

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.03.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.Nos.939 of 2017 and 1230 of 2019
and C.M.P.No.4602 of 2017

C.M.A.Nos.939 of 2017

The TATA AIG General Insurance Co. Ltd.,
Joya Enclave, 2nd Floor, Avinashi Road,
Coimbatore. Appellant /2nd Respondent

Vs.

1.Kamalam
2.Pongiyannan Respondents 1 & 2/Petitioners
3.M.Senthil3rd Respondent/1st Respondent

C.M.A.No.1230 of 2019

1.Kamalam
2.Pongiyannan Appellants/Petitioners

Vs.

1.M.Senthil

2.The TATA AIG General Insurance Co. Ltd.,
Joya Enclave, 2nd Floor, Avinashi Road,
Coimbatore. Respondents/Respondents

Common Prayer: These Civil Miscellaneous Appeals are filed under
Section 173 of Motor Vehicles Act, 1988, against the award dated
20.07.2016, made in M.C.O.P.No.124 of 2013, on the file of the
Sub Court, (Motor Accident Claims Tribunal), Gobichettipalayam.

(In C.M.A.No.939/2017)

For Appellant : Mr.S.Manohar

For R1 & R2 : Mr.Ma.P.Thangavel

(In C.M.A.No.1230/2019)

For Appellants : Mr.Ma.P.Thangavel

For Respondent : Mr.S.Manohar

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

These Civil Miscellaneous Appeals have been filed against the award dated 20.07.2016, made in M.C.O.P.No.124 of 2013, on the file of the Sub Court, (Motor Accident Claims Tribunal), Gobichettipalayam.

2.Both the appeals arise out of the same accident and same award and 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 claimants filed the said claim petition claiming a sum of Rs.10,00,000/- as compensation for the death of one Murugan who died in the accident that took place on 10.02.2013.

5.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the driver of the tractor belonging to the 1st respondent and insured with the 2nd respondent and directed the 2nd respondent-Insurance Company to pay a sum of Rs.5,57,000/- as compensation to the claimants at the first instance with liberty to recover the same from the 1st respondent, owner of the vehicle.

6.Against the said award dated 20.07.2016, made in M.C.O.P.No.124 of 2013, the 2nd respondent-Insurance Company has filed C.M.A.No.939 of 2017 for setting aside the award of the Tribunal and claimants have filed C.M.A.No.1280 of 2019 for enhancement of the compensation.

7.The learned counsel appearing for the 2nd respondent-Insurance Company contended that the deceased traveled in the tractor as a gratuitous passenger. The tractor at the time of accident was not attached to any trailer. The seating capacity is that, no other persons, except driver including load man can travel in the tractor. The Tribunal erred in holding that the deceased was a load man and insurance policy covers the claim of one load man who traveled in the tractor. The 1st respondent violated policy condition and Insurance Company is not liable to pay any compensation as the deceased traveled as gratuitous passenger along with the driver of the tractor who is his

friend. The driver of the tractor did not possess driving license at the time of accident. The Tribunal ought to have exonerated the 2nd respondent-Insurance Company and erred in ordering pay and recovery and prayed for setting aside the award of the Tribunal.

8. Per contra, the learned counsel appearing for the claimants contended that the deceased was working as a load man and was earning a sum of Rs.15,000/- per month. The learned counsel for the claimants further contended that the deceased traveled in the tractor only as a load man. The 1st respondent, the owner of the tractor had paid extra premium to cover one load man. The Tribunal has considered the fact that extra premium was paid by the 1st respondent and the 2nd respondent-Insurance Company failed to prove that the deceased traveled only as a gratuitous passenger. The Tribunal by giving reasons, held that the 2nd respondent is liable to pay compensation as insurer of the tractor belonging to the 1st respondent at the first instance and recover the same from the 1st respondent. The Tribunal without considering the documents filed by the claimants, erroneously fixed a sum of Rs.3,000/- as notional income of the deceased. The deceased was 20 years at the time of accident. The Tribunal failed to grant any enhancement towards future prospects. The amounts granted by the Tribunal for loss of love and affection and funeral expenses are meagre and prayed for enhancement of the compensation.

