

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 28.01.2019

CORAM:

THE HON'BLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1367 of 2015
and M.P.No.1 of 2015
& C.M.P.No.1405 of 2019

Divisional Manager,
Oriental Insurance Company Limited,
Pondicherry. ...Appellant

Vs

1.Kaliyamurthy

2.Rajakumari

3.V.K.Enterprises
Transport Contractors,
Mayiladuthurai.

4.Nagarajan ...Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 27.01.2015 made in M.C.O.P.No.201 of 2009 on the file of Motor Accidents Claims Tribunal, Sub Court, Chidambaram.

For Appellant : Mr.S.Manohar

For R1 and R2 : Mr.A.Murugan

For R4 : Mr.P.Parthikannan

For R3 : Exparte before the Tribunal below

J U D G M E N T

This Civil Miscellaneous Appeal is filed against the award dated 27.01.2015 made in M.C.O.P.No.201 of 2009 on the file of Motor Accidents Claims Tribunal, Sub Court, Chidambaram.

2.The appellant-Insurance Company is 2nd respondent in M.C.O.P.No.201 of 2009 on the file of Motor Accidents Claims Tribunal, Sub Court, Chidambaram. The respondents 1 and 2 filed the above claim petition claiming a sum of Rs.20,00,000/- as compensation for the death of one Anandaraj, who died in the accident that took place on 16.04.2008. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the driver of the lorry belonging to the 3rd respondent and directed the appellant-Insurance Company being the insurer of the said lorry to pay a sum of Rs.14,50,000/- as compensation to the respondents 1, 2 and 4. Against the said award dated 27.01.2015 made in M.C.O.P.No.201 of 2009, the appellant-Insurance Company has come out with the present appeal challenging the quantum of compensation awarded by the Tribunal.

3.The learned counsel appearing for the appellant-Insurance Company contended that the Tribunal has erred in fixing the notional income of the deceased at Rs.10,000/- per month. The deceased was only M.C.A. student and the amount fixed by the Tribunal is excessive. The Tribunal erred in applying wrong multiplier. The claimants are the grandparents of the deceased and they are not dependants. The 4th respondent herein is the father of the deceased and he is living separately. The Tribunal has erred in holding that the 4th respondent is also a dependant of the deceased. The Tribunal ought to have taken age of the claimants for applying multiplier and erred in taking the age of the deceased, while calculating the compensation. The amounts awarded by the Tribunal under different heads are excessive and prayed for setting aside the award of the Tribunal.

4.Per contra, the learned counsel appearing for the respondents 1 and 2 contended that the respondents 1 and 2 have produced documents to show that the deceased was a brilliant student and being post graduate, the deceased would have easily got a job and would have got salary more than Rs.20,000/- per month. The Tribunal has rightly taken the age of the deceased for calculating loss of income to the respondents 1 and 2 and the amount awarded by the Tribunal under different heads are not excessive and prayed for dismissal of the appeal.

5.The learned counsel appearing for the 4th respondent contended that the 4th respondent is the father of the deceased and he is the legal heir and he is entitled to get entire compensation for the death of his son in the accident.

6. Heard the learned counsel appearing for the appellant as well as the respondents 1 & 2 and 4 and perused the materials available on record.

7. From the materials available on record, it is seen that the present appeal has been filed only challenging the quantum of compensation. The learned counsel appearing for the appellant contended that the notional income fixed by the Tribunal is excessive and the Tribunal ought to have fixed only Rs.5000/- per month instead of Rs.10,000/-. The said contention is without merits in view of the materials available on record. The respondents 1 and 2 have proved that the deceased was M.C.A. student and brilliant in his studies. Considering the course studied by the deceased, the contention of the learned counsel appearing for the respondents 1 and 2 that the deceased would have easily got a job and got salary at Rs.10,000/- per month has considerable force and the same is acceptable. The deceased was aged 23 years at the time of death and the Tribunal has not awarded any enhancement for future prospects and multiplier applicable to the age of the deceased is 18, but the Tribunal has applied only multiplier 17. In view of the facts, the amounts awarded by the Tribunal under different heads are not excessive. There is no error in the said finding of the Tribunal warranting interference by this Court.

