

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.07.2019

CORAM

THE HON'BLE MR.JUSTICE R.MAHADEVAN

C.M.A.Nos.326, 327 & 328 of 2008
and M.P.Nos.1, 1 and 1 of 2008

New India Assurance Co. Ltd.,
Officer's Line,
Vellore.

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

Vs.

1.Maragatham ...1st Respondent in CMA 326/2008
/Petitioner

2.Arumugam
3.Perumal

4.The United India Insurance Co. Ltd.,
Katpadi Road, Vellore.

(Respondents 2 & 3 ex-parte
before Lower Court and hence
notice may be dispensed)

... Respondents 2 to 6 in C.M.A.No.326 of
2008/Respondents 1,3 & 6

1.Kathiresan ...1st Respondent in CMA 327 of 2008/Petitioner
2.Arumugam
3.Perumal

4.The United India Insurance Co. Ltd.,
Katpadi Road, Vellore.

(Respondents 2 & 3 ex-parte
before Lower Court and hence
notice may be dispensed)

... Respondents 2 to 6 in C.M.A.No.327 of 2008/
Respondent 1,3 & 4

1.Srimathi Kamatchi
2.Minor Akilan
3.Minor Priya
(Minors 2 & 3 rep. by mother
and natural guardian, 1st respondent)

4.Kamala
5.Arumugam
6.Perumal

... Respondents 1 to 4/Petitioner

7.The United India Insurance Co. Ltd.,
Katpadi Road, Vellore.

(Respondents 5 & 6 ex-parte
before Lower Court and hence
notice may be dispensed) ... Respondents 5 to 7 in
C.M.A.No.328 of 2008/Respondents 1,3 & 4

COMMON PRAYER: Civil Miscellaneous Appeals are filed under
Section 173 of Motor Vehicles Act, 1988, against the judgment
and decree dated 19.06.2006 made in M.C.O.P.Nos.72, 73 & 74 of
2001 on the file of Motor Accidents Claims Tribunal, Sub-Court,
Gudiyattam.

C.M.A.No.326 of 2008

For Appellant : Mr.N.Vijayaraghavan
For R1 : Mr.S.V.Vasantha Kumar
For R2 & R3 : Exparte
For R4 : Mr.M.Krishnamoorthy

C.M.A.No.327 of 2008

For Appellant : Mr.N.Vijaya Raghavan
For R1 : Mr.S.V.Vasantha Kumar
For R2 & R3 : Exparte
For R4 : Mr.M.Krishnamoorthy

C.M.A.No.328 of 2008

For Appellant : Mr.N.Vijayaraghavan
For R1 to 3 : Mr.M.Rajendran
For R4 : Dismissed on 29.10.2012
For R5 & R6 : Exparte
For 7 : Mr.M.Krishnamoorthy

COMMON JUDGMENT

These Civil Miscellaneous Appeals are filed against the
common award, dated 19.06.2006, made in M.C.O.P.Nos.72, 73 and
74 of 2001 on the file of Motor Accidents Claims Tribunal, Sub-
Court, Gudiyattam.

2.The case in brief, is as follows:

On 24.11.2000 at about 4.40 a.m., the first respondent in
C.M.A.Nos.326 and 327 of 2008 and the deceased-Thanigai Mani,

along with others, were travelling in a Maruthi Van bearing Registration No.TN 21 A 2229, belonging to the second respondent and insured with the appellant Insurance Company in C.M.A.No.326 of 2008. When the van reached near Thiruchitrambalam, due to the rash and negligent driving of its driver, it dashed against a stationed lorry bearing Registration No.TN 31 0711. Due to the impact, the deceased Thanigai Mani died on the spot and the other persons sustained grievous injuries. The injured as well as the legal heirs of the deceased filed separate claim petitions before the Tribunal. Considering the materials and evidence available on record, the Tribunal has awarded a total compensation of Rs.1,02,844/-, Rs.40,395/- and Rs.6,29,000/- respectively, with interest at the rate of 6% per annum from the respective dates of petitions.

3.Challenging the same, the present appeals have been filed by the appellant Insurance Company.

4.The learned counsel for the appellant Insurance Company has submitted that the Tribunal has erred in fixing the entire liability on the appellant in a case where fault was on the part of the drivers of both the vehicles. It is also submitted that the compensation awarded by the Tribunal is excessive.

5.The learned counsel appearing for the claimants has submitted that the Tribunal has considered all the materials and evidence available on record and has rightly awarded the compensation amounts are just and reasonable, and hence the judgment of the Tribunal need not be interfered with by this Court.

6.This Court has considered the said submissions made by the learned counsel for both sides and perused the materials available on record.

