

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 23.01.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

CMA.No.67 of 2011 and
CMA No.139 of 2011 and
MP No.1 of 2011

In CMA 67 of 2011

1. B.Rengaiah Gounder
2. R.Nallammal Appellants/ Claimants

Vs.

1. P.Alagarsamy
(Exparte before tribunal)
2. New India Assurance Company,
45, Moore Street, Chennai-1. Respondents/Respondents

In CMA 139 of 2011

New India Assurance Company Limited,
45, Moore Street, Chennai-1. Appellant/ 2nd respondent

Vs.

1. B.Rengaiah Gounder
2. R.NallammalRespondents 1 & 2/claimants

3. P.Alagarsamy 3rd respondent/ 1st respondent

PRAYER IN CMA NO.67 OF 2011 AND 139 OF 2011

Both the Civil Miscellaneous Appeals in CMA 67 of 2011 and 139 of 2011 have been filed under Section 173 of the Motor Vehicles Act, 1988, against the orders passed in M.C.O.P.No.4488 of 2008 by the Chief Judge, Motor Vehicle Accidents Claims Tribunal, Court of Small Causes, Chennai on 27.09.2010.

In CMA 67 of 2011

For Appellants	: Ms.P.T.Salim Fathima
For 2nd Respondent	: Mr.K.Mohan
First respondent	: No appearance

In CMA 139 of 2011

For Appellant	: Mr.K.Mohan
For Respondents 1 & 2	: Ms. P.T.Salim Fathima
Third Respondent	: No appearance

J U D G M E N T

The appellants in CMA 67 of 2011 are the claimants in MCOP No.4488 of 2008 on the file of the Chief Judge, Motor Accident Claims Tribunal, Court of Small Causes, Chennai and they filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.11,00,000/- for the death of their son Thangarajan.

2. The brief case of the appellants/claimants in MCOP No.4488 of 2008 is as follows. On 23.10.2008, the deceased Thangarajan was changing tyre in a tractor bearing registration No.TN-45-AZ-1254, belonging to the first respondent, without switching off the engine, as a result of which, the tyre rolled down and ran over the deceased. According to the claimants, the deceased was aged 29 years on the date of accident and he was a driver and agricultural labourer by profession earning a sum of Rs.7,500/- per month. Their specific contention is that since the first respondent had insured his vehicle bearing registration No.TN-45-AZ-1254 with the 2nd respondent, both of them are jointly and severally liable to pay compensation to them.

3. The first respondent, owner of the tractor remained absent before the tribunal and therefore, he was set exparte. The appellant in CMA No.139 of 2011, Insurance company contested the claim petition.

4. The learned Chief Judge, Motor Accident Claims Tribunal, Court of Small Causes, Chennai, after analysing the evidence on record, awarded a compensation of Rs.3,14,000/- to the claimants. Not satisfied with the quantum of compensation, the claimants have filed the appeal in CMA 67 of 2011 seeking enhancement of compensation, while the New India Assurance Company Limited filed CMA No.139 of 2011 questioning their

liability to pay compensation to the claimants, since the deceased Thangarajan was the tort-feasor, as far as the present case is concerned.

5. Mr.S.Jayasankar, learned counsel appearing for the New India Assurance company Limited would contend that since the driver of the tractor was attempting to change the tyre, without switching off the engine, he invited the accident and therefore, the insurance company cannot be held liable to pay compensation to the claimants.

6. Per contra, Ms.P.T.Salim Fathima, learned counsel appearing for the claimants would contend that since the self motor in the tractor was not functioning properly, the driver did not switch off the engine and the jack also slipped, as a result of which, the deceased died. She would further contend that in the facts and circumstances, the insurance company is fully liable to pay compensation to the claimant.

7. A perusal of the First Information Report (Ex.P1) clearly shows that the deceased Thangarajan, without switching off the engine of the tractor, attempted to change the tyres and thus has contributed to the accident. Though it is an admitted case of both the parties that the deceased attempted to change the tyre without switching off the engine, this has not been taken into consideration by the tribunal. Therefore, 25% is fixed on the part of the deceased towards contributory negligence.

8. As far as the quantum of compensation is concerned, the contention of the claimants is that, the deceased was a driver and agricultural labourer earning a sum of Rs.7,500/- per month. However, no documentary evidence was adduced to substantiate their contentions in this regard. Therefore, In the absence of proof of income, a sum of Rs.6,500/- is fixed as notional income of deceased. To this amount, as per the decision of the Constitution Bench of the Honourable Supreme Court of India in National Insurance Company Limited Vs. Pranay Sethi and others reported in 2017 (2) TNMAC 601, 40% should be added towards future prospects of the deceased which comes to Rs.9,100/- (6500+2600 = Rs.9100). Since the deceased died as a bachelor, 50% of the income has to be deducted towards his personal expenses and it would be Rs. 4550. The proper multiplier to be adopted in the instant case is 17, as per the decision in Sarala Verma and others Vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121. Thus, Loss of dependency is calculated as follows.