8. In the result, the Civil Miscellaneous Appeal is dismissed and award of the Tribunal is confirmed. The appellant-Insurance Company is directed to deposit the entire amount awarded by the Tribunal along with interest and costs, less the amount already deposited if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the respondents 1 and 2-claimants and 4th respondent herein are permitted to withdraw their respective share amount as per the apportionment made by the Tribunal along with proportionate interest and costs, less the amount if any, already withdrawn. No costs. Consequently, connected Miscellaneous Petitions are closed.

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Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

kj/rst

To

The Motor Accidents Claims Tribunal,
Subordinate Judge, Chidambaram.

copy to: The Section Officer,
VR Section, High Court, Madras.

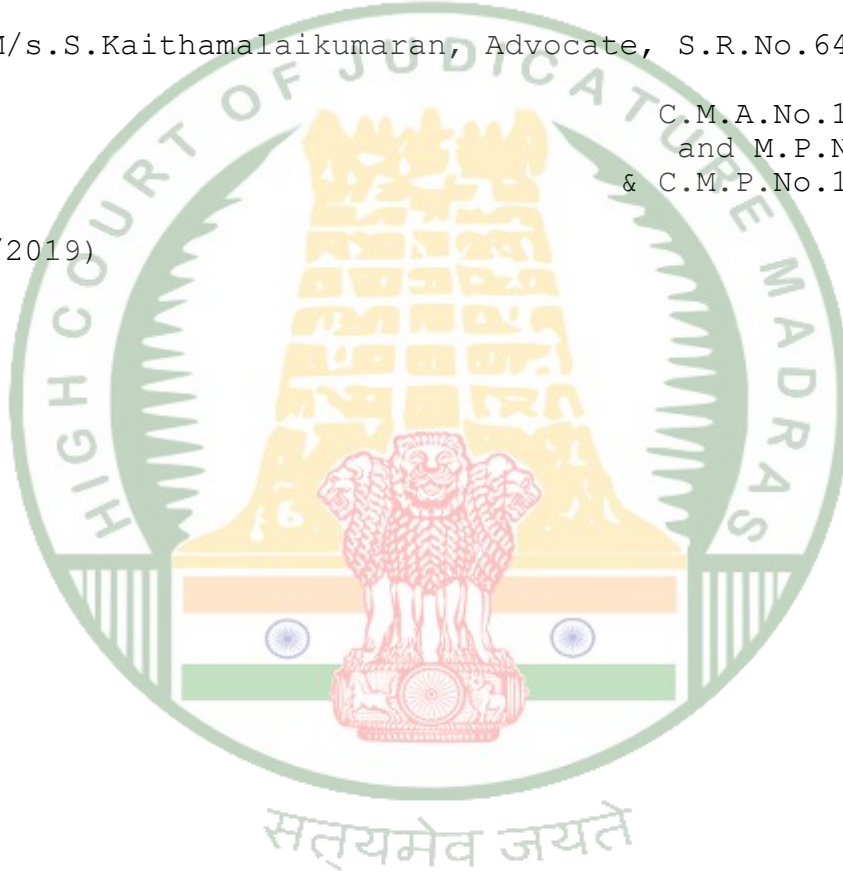
+1 cc to M/s.S.Manohar, Advocate, S.R.No.6554

+1 cc to M/s.A.Murugan, Advocate, S.R.No.7194

+1 cc to M/s.S.Kaithamalaikumaran, Advocate, S.R.No.6463

C.M.A.No.1367 of 2015
and M.P.No.1 of 2015
& C.M.P.No.1405 of 2019

RGN (CO)
SSM(25/07/2019)



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