7.P.W.1 is the wife of the deceased Thanigai Mani. P.W.2 is the injured in respect of C.M.A.No.326 of 2008. P.W.3 is the injured in respect of C.M.A.No.327 of 2008. R.W.1 is the Administrative Assistant of the appellant Insurance Company. A perusal of the depositions of P.W.2 and P.W.3 would disclose that at the time of accident, the atmosphere was foggy and the lorry in question was parked in the middle of the road without putting any parking lights. They also deposed that the driver of the Maruti van was rash and negligent in his driving. Since P.W.1 is not an eye-witness to the occurrence and also taking note of the fact that P.Ws.2 and 3 are interested witnesses as all these three witnesses are relatives as per the version of P.W.3, the Tribunal has not given much weightage to their evidence, rather coming to the conclusion that the accident had occurred only due to the rash and negligent driving of the

driver of the Maruti van, relying upon Ex.P1- First Information Report. This Court is not inclined to interfere with the said factual finding rendered by the Tribunal.

8. With regard to the quantum of compensation, the Tribunal has relied upon the exhibits, evidence of witnesses, medical bills, treatment records, Discharge Summaries and taking note of the II Schedule of the Motor Vehicles Act and all other aspects in a proper perspective and has awarded a total compensation of Rs.1,02,844/-, Rs.40,395/- and Rs.6,29,000/- relating to C.M.A.Nos. 326, 327 and 328 of 2008 (MCOP Nos.72, 73 and 74 of 2001) respectively, with interest at the rate of 6% per annum from the respective dates of petitions, under various heads to the claimants. Further, this Court is of the considered view that the compensation awarded in these cases, are reasonable and justifiable and hence the same are confirmed.

9. In the result, the Civil Miscellaneous Appeals are dismissed. The appellant / Insurance Company is directed to deposit the compensation amounts, as awarded by the Claims Tribunal, along with interest and costs, less the amounts already deposited, if any, within a period of four weeks from the date of receipt of a copy of this judgment. The minor respondents 2 and 3 in C.M.A.No.328 of 2008 would have attained majority by now. Hence on such deposit being made, all the claimants in these appeals are permitted to withdraw their respective shares, as apportioned by the Tribunal, on making proper application. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar

//True Copy// सत्यमेव जयते

Sub Assistant Registrar

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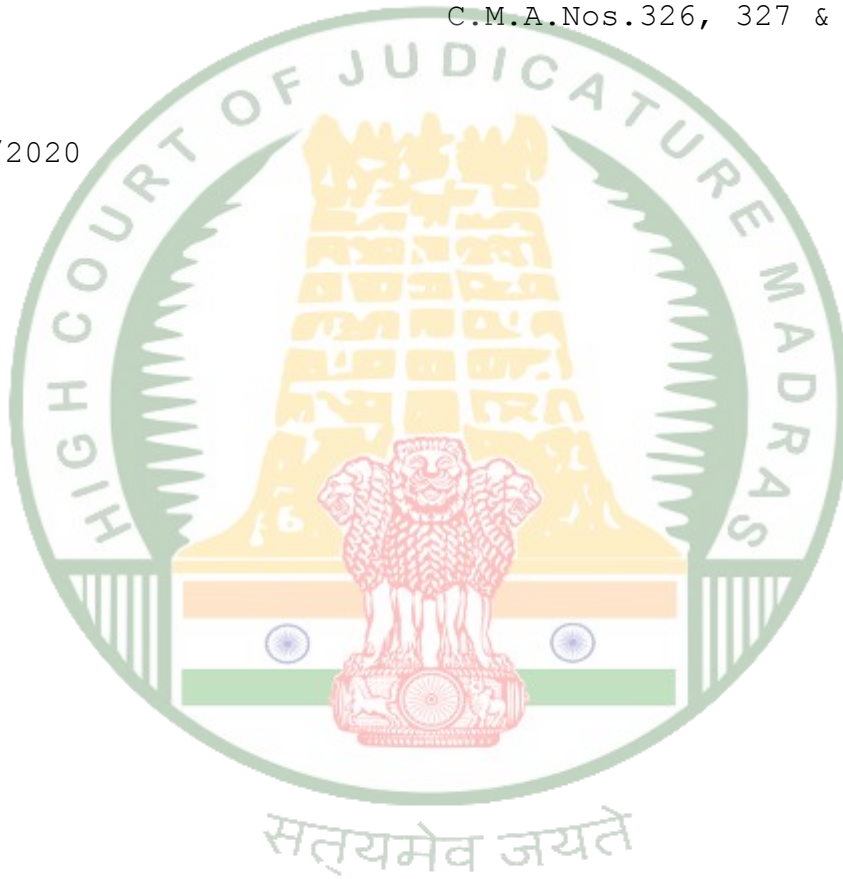
1. The Sub-Judge,
Motor Accidents Claims Tribunal,
Gudiyattam.

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

+3cc to Mr.N.Vijayaraghavan, Advocate Sr.56591, 56590 and 56589
+1cc to Mr.M.Rajendiran, Advocate Sr.56447
+1cc to Mr.M.Krishnamoorthy, Advocate Sr.56611

C.M.A.Nos.326, 327 & 328 of 2008

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srg 29/07/2020



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