

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.2776 of 2011

and

M.P.No.1 of 2011

United India Insurance Company Ltd.,
Divisional Office II,
No.1122-D.B.Road,
R./S.Puram Post,
Coimbatore - 641 002. ..Appellant/3rd Respondent

Vs.

1. N. Bathrappan
2. B. Rani ..Respondents 1 & 2/Petitioners
3. T. Charles Rosario
4. T. Hari alias Subramaniam ..Respondents 3 & \$/
Respondents 1 & 2

(Respondents 3 & 4 are exparte
in the lower Court)

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 24.11.2010 made in MCOP No.164 of 2009 on the file of the Motor Accident Claims Tribunal (Fast Track Court No.III) Dharapuram.

For Appellant : Mr.J. Chandran

For Respondents 1 and 2 : Mr.Ma.Pa.Thangavel

For Respondents 3 and 4 : Ex-parte

JUDGMENT

The appellant herein/insurance company has preferred this appeal challenging the Judgment and Decree dated 24.11.2010 made in MCOP No.164 of 2009 on the file of the Motor Accident Claims Tribunal (Fast Track Court No.III) Dharapuram.

2. The brief facts, which are necessary for disposal of this appeal, are that on 07.12.2008 at about 4.00 p.m, when the deceased was ridding a motor cycle bearing Registration No.TV-38-V-5891 along with one Ganesh, who is a pillion rider and were proceeding towards north on the western edge of the north south Coimbatore to Mettupalayam main Road near old Sugi Hospital, the first respondent's auto bearing Registration No.TN 41-X-6719 came in a rash and negligent manner with high speed, and hit the motor cycle of the deceased, thereby the deceased and the pillion rider were thrown out from the motorcycle and fell down on the road and sustained grievous injuries to all over the body. Hence, the first and second respondents herein, who are the legal heirs of the deceased, have filed a claim petition in M.C.O.P.No.164 of 2009 before the Motor Accident Claims Tribunal (Fast Track Court No.III) Dharapuram, seeking compensation of Rs.10,00,000/-

3. Before the Tribunal, on the side of the claimants, three witnesses were examined as P.Ws.1 to 3 and documents Exs.P.1 to P.12 were marked. On the side of the third respondent before the Tribunal, R.Ws.1 and 2 were examined and no document was marked.

4. The Tribunal, after considering both oral and documentary evidence adduced on either side, awarded a sum of Rs.6,15,000/- with interest at the rate of 7.5% per annum from the date of claim petition till the date of realization with costs. The Tribunal also held that at the time of the accident, as per Ex.P.10, the deceased has valid driving license and the vehicle has been duly insured with the appellant/insurance company and therefore, directed the respondents 1 to 3 before the Tribunal to pay the compensation to the claimants jointly and severally and this point is answered accordingly.

5. As against the said award passed by the Tribunal, the Insurance Company / third respondent before the Tribunal, has preferred this appeal before this Court.

6. Heard the learned counsel appearing for the appellant/insurance company and the learned counsel appearing for the respondents 1 and 2/claimants.

7. In the decision of this Court reported in 2018 (1) TN MAC 592 (DB), [Managing Director, State Express Transport Corporation Limited, Vs. Radha and others], the Division Bench has held that though the appeal has been preferred by the Transport Corporation, considering the facts and circumstances of the case, the Court could take suo motu decision for

enhancing the compensation amount awarded by the Tribunal, by re-appreciating the evidence on record and applying the correct position of law, as on date and invoking Order 41, Rule 33 C.P.C. and Section 151 CPC as well as Article 227 of the Constitution of India. The relevant paragraph No.9 of the above said decision is extracted hereunder:-

"9. Though the Appeal has been preferred by the Transport Corporation, the facts and circumstances of the case, enables this Court to enhance the Compensation awarded by the Tribunal from Rs.14,57,000/- to Rs.17,83,600/- by re-appreciating the evidence on record and applying the correct position of law, as on date and invoking Order 41, Rule 33, C.P.C., and Section 151 C.P.C., as well as Article 227 of the Constitution of India. Moreover, the provisions of Motor Vehicles Act are beneficial in nature and what is required to be awarded is Just and Reasonable Compensation. Therefore, even in the absence of Appeal/Cross-Appeal by the Claimants, this Court has got power and jurisdiction to enhance the Compensation, which has been recognised by the Honourable Supreme Court in Nagappa v. Gurdayal Singh, 2004 (2) TN MAC 398 (SC)."

