(03/12/2019)



WEB COPY