

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.07.2019

CORAM:

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.M.A.Nos.236 of 2018 and 950 of 2018

C.M.A.No. 236 of 2018

Arumugam (died)

Mariammal

... Appellants/Petitioners

Vs.

1. Subashkumar

2. United India Insurance Co., Ltd.,  
Branch Office No.2, Sankaran Road,  
Namakkal.

... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeals is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 22.09.2017 made in M.A.C.T.O.P.No.239 of 2010 on the file of the Motor Accidents Claims Tribunal, Sub-Court, Sankari.

For Appellant : Mr.T.S.Arthanareeswaran

For Respondents : Mr.C.Paranthaman for R2

Exparte - R1

C.M.A.No. 950 of 2018

United India Insurance Co., Ltd.,  
Divisional Office No.2, Sankaran Road,  
Namakkal.

... Appellant/2<sup>nd</sup> Respondent

Vs.

Arumugam (died)

1. Mariammal

2.Subashkumar

... Respondents/Petitioners  
and 1<sup>st</sup> Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 22.09.2017 made in M.A.C.T.O.P.No.239 of 2010 on the file of the Motor Accidents Claims Tribunal, Sub-Court, Sankari.

For Appellant : Mr.C.Paranthaman

For Respondents : Mr.T.S.Arthanareeswaran for R1

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

CMA.No.236 of 2018 has been filed by the claimant, challenging the judgment and decree dated 22.09.2017 made in M.A.C.T.O.P.No.239 of 2010 on the file of the Motor Accidents Claims Tribunal, Sub-Court, Sankari.

CMA.No.950 of 2018 has been filed by the Insurance Company, challenging the judgment and decree dated 22.09.2017 made in M.A.C.T.O.P.No.239 of 2010 on the file of the Motor Accidents Claims Tribunal, Sub-Court, Sankari.

2. Both the above appeals arise out of the same accident. For the sake of convenience, the parties in these appeals are referred to by their respective ranks in the claim petitions.

3.The appellants in CMA.No.236 of 2018 are the petitioners in M.C.O.P.No.239 of 2010 on the file of the Motor Accidents Claims Tribunal, Sub-Court, Sankari and the appellant in CMA.No.950 of 2018 is the Insurance Company in M.A.C.T.O.P.No.239 of 2010 on the file of the Motor Accidents Claims Tribunal, Sub-Court, Sankari.

4. The brief facts leading to the claim application are as follows :

On 04.02.2010 at about 7.00 p.m., the petitioner/injured was travelling as a load man in parking Tractor near Vivekanantha College, Thennai Thoppu at left side to Tiruchengode to Namakkal Main Road in Tiruchengodu Taluk by vehicle bearing Reg.No.TN-33 AD-5866 (Tractor) TN-30 S-5007 (Trailer). At that time, the person who was driving the vehicle bearing Reg.No.TN-28 L-5019 (lorry) drove the vehicle in a rash and negligent manner and hit against the petitioner due to which he sustained injuries on left head, left knee, left hip and all over the body. Immediately, he was taken to the Government Hospital, Tiruchengode and shifted to Senthil Hospital, Erode and to Maruthi Medical Centre Hospital, Erode, admitted as an inpatient from 04.02.2010 and the case was registered in Cr.No.72 of 2010 under Sections 279, 337 of IPC against the driver of the lorry and is pending before the Judicial Magistrate, Tiruchengode. The petitioner sustained grievous injuries and spent nearly Rs.2,10,000/- and underwent physical pain and mental agony and he died on 28.06.2012. Hence, his wife claimed a compensation for a sum of Rs.5,00,000/-

5. The second respondent/Insurance Company denied the mode of accident as contended by the claimant. Further, they contended that there is no negligent driving on the part of the driver of the lorry and the sum claim by the claimant under various heads are also stated as an excessive one when there is no sufficient proof for nature of injuries, medical expenses spent by him and the disability caused due to the said injury. Hence, the negligence aspect on the part of the lorry driver is very much denied by stating that it is the driving of the tractor and trailer who suddenly turned and applied brake without any signal and hence the entire mistake is on the part of the driver of the Tractor-cum-Trailer who invited the accident. The sum claimed by the claimant is also very much disputed by the Insurance Company.

