

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.01.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2835 of 2018
and C.M.P.No.21622 of 2018

The Manager,
HDFC ERGO General Insurance Co. Ltd
New No: 528 and Old No: 559, Anna Salai
Thenampettai,
Chennai .. Appellant/2nd Respondent

Vs.

1.Mahalakshmi
2.Parasakthi
3.Raja
4.Gunasekaran
5.Shanthi .. Respondents 1 to 5/Petitioner
6.Manikandan .. 6th Respondent/1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 08.12.2017 made in M.C.O.P.No.170 of 2016 on the file of the Motor Accidents Claims Tribunal, Special Sub Court, Tiruvannamalai.

For Appellant : Mr.T.K.Prem Kumar

For RR1 to R5 : Mr.S.Panneer Selvam

For R6 : Not ready in notice

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J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the award dated 08.12.2017 made in M.C.O.P.No.170 of 2016 on the file of the Motor Accidents Claims Tribunal, Special Sub Court, Tiruvannamalai.

2. The appellant/Insurance Company is 2nd respondent in M.C.O.P.No.170 of 2016 on the file of the Motor Accidents Claims

Tribunal, Special Sub Court, Tiruvannamalai. The respondents 1 to 5 filed the above claim petition claiming a sum of Rs.15,00,000/- as compensation for the death of one Ramaiyan, who died in the accident that took place on 18.12.2015.

3.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 van belonging to the sixth respondent and directed the appellant/Insurance Company to pay a sum of Rs.7,40,428/- as compensation to the respondents 1 to 5 and recover the same from the sixth respondent.

4.Challenging the said award dated 08.12.2017, made in M.C.O.P.No.170 of 2016, granting compensation to the respondents 1 to 5, the appellant/Insurance Company has come out with the present appeal challenging the liability fastened on them as well as quantum of compensation awarded by the Tribunal.

5.The learned counsel appearing for the appellant/Insurance Company contended that the deceased was a gratuitous passenger travelled in a goods vehicle and the policy issued by the appellant does not cover person like deceased and hence the appellant is not liable to pay compensation. The Tribunal has erred in fixing the liability on the appellant. The sixth respondent has violated the policy condition by allowing unauthorised passengers to travel in the vehicle. The Tribunal has erroneously held that the deceased travelled along with goods. The deceased was 65 years at the time of accident and the Tribunal has erred in granting 10% enhancement towards future prospects while calculating loss of income for the respondents 1 to 5. The Tribunal without any basis fixed notional income of the deceased at Rs.6,500/- per month. The amounts awarded by the Tribunal towards loss of income, loss of love and affection, medical expenses and transportation are excessive and prayed for setting aside the award of the Tribunal.

6.Per Contra, the learned counsel appearing for the respondents 1 to 5 contended that the respondents 1 to 5 have examined PW1 and PW2 and proved that the deceased travelled along with paddy bags as owner of the goods by sitting in the cabin of the van. The Tribunal appreciating the evidence let in by the respondents 1 to 5 has held that the deceased travelled in the cabin only as owner of the goods. The deceased was an agriculturist and was earning a sum of Rs.20,000/- per month and the Tribunal has fixed only a meagre sum of Rs.6,500/- per month as notional income of the deceased. The Tribunal has considered the claim of the respondents 1 to 5 and awarded compensation under different heads and they are not excessive and prayed for dismissal of the appeal.

7. Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the respondents 1 to 5 and perused the materials available on record.

8. The contentions of the learned counsel for the appellant that the deceased travelled as unauthorised passenger in goods vehicle and the appellant/Insurance Company is not liable to pay compensation are contrary to the evidence let in by the respondents 1 to 5. The first respondent examined herself as PW1 and also examined PW2, eye witness and proved that the deceased travelled as owner of the goods in the cabin along with paddy bags. The appellant has not let in any evidence to disprove the evidence of PW1 and PW2. From the award of the Tribunal, it is seen that in FIR also, it has been stated that the deceased travelled along with goods. In view of the same, the findings of the Tribunal that the deceased travelled as owner of the goods is proper and there is no error warranting interference by this Court.

9. As far as quantum of compensation is concerned, the respondents 1 to 5 claimed that the deceased was an agriculturist and was earning a sum of Rs.20,000/- per month. They have not produced any acceptable evidence to substantiate their claim. In the absence of evidence, the Tribunal has fixed monthly income of the deceased at Rs.6,500/- per month and the same is reasonable and proper. The Tribunal based on the post-mortem certificate, fixed age of the deceased as 65 years and awarded 10% enhancement for future prospects. As per the judgment of the Hon'ble Apex Court reported in 2017(2)TNMAC 609 (SC) (National Insurance Company v. Pranay Sethi), the respondents 1 to 5 are not entitled to any amount towards future prospects as the deceased was aged 65 years. 10% enhancement for future prospects to the income of the deceased granted by the Tribunal is hereby set aside. The amount granted by the Tribunal towards loss of income is modified as follows:

$$\text{Rs.6,500/-} \times 12 \times 7 \times \frac{2}{3} = \text{Rs.3,64,000/-}$$

