

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.01.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2242 of 2015
and Cross Objection No.66 of 2018
and M.P.No.1 of 2015

National Insurance Co., Ltd.,
Divisional Office IX,
6th Floor, Poddar Court,
Gate No.4, 18, Rabindra Sarani,
Kolkatta 700 001,
West Bengal State. ... Appellant

Vs.

1.P.Selvaraj
2.S.Kamala
3.S.Umasankar
4.M/s.Nareshkumar and Co Pvt. Ltd.,
Q15-A.C.C.Madhukarai Cement Works,
A.C.C. Quarry Colony,
Madhukarai Post,
Coimbatore 641 105. ... Respondents
(R3 & R4 remained exparte before the Tribunal)

Prayer: This Civil Miscellaneous Appeal is filed under
Section 173 of Motor Vehicles Act, 1988, against the award
dated 17.11.2012, made in M.C.O.P.No.522 of 2010, on the file
of the Motor Accident Claims Tribunal, Dharapuram.

For Appellant : Mr.S.Vadivel

For RR1 & 2 : Mr.Ma.P.Thangavel

Cross Objection No.66 of 2018

1.P.Selvaraj
2.S.Kamala ... Cross objectors
Vs.

1.National Insurance Co., Ltd.,
Divisional Office IX,
6th Floor, Poddar Court,
Gate No.4, 18, Rabindra Sarani,
Kolkatta 700 001,
West Bengal State.

2.S.Umasankar

3.M/s.Nareshkumar and Co Pvt. Ltd.,
Q15-A.C.C.Madhukarai Cement Works,
A.C.C. Quarry Colony,
Madhukarai Post,
Coimbatore 641 105. .. Respondents
(R2 & R3 remained exparte before the Tribunal)

Prayer: This Cross Appeal is filed under Order XLI Rule 22 of C.P.C against the Decree and Judgment dated 17.11.2012, made in M.C.O.P.No.522 of 2010, on the file of the Motor Accident Claims Tribunal, Dharapuram.

For Cross Appellants : Mr.Ma.P.Thangavel
For R1 : Mr.S.Vadivel

C O M M O N J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant-Insurance Company, challenging the award dated 17.11.2012, made in M.C.O.P.No.522 of 2010, on the file of the Motor Accident Claims Tribunal, Dharapuram.

2.Both the appeals arise out of the same accident and same award. Hence, they are disposed of by this common judgment.

3.The parties are referred to as per their rank in the claim petition.

4.The Insurance Company is 3rd respondent in M.C.O.P.No.522 of 2010, on the file of the Motor Accident Claims Tribunal, Dharapuram. The claimants filed the said claim petition, claiming a sum of Rs.14,00,000/- as compensation for the death of their son, viz., S.Dhineshkumar, who died in the accident that took place on 26.04.2010.

5.The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the 1st respondent, driver of the lorry belonging to the 2nd respondent and directed the respondents 1 to 3 to pay a sum of Rs.6,63,700/- as compensation to the claimants, jointly and severally.

6.Against the said award of the Tribunal, the 3rd respondent-Insurance Company has filed C.M.A.No.2242/2015, questioning the liability as well as the quantum of

compensation. The claimants have filed Cross Objection No.66 of 2018 for enhancement of compensation.

7.The learned counsel appearing for the 3rd respondent- Insurance Company contended that the claimants failed to prove the avocation and income of the deceased. In the absence of any evidence, the Tribunal erred in fixing the notional income of the deceased at Rs.4,500/- per month. The deceased was a bachelor at the time of accident. The Tribunal ought to have deducted 50% towards the personal expenses of the deceased, instead of deducting 1/3rd. The Tribunal erred in awarding a sum of Rs.10,000/- for pain and suffering when the claimant filed claim petition for the death of their son, S.Dhineshkumar and prayed for reducing the compensation granted by the Tribunal.

8.Per contra, the learned counsel appearing for the claimants contended that the deceased was aged 19 years at the time of accident and was working as an electrician and earning a sum of Rs.7,500/- per month. The Tribunal without considering the documents filed by the claimants erroneously fixed the meagre sum of Rs.4,500/- per month. The Tribunal has not awarded any amount towards future prospects. The Tribunal ought to have applied the multiplier of '18', taking the age of the deceased, instead of taking the age of the mother of the deceased and prayed for enhancement of the compensation.

9.Heard the learned counsel appearing for the 3rd respondent as well as the claimants and perused the materials available on record.