6. The Tribunal after analysing the evidences and documents, has given the findings that the accident occurred only due to the rash and negligent driving on the part of the driver of the lorry. The Tribunal has observed as per Ex.P5(Copy of Accident Register) and the Wound Certificate (Ex.P6) and discharge summary/Ex.P7, has observed that the injury sustained by the deceased is grievous in nature and assessed disability at 50% and awarded compensation at Rs.3,55,000/- under various heads as follows:

| Sl.No. | Head                    | Amount        |
|--------|-------------------------|---------------|
| 1.     | Disability (50% x 3000) | Rs.1,50,000/- |
| 2.     | Medical Expenses        | Rs. 31,000/-  |
| 3.     | Pain and sufferings     | Rs. 75,000/-  |
| 4.     | Transportation Expenses | Rs. 20,000/-  |
| 5.     | Nutrition Food          | Rs. 25,000/-  |
| 6.     | Attendant Charges       | Rs. 10,000/-  |
| 7.     | simple injury           | Rs. 40,000/-  |
| 8.     | Loss of property        | Rs. 4,000     |
|        |                         |               |
|        | Total                   | Rs.3,55,000/- |

7. Aggrieved against the said award, the appellant/injured in CMA.No.236 of 2018, in the grounds of appeal contended that the accident occurred on 04.02.2010 and only because of the nature of grievous injuries, the injured died after two years. The appellant/claimant was very much aggrieved by the award made by the Tribunal stating that without applying the proper multiplier method for assessing the loss of income, the determination made by the Tribunal in awarding a sum of

Rs.3,55,000/- under various heads, is totally a meagre amount and without application of mind and moreover, no sum was awarded for loss of consortium. Hence, the appeal is filed by the claimant for enhancement of compensation.

8. On the other hand, the second respondent/Insurance Company in CMA.No.950 of 2018 has aggrieved against the award made by the Tribunal by stating that the death of the deceased Arumugam was due to the natural cause and not due to the accident since the date of accident was on 04.02.2010 and he died after two years and four months i.e., on 28.06.2012. Further, the assessment made at 50% disability and the award of Rs.1,50,000/- by taking Rs.3000/- per percentage is very much on the higher side. The sum awarded at Rs.40,000/- for two simple injuries is without any basis. For Transportation charges, nourishment, Pain and Suffering, amount awarded by the Tribunal is very high and excessive and does not warrant interference and hence, the Insurance Company sought for setting aside the judgment and decree of the Tribunal for the reason that the sum awarded by the Tribunal under various heads are without any sufficient proof and documents and evidence

9. Heard learned counsel appearing for both sides and perused the materials available on record.

10. On hearing both sides and also on perusal of records, it is observed that the injuries sustained by the claimant are grievous in nature as stated in the death certificate filed by the claimant. The Tribunal has also observed the fact by perusing the wound certificate and discharge summary, it is seen that the injured sustained is totally six injuries and injury Nos.1 to 4 are grievous and 5 and 6 are simple injuries. However, he was given treatment in the two hospitals and the discharge summaries were filed and as he was admitted as an in-patient and he was admitted on 25.10.2010 and discharged only on 13.03.2010. The Tribunal observed all these facts and also the aspect that the age of the injured person was 42 years and his occupation was a load man and taken the disability at 50% as spoken by the doctor and has awarded a sum of Rs.1,50,000/- by awarding Rs.3000/- per percentage. Hence, the assessment made by the Tribunal based on the nature of the injuries and resulted in disability and the said sum awarded by the Tribunal at Rs.1,50,000/- is very much reasonable and not on the higher side. The appellant/claimant is very much aggrieved that the Tribunal has also verified the medical bills which were filed as Ex.P8 and awarded a sum to the tune of Rs.31000/- and the said sum awarded by the Tribunal is very much meagre owing to the nature of injuries and treatment given to him and that has to be properly considered by the Tribunal. While verifying the sum, under the head of Pain and Suffering

