

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.01.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3102 of 2018
and C.M.P.No.23573 of 2018

The United India Insurance Co. Ltd.,
Tirupur.

.. Appellant / 3rd Respondent

Vs.

1.Veni
2.Minor Ravivarma
3.Lakshmi

.. Respondents 1 to 3 /
Claimants

4.V.Anburaja
5.S.K.M.Dyeings,
Poosarikottam, Karuvampalayam,
Tirupur.

(Minor 2nd respondent rep. By his
mother and next friend, 1st respondent)

.. Respondents 4 and 5 /
Respondents 1 & 2

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, against the judgment and decree dated 13.07.2014 made in M.C.O.P.No.994 of 2001 on the file of the I Additional District Court, Fast Track Court No.5, (Motor Accident Claims Tribunal), Coimbatore, Tirupur.

For Appellant : Mr.S.Arun Kumar

J U D G M E N T

The Civil Miscellaneous Appeal is filed challenging the quantum of compensation granted by the award dated 13.07.2014 made in M.C.O.P.No.994 of 2001 on the file of the I Additional District Court, Fast Track Court No.5, (Motor Accident Claims Tribunal), Coimbatore, Tirupur.

2.The appellant is the 3rd respondent in M.C.O.P.No.994 of 2001 on the file of the I Additional District Court, Fast Track Court No.5, (Motor Accident Claims Tribunal), Coimbatore, Tirupur. The respondents 1 to 3 filed the said claim petition, claiming a sum of Rs.4,50,000/- as compensation for the death of

one R.Sethuraman, husband of the 1st respondent, father of the 2nd respondent and son of the 3rd respondent, who died in the accident that took place on 20.10.2001.

3. According to the respondents, on 20.10.2001, while he was walking on the extreme left side of the road, a Matador van bearing Registration No. TN 39 0168, belonging to the 5th respondent, driven by the 4th respondent in a rash and negligent manner, came in opposite direction and dashed against the deceased pedestrian. Due to the said impact, the deceased sustained grievous injuries on his head and he died in the hospital. The accident had occurred only due to rash and negligent driving by the 4th respondent, driver of the Matador van belonging to the 5th respondent. The deceased was aged 28 years at the time of accident and was a dyeing master and earning a sum of Rs.4,750/- per month.

4. The appellant-Insurance Company filed counter statement and denied all the averments made by the respondents 1 to 3. According to the appellant, 4th respondent, driver of the Matador van belonging to 5th respondent and insured with them, drove the vehicle with due care and caution, observing traffic rules and regulations. The accident occurred only due to the negligent act of the deceased. Hence, the appellant is not liable to pay any compensation to the respondents 1 to 3 and the amounts claimed by the respondents 1 to 3 are exorbitant and excessive. Hence, prayed for dismissal of the claim petition.

5. Before the Tribunal, the respondents 1 to 3 examined the 1st respondent as P.W.1 and examined 3 others as P.Ws.2 to P.W.4 and marked 8 documents as Exs.P1 to P8. On behalf of the appellant, no oral and documentary evidence was let in.

6. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred solely due to the rash and negligent driving by the 4th respondent, driver of the Matador van belonging to the 5th respondent and insured with the appellant-Insurance Company and awarded a sum of Rs.7,22,000/- as compensation to the respondents 1 to 3 and directed the appellant as well as the respondents 4 & 5 to pay the same jointly and severally.

7. Challenging the quantum of compensation granted by the Tribunal by the award dated 13.07.2014 made in M.C.O.P.No.994 of 2001, the appellant-Insurance Company has filed the present Civil Miscellaneous Appeal.

8. The learned counsel appearing for the appellant contended that the Tribunal erred in awarding a huge sum of Rs.7,22,00/- as compensation, inspite of Rs.4,50,000/-, claimed by the

respondents 1 to 3. In the absence of any documentary evidence to prove that the deceased was a skilled labour earning Rs.4,750/- per month, the Tribunal ought not to have believed the contention of the respondents 1 to 3 that the deceased was earning Rs.4,750/- per month, merely relying on the oral evidence of P.W.1 to P.W.3. The Tribunal without properly appreciating the evidence on record, awarded the amounts on the higher side. Therefore, he prayed for setting aside the award passed by the Tribunal.

9.I have heard the learned counsel for the appellant and perused all the materials available on record.