8. As to the point of quantum of compensation, it appears that the deceased was working as a driver in Sudha lorry service and earning a sum of Rs.6,000/- per month. The Tribunal has fixed the income of the deceased at Rs.4,200/- per month and after deducting 1/3 towards personal expenses of the deceased and also considering the age of the deceased as 29, by applying the multiplier of 18, arrived a sum of Rs.6,04,800/- [Rs.4200 x 12 x 2/3 x 18 = Rs.6,04,800/-] towards loss of income and the same is confirmed. Further, a sum of Rs.5,200/- was awarded by the Tribunal towards transportation and funeral expenses. This Court is of the view that it is just and proper to award a sum of Rs.15,000/- towards transportation and a sum of Rs.10,000/- towards funeral expenses. Further, the Tribunal has awarded a sum of Rs.5,000/- towards loss of love and affection and the same is confirmed. In all, respondents 1 and 2 herein/claimants are entitled to a sum of Rs.6,34,800/- as total compensation.

9. Accordingly, the award of the Tribunal stands modified as follows:-

Sl. No.	Head	Amount awarded by the Tribunal	Amount granted by this Court
1.	Loss of income	Rs. 6,04,800/-	Rs. 6,04,800/-
2.	Transportation and Funeral expenses	Rs. 5,200/-	---
3.	Transportation charges	---	Rs. 15,000/-
4.	Funeral expenses	---	Rs. 10,000/-
5.	Loss of love and affection	Rs. 5,000/-	Rs. 5,000/-
	Total	Rs. 6,15,000/-	Rs. 6,34,800/-

10. In the result,

- I. This Civil Miscellaneous Appeal is partly allowed enhancing the compensation from Rs.6,15,000/- to Rs.6,34,800/-.
- II. The interest granted by the Tribunal at 7.5% stands confirmed.
- III. The appellant-Insurance Company is directed to deposit the enhanced compensation amount within a period of eight weeks from the date of receipt of a copy of this judgment, less the amount already deposited, if any.
- IV. On such deposit, respondents 1 and 2 herein/claimants are permitted to withdraw the enhanced award amount with proportionate interest, as apportioned by the Tribunal, less the amount already withdrawn, if any.
- V. The respondents 1 and 2/ claimants shall pay necessary Court fee, if any, on the enhanced compensation.
- VI. No order as to costs. The connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (C.S. -VIII)

//True Copy//

Sub Assistant Registrar

To

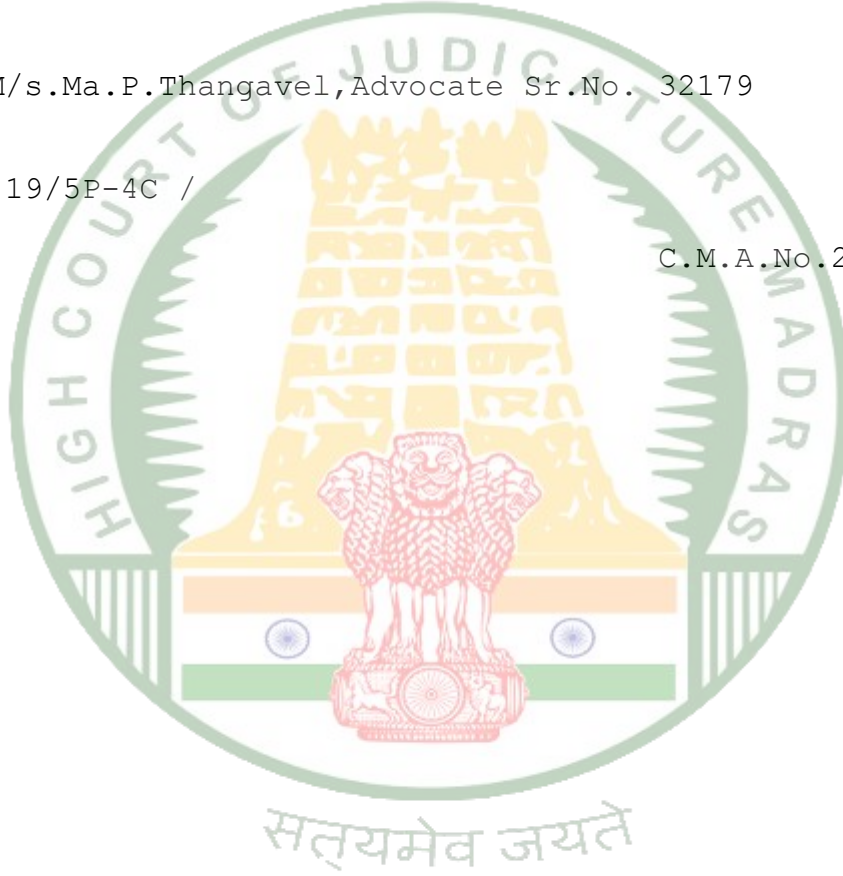
The Motor Accident Claims Tribunal
(Fast Track Court No.III) Dharapuram.

Copy to : The Section Officer,
V.R.Section,
High Court, Madras.

+1 cc to M/s.Ma.P.Thangavel, Advocate Sr.No. 32179

AKM/29.11.19/5P-4C /

C.M.A.No.2776 of 2012



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