which is tuned to Rs.75000/- and the sum awarded for transportation expenses and nourishment and attendant charges were claimed by the appellant/claimant as very much meagre and all these heads sought by the appellant for reasonable enhancement. But the sum awarded by the Tribunal for Pain and Suffering, transportation and nourishment though appear to be excessive, those sums does not require any modification when it is spoken by the appellant that the nature of the injuries are such that he was under treatment for a period of another two years. Hence, these sums awarded by the Tribunal are not on the higher side.

11. It is seen from the records that there are totally six injuries sustained by the claimant and the treatment also given for all the six injuries and the assessment is also made by the doctors and for medical expenses, pain and suffering, the Tribunal has awarded a reasonable compensation. But apart from that, the Tribunal has awarded another sum for two injuries, noted as Injury Nos.5 and 6 injuries which are simple injuries and that sum does not warrants any interference, since the reasonable sum is awarded by the Tribunal under the heads, viz., medical expenses, pain and suffering and attendant charges, another sum under the same head i.e., simple injury, claimed by the claimant is without any basis. Hence, on hearing both sides contention and also the sum awarded by the Tribunal under various heads, the sum awarded under the head 'simple injury' appears to be unreasonable. Accordingly, the sum awarded under the head 'simple injury' at Rs.40,000/- is set aside and the amount awarded under the other heads are confirmed.

The sum awarded by the Tribunal is modified as mentioned below:

| Sl.No. | Head                    | Sum Awarded by the Tribunal | Sum Awarded by this Court |
|--------|-------------------------|-----------------------------|---------------------------|
| 1.     | Disability (50% x 3000) | Rs.1,50,000/-               | Rs.1,50,000/-             |
| 2.     | Medical Expenses        | Rs. 31,000/-                | Rs. 31,000/-              |
| 3.     | Pain and sufferings     | Rs. 75,000/-                | Rs. 75,000/-              |
| 4.     | Transportation Expenses | Rs. 20,000/-                | Rs. 20,000/-              |
| 5.     | Nutrition Food          | Rs. 25,000/-                | Rs. 25,000/-              |
| 6.     | Attendant Charges       | Rs. 10,000/-                | Rs. 10,000/-              |

| Sl.No. | Head             | Sum Awarded by<br>the Tribunal | Sum Awarded by<br>this Court |
|--------|------------------|--------------------------------|------------------------------|
| 7.     | Simple injury    | Rs. 40,000/-                   | ---                          |
| 8.     | Loss of property | Rs. 4,000/-                    | Rs. 4,000/-                  |
|        | Total            | Rs.3,55,000/-                  | Rs.3,15,000/-                |
|        |                  |                                |                              |

12. In the result, CMA.No.236 of 2018 is dismissed and CMA.No.950 of 2018 is partly allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

13. The Insurance Company is directed to deposit the award amount modified 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. On such deposit, the claimants are permitted to withdraw their respective award amount along with proportionate interest and costs, after adjusting the amount, if any, already withdrawn.

s/d-

Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

gv

To

1.The Motor Accidents Claims Tribunal,  
Sub-Court, Sankari.

2.The Section Officer,  
VR Section,  
High Court,  
Madras.

+2 Ccs to Mr.C.Paranthaman, Advocate sr 64883, 64884  
+2 Ccs to Mr.C.Paraneetharan, Advocate sr 65120.

C.M.A.Nos.236 of 2018 and 950 of 2018

SAI (CO)  
SP(18/09/2020)