10.From the materials on record, it is seen that the deposition of P.W.1 to the effect that the deceased was earning Rs.4,750/- per month was not disproved in the cross examination by the appellant. P.W.3, employer of the deceased also deposed to that effect and marked Ex.P7, salary certificate to prove the monthly income of the deceased. The Tribunal considering these oral and documentary evidence, fixed the monthly income of the deceased at Rs.4,750/-, applying the multiplier of '18', for the deceased who was aged 28 years at the time of accident, which was proved by the postmortem certificate, marked as Ex.P2 and deducting 1/3rd towards the personal expenses of the deceased, granted a sum of Rs.6,84,000/- [Rs.4,750/- x 12 x 18 x 2/3] towards loss of income. The Tribunal has awarded a sum of Rs.20,000/- towards loss of love and affection to the respondents 1 and 2, Rs.5,000/- towards loss of love and affection to the 3rd respondent, a sum of Rs.10,000/- towards loss of consortium to the 1st respondent and a sum of Rs.3,000/- towards funeral expenses. The Tribunal after considering both the oral and documentary evidence, awarded a total sum of Rs.7,22,000/- as compensation to the respondents 1 to 3/claimants. In my considered opinion, the compensation awarded by the Tribunal is just and reasonable. It is well settled that the Tribunal and Courts must award just compensation and can award more compensation than claimed in the claim petition. In the above circumstances, this Court is not inclined to interfere with the award passed by the Tribunal.

11.Accordingly, the award passed by the Tribunal is hereby confirmed and the Civil Miscellaneous Appeal is dismissed. The Appellant-Insurance Company as well as the respondents 4 & 5 are directed to deposit the award amount jointly and severally, 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 respondents 1 & 3 are permitted to withdraw their share of the award amount along with proportionate interest and costs, after adjusting the amount already withdrawn, if any, by making

necessary applications before the Tribunal. The share of the minor 2nd respondent is directed to be deposited in any of the Nationalized Bank, till he attains majority. The 1st respondent/mother of the minor 2nd respondent is permitted to withdraw the interest, once in three months for the welfare of the minor 2nd respondent. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

gsa

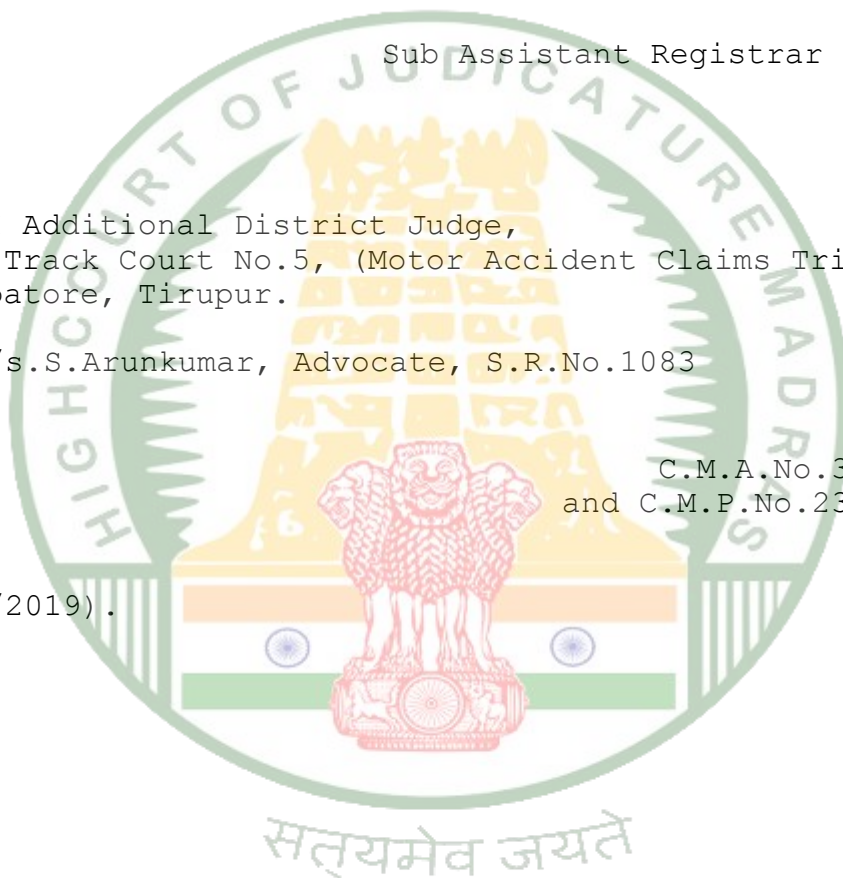
To

The I Additional District Judge,
Fast Track Court No.5, (Motor Accident Claims Tribunal),
Coimbatore, Tirupur.

+1cc to M/s.S.Arunkumar, Advocate, S.R.No.1083

C.M.A.No.3102 of 2018
and C.M.P.No.23573 of 2018

SJ(CO)
SSM(02/04/2019).



WEB COPY