9. Heard the learned counsel appearing for the claimants as well as the 2nd respondent and perused the materials available on record.

10. From the materials on record, it is seen that the claimants have contended, the deceased was a load man and he traveled in the tractor as a load man. The Tribunal has taken note of the fact that the 2nd respondent has collected extra premium of Rs.50/- for the person employed for loading and unloading. In view of the extra premium paid by the 1st respondent, the 2nd respondent is liable to pay compensation to the load man who traveled in the tractor. The 2nd respondent contended that the deceased was a friend of driver of the tractor and he traveled only as a gratuitous passenger. The 2nd respondent has not examined any witness to prove that the deceased was not a load man under 1st respondent and he is working elsewhere. The Tribunal also took note of the fact that in the tractor seating arrangements have been made for two persons to sit in addition to the driver of the tractor. The Tribunal relied on the judgment of this Court dated 25.11.2013 made in C.M.A.No.1876 of 2008 and since the facts of the said case are similar to the facts of the present case, held that the said judgment is squarely applicable to the facts of the present

case. The Tribunal considering the above materials and the Insurance Policy which covers the load man, held that the 2nd respondent is liable to pay compensation to the claimants as insurer of the tractor at the first instance and recover the same from the 1st respondent. There is no error in the said award warranting interference by this Court.

11. The driver of the tractor did not possess driving license at the time of accident. The Tribunal rightly ordered pay and recovery. As far as the quantum of compensation is concerned, the claimants have contended that the deceased was working as a load man and was earning Rs.15,000/- per month. The claimants failed to prove the said contention. In the absence of any material to prove the same, the Tribunal has fixed the notional income of the deceased at Rs.3,000/- per month. The accident is of the year 2013. The amount fixed by the Tribunal as notional income of the deceased is meagre. A sum of Rs.6,500/- is fixed as notional monthly income of the deceased. The deceased was aged 20 years and was a bachelor at the time of accident. The Tribunal has not granted any enhancement towards future prospects. The claimants are entitled to 40% enhancement towards future prospects. Applying the multiplier '18' and deducting 50% towards the personal expenses of the deceased, the amount granted towards loss of income is modified to Rs.9,82,800/- $\{[Rs.6,500/- + Rs.2,600/- (40\% \text{ of } Rs.6,500/-)] \times 12 \times 18 \times \frac{1}{2}\}$. The Tribunal has awarded excessive amount of Rs.1,00,000/- towards loss of love and affection and Rs.25,000/- towards funeral expenses. Hence, the same are reduced to Rs.40,000/- each to the claimants 1 and 2 and Rs.15,000/- towards funeral expenses. The Tribunal has not granted any amount towards loss of estate. The claimants are entitled to a sum of Rs.15,000/- towards the said head. 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 earning	4,32,000/-	9,82,800/-	Enhanced
2.	Funeral expenses	25,000/-	15,000/-	Reduced
3.	Loss of love and affection	1,00,000/-	80,000/-	Reduced
4.	Loss of estate	-	15,000/-	granted

	Total	5,57,000/-	10,92,800/-	Enhanced by Rs.5,35,800/-
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12. In the result, C.M.A.No.1230 of 2019 filed by the claimants is partly allowed and C.M.A.No.939 of 2017 filed by the 2nd respondent-Insurance Company is dismissed. The award granted by the Tribunal at Rs.5,57,000/- is enhanced to Rs.10,92,800/- along with interest and costs. The 2nd respondent-Insurance Company is 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.124 of 2013. On such deposit, the claimants are permitted to withdraw their share of 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. No costs. Consequently, connected Miscellaneous Petition is closed. The claimants are directed to pay necessary Court fee, if any, for the enhanced award amount now determined by this Court.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

gsa
To

1.The Subordinate Judge,
(Motor Accident Claims Tribunal),
Gobichettipalayam.

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

+lcc to Mr.S.Manohar, Advocate Sr.24320
+lcc to Mr.Ma.P.Thangavel, Advocate Sr.24835 [05/11/2019]

C.M.A.Nos.939 of 2017 and 1230 of 2019
and C.M.P.No.4602 of 2017

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srg 09/07/2019