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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A.NO.3124 OF 2011

AND

M.P.NO.1 OF 2011

AND

CROSS.OBJECTION NO.31 OF 2013

The National Insurance Company Ltd.,
1670, Cauvery Complex,
Trichy Road, Ramanathapuram,
Coimbatore - 641 045.

.. Appellant/
(in CMA.No.3124 of 2011)
and 3rd Respondent
(in Cross.Obj.No.31 of 2013)/R3

Vs.

1.Velumani (died)
2.Nachimuthu

.. Respondents 1 & 2/
(in CMA.No.3124 of 2011)
and Cross Objectors
(in Cross.Obj.No.31 of 2013)/Claimant

3.Sundararjan
4.Ramamoorthy
(Respondents 3 & 4 are
set exparte before the Tribunal)
(first respondent died and
second respondent is recorded
as legal heir, vide Memo, dated 18.03.2019)

.. Respondents 3 & 4/
(in CMA.No.3124 of 2011)
and Respondent 1 & 2
(in Cross.obj.No.31 of 2013)/R1 & R2

Prayer in C.M.A.No.3124 of 2011 and
Cross Objection No.31 of 2013:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 and Cross Objection filed under Order 41, Rule 22 of C.P.C., against the fair and decreetal order dated 25.02.2011 passed in M.C.O.P.No.378 of 2008 on the file of the Motor Accident Claims Tribunal (Subordinate Judge) at Dharapuram.



C.M.A.No.3124 of 2011

For Appellant : Mrs.R.Sreevidhya
For R1 : Died
For R2 : Mr.V.Ragunathan
For Mr.S.Dhanasekaran
For R3&R4 : Given up

Cross Objection No.31 of 2013

For Cross objectors : Mr.V.Ragunathan
For Mr.S.Dhanasekaran
For R3 : Mrs.R.Sreevidhya

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the National Insurance Company and Cross Objection 31 of 2013 is filed by the respondents 1 and 2/claimants in the said CMA seeking for enhancement of compensation.

2. The averments made in the claim petition are as follows:

(i) On 12.04.2008 at about 7.00 A.M, the deceased Sivakumar was riding motor-cycle bearing Registration Number TN 47 B 5835 from East to West of Kangayam to Kovai Road, on the left side of the road, in a minimum speed with care. When he was nearing Old RTO office, a Lorry bearing Registration Number TN 33 B 7779 owned by the fourth respondent and insured with the appellant-Insurance Company, was driven by the driver, the third respondent, namely Sundarrajan in a rash and negligent manner with high speed without observing road rules and norms coming in the opposite direction, that is, West to East of Kovai to Kangayam road.

(ii) Due to the high speed, the Lorry driver lost his control and hit against the deceased who was driving the Motor-cycle. The deceased was thrown out from the Motor-cycle. Due to the accident, the deceased sustained grievous injuries in head and all over the body. The deceased was immediately taken to Kangayam Government Hospital. The Doctor advised to go to Coimbatore for effective treatment. But he succumbed to death. This accident happened only due to the rash and negligent driving of the Lorry driver. The case was registered at Kangayam Police Station in Crime No.284 of 2008, under Sections 279 and 304(A) I.P.C.



3. Before the Tribunal, the father of the deceased was examined as P.W.2 apart from P.W.1 and they have also marked as Exhibits P1 to P11. On behalf of the respondents before the Tribunal, no one was examined and no exhibit was marked.

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4. On a consideration of both oral and documentary evidence, the Tribunal has come to the conclusion that the accident has taken place due to the rash and negligent driving of the driver, namely the third respondent herein. Accordingly, the Tribunal fixed the liability on the third respondent/driver who drove the offending vehicle and on re-appreciation of the evidence, the said finding is hereby confirmed.

5. On the point of quantum, both the parties are heard.

6. It is to be stated that as per Exhibit P9, deceased Sivakumar was aged about 27 years at the time of the accident and as per Exhibit P11, the Salary Certificate, the Tribunal has arrived at the salary of the deceased at the time of the accident at Rs.3,850/- after making necessary calculation, fixed the loss of earning of the deceased at Rs.4,80,000/-.

7. On the point of quantum of compensation, both the parties are heard.

8. The learned counsel for the respondents would submit that taking into account the age of the deceased, the loss of dependency is assessed at Rs.4,80,000- (Rs.2500*12*16). For 'Transport expenses' Rs.4,000/-, for Clothes expenses Rs.1000/-, for 'loss of estate' Rs.20,000/- and for 'loss of love and affection' Rs.20,000/-, awarded by the Tribunal, are confirmed.

9. Therefore, the compensation awarded by the Tribunal at Rs.5,55,000/- is hereby confirmed, which shall carry interest at the rate of 7.5% per annum, as awarded by the Tribunal.

10. In the result,

(i) The Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

(ii) Cross Objection No. 31 of 2013 is dismissed.

(iii) The quantum of compensation awarded by the Tribunal is confirmed.

(iv) The appellant-Insurance Company shall deposit the award amount, if not deposited, within a period of twelve weeks from the date of receipt of a copy of this judgment.



(v) On such deposit, the claimant is permitted to withdraw the above amount of compensation before the Tribunal.

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Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accident Claims Tribunal
(Subordinate Judge) at Dharapuram.

Copy To

The Section Officer,
V.R. Section, High Court, Madras - 104.

+1cc to Mrs.R.Sreevidhya, Advocate, S.R.No.26433

+1cc to Mr.V.Ragunathan, Advocate, S.R.No.26556

C.M.A.No.3124 of 2011 and
M.P.No.1 of 2011 and
Cross.Objection No.31 of 2013

MR(CO)
CS/01/08/2019