Loss of dependency
 Income of the deceased - Rs.4550
 Proper multiplier - 17
 Loss of dependency - $4500 \times 12 \times 17 = 9,28,200/-$

In addition to that, as per the decision rendered by the Constitution Bench of the Honourable Supreme Court in National Insurance Company Limited Vs. Pranay Sethi and others reported in 2017 (2) TNMAC 601, the claimants are entitled to Rs.40,000/- Rs.15,000, Rs.15,000/- and Rs.40,000/- towards "loss of love and affection", "Loss of Estate" and "Funeral Expenses" respectively. Thus, total compensation is Rs.9,98,000/- ($9,28,200 + 40,000 + 15000 + 15000 = 9,98,200$) which is extracted here under.

Sl.No	Heads	Amount
1	Loss of dependency (4550x12x17)	9,28,200
2	Love and affection	40,000
3	Loss of Estate	15,000
4	Funeral Expenses	15,000
	Total	9,98,200

Since the deceased had contributed to the accident, 25% is reduced from the total award amount and hence, the claimants are entitled to a sum of Rs.7,48,650/- ($9,98,200 - 2,49,550 = 7,48,650$). This amount shall carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

9. In the result,
 CMA 67 of 2011

i) The appeal in CMA 67 of 2011 is allowed in part.
 No costs. The compensation awarded by the tribunal is enhanced to Rs.7,48,650/- from Rs.3,14,000/-.

ii) The insurance company is directed to deposit the enhanced compensation of Rs.7,48,650/- along with interest at the rate of 7.5% per annum, less the amount already deposited by them, within a period of 4 weeks from the date of receipt of a copy of this order.

iii) On such deposit being made, the claimants are entitled to withdraw the same, as per the apportionment made by the tribunal, after following due process of law.

CMA No.139 of 2011

(i) The appeal in CMA 139 of 2011 is allowed partly.
No costs. The connected miscellaneous petition is closed.

(ii) Contributory negligence on the part of the
deceased is fixed at 25% .

-s/d-

Assistant Registrar

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Sub-Assistant Registrar

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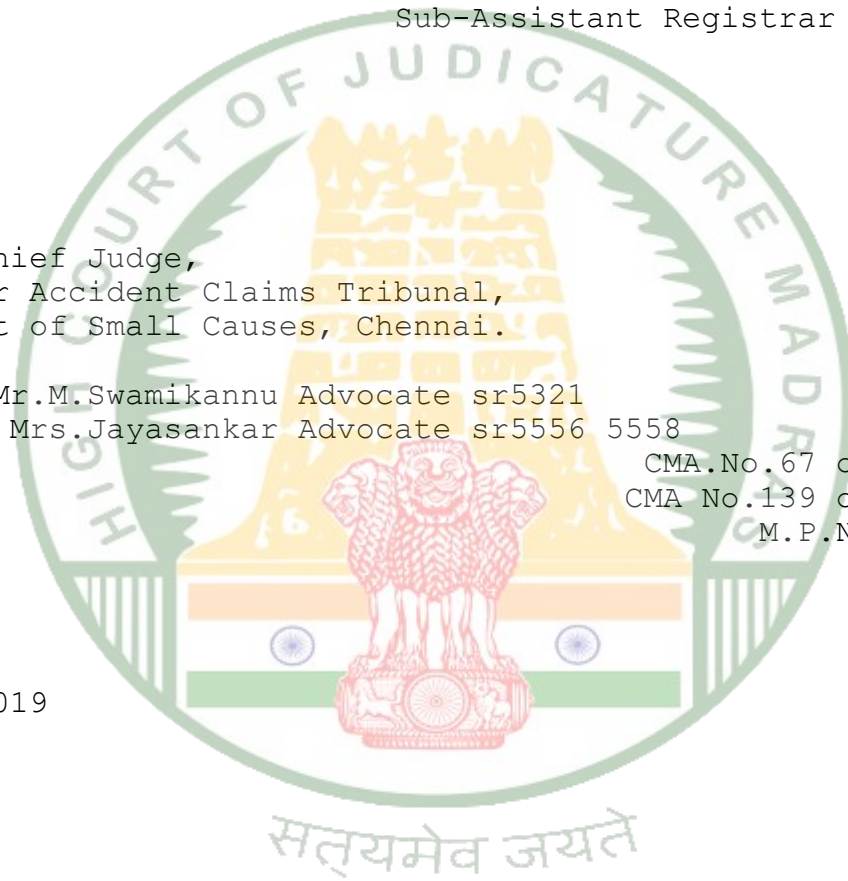
1. The Chief Judge,
Motor Accident Claims Tribunal,
Court of Small Causes, Chennai.

+1 cc to Mr.M.Swamikannu Advocate sr5321

+2 ccs to Mrs.Jayasankar Advocate sr5556 5558

CMA.No.67 of 2011 and
CMA No.139 of 2011 and
M.P.No.1 of 2011

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