10.From the materials on record, it is seen that the claimants have contended that the deceased was working as an electrician and was earning a sum of Rs.7,500/- per month. The claimants have not let in any evidence to prove their contention. In the absence of any acceptable evidence, the Tribunal has fixed the notional income of the deceased at Rs.4,500/- per month. The accident is of the year 2010. Hence, the notional income of the deceased is fixed at Rs.6,000/-. The deceased was aged 19 years at the time of accident. The claimants are entitled to 40% enhancement towards future prospects as per the judgment of the Hon'ble Apex Court reported in 2017(2)TNMAC 609 (SC) [National Insurance Company vs. Pranay Sethi & others] and age of the deceased should be the basis for applying the multiplier. The deceased was a bachelor at the time of accident. The Tribunal erred in deducting 1/3rd, instead of deducting 50% towards the personal expenses of the deceased. Hence, the amounts awarded by the Tribunal towards loss of income is modified to

Rs.9,07,200/- {[Rs.6,000 + Rs.2,400 (40% of Rs.6,000)] x 12 x 18 x ½}. The Tribunal erred in awarding a sum of Rs.10,000/- towards pain and suffering. Hence, the same is hereby set aside. A sum of Rs.10,000/- and a sum of Rs.30,000/- granted towards funeral expenses and loss of love and affection respectively are meagre and hence, they are enhanced to Rs.15,000/- and Rs.40,000/- respectively. The Tribunal has not awarded any amount for loss of estate. Hence, a sum of Rs.15,000/- is granted towards loss of estate. The amounts granted by the Tribunal under all other heads are just and reasonable and they are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of income	5,76,000/-	9,07,200/-	enhanced
2.	Funeral expenses	10,000/-	15,000/-	enhanced
3.	Transportation charges	5,000/-	5,000/-	confirmed
4.	Loss of love and affection	30,000/-	40,000/-	enhanced
5.	Pain and suffering	10,000/-	-	Set aside
6.	Medical expenses	32,700/-	32,700/-	confirmed
7.	Loss of estate	-	15,000/-	granted
	Total	6,63,700/-	10,14,900/-	enhanced by Rs.3,51,200/-

11. In the result, both the appeal as well as the cross objection are partly allowed and the award granted by the Tribunal at Rs.6,63,700/- is enhanced to Rs.10,14,900/- along with interest and costs. The respondents are jointly and severally directed to deposit the enhanced award amount now determined by this Court 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, to the credit of M.C.O.P.No.522 of 2010. On such deposit, the claimants are permitted to withdraw the award amount along with interest and costs, as per the ratio of apportionment fixed by the Tribunal, less the amount already withdrawn if

any, by filing necessary applications before the Tribunal. However, it is made clear that the claimants are not entitled for the interest for the delay period. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

gsa

To

1.The Motor Accident Claims Tribunal,
Dharapuram.

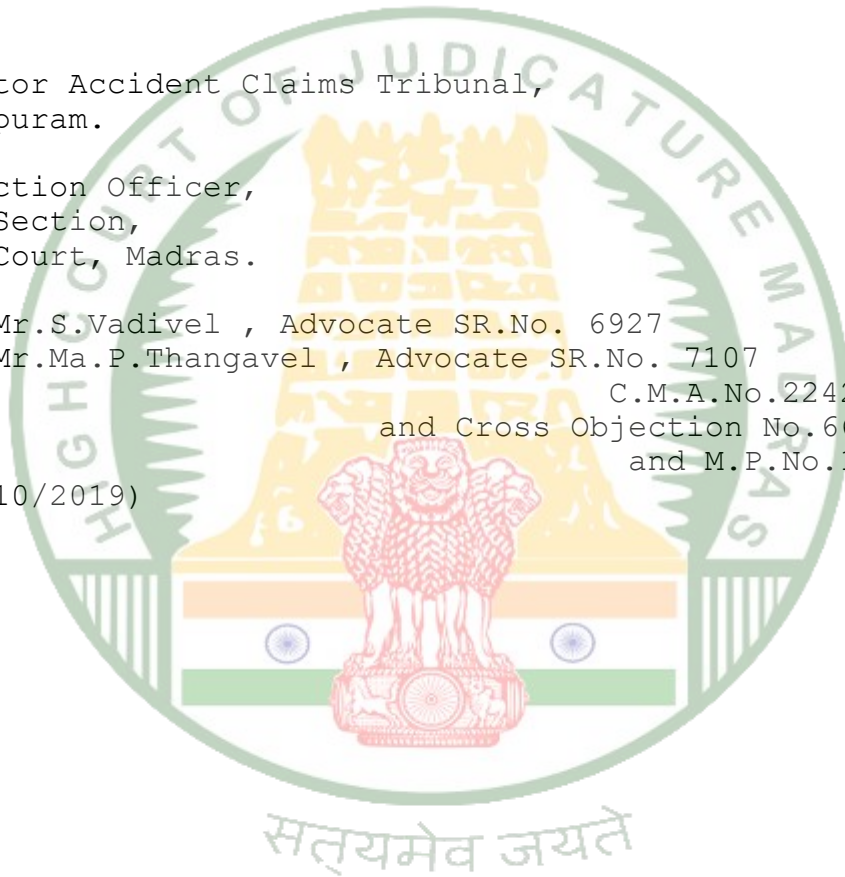
2.The Section Officer,
V.R. Section,
High Court, Madras.

+lcc to Mr.S.Vadivel , Advocate SR.No. 6927

+lcc to Mr.Ma.P.Thangavel , Advocate SR.No. 7107

C.M.A.No.2242 of 2015
and Cross Objection No.66 of 2018
and M.P.No.1 of 2015

A.SK(16/10/2019)



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