The Tribunal has granted a sum of Rs.1,20,000/- towards loss of love and affection to the respondents 2 to 5. As per the judgment referred to above, the appellants are not entitled to any amount towards loss of love and affection and hence, the said amount is hereby set aside. The amounts granted by the Tribunal under other heads are hereby confirmed. The award of the Tribunal with regard to pay and recovery is also hereby confirmed. 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 income	4,00,428	3,64,000	Reduced
2.	Loss of love and affection	1,20,000	-	Set aside
3.	Loss of Consortium	40,000	40,000	Confirmed
4.	Funeral expenses	15,000	15,000	Confirmed
5.	Loss of estate	15,000	15,000	Confirmed
6.	Medical expenses and transportation	1,50,000	1,50,000	Confirmed
	Total	7,40,428	5,84,000	Reduced by Rs.1,56,428/-

10. With the above modification, the Civil Miscellaneous Appeal is partly allowed. The compensation of Rs.7,40,428/- awarded by the Tribunal is hereby reduced to Rs.5,84,000/- with interest at the rate of 7.5% per annum from the date of petition till the date of realisation. The first respondent being the wife of the deceased is entitled to a sum of Rs.2,50,000/-, the respondent 2 and 5 being daughters of the deceased are entitled to a sum of Rs.57,000/- each and the respondents 3 and 4 being the sons of the deceased are entitled to a sum of Rs.1,10,000/- each. The learned counsel appearing for the appellant/Insurance Company has submitted that they have already deposited 75% of the amount awarded by the Tribunal. Therefore, the appellant/Insurance Company is directed to deposit the balance amount along with interest and costs, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the respondents 1 to 5/claimants are permitted to withdraw their respective shares from the modified award amount along with proportionate interest and costs, after adjusting the amount if any, already withdrawn. The appellant/Insurance Company is permitted to withdraw the excess amount, if any lying in the deposit to the credit of M.C.O.P.No.170 of 2016, if the

entire award amount has already been deposited by them. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

kj/rst

To

The Special Subordinate Judge
(Motor Accident Claims Tribunal),
Tiruvannamalai.

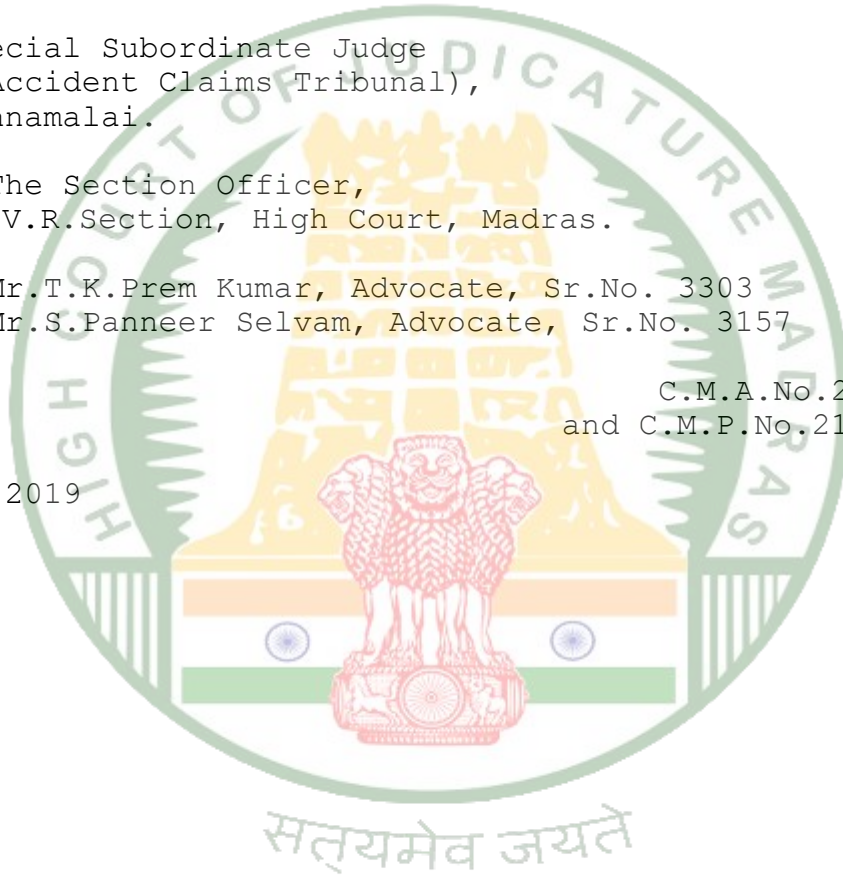
Copy To: The Section Officer,
V.R.Section, High Court, Madras.

+1 cc to Mr.T.K.Prem Kumar, Advocate, Sr.No. 3303

+1 cc to Mr.S.Panneer Selvam, Advocate, Sr.No. 3157

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MP(CO)
CSL/27.05.2019



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