



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.02.2019

CORAM

WEB COPY

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
and
THE HONOURABLE MRS.JUSTICE R.THARANI

C.M.A. (MD) .Nos.423 to 426 of 2018
and
C.M.P. (MD) .Nos.5296, 9146, 5297, 5298 and 5299 of 2018

The Branch Manager,
United India Insurance Company Limited,
No.61/2694, South Main Road,
Thanjavur. ... Appellant in all C.M.As.

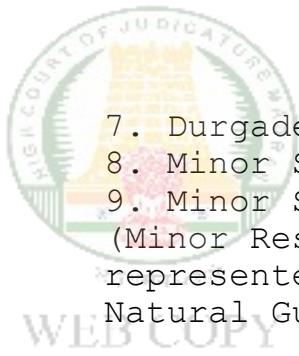
Vs.

1. Durgadevi
2. Minor Sivasankari
3. Minor Sivadharshini
Minor respondents 2 and 3 are represented
through their Mother and Natural Guardian
first respondent.
4. Muthukrishnan
5. Veeramuthu
6. Rengammal ... Respondents in C.M.A.(MD).No.423 of 2018

1. Cauveri
2. Minor Mathila
3. Minor Asaimathi
(Minor respondents 2 and 3 are represented
by their mother and natural guardian 1st
respondent.)
4. Rajamanickam
5. Anjalai
6. Muthukrishnan ... Respondents in C.M.A.(MD).No.424 of 2018

1. Sivakumar
2. Muthukrishnan ... Respondents in C.M.A.(MD).No.425 of 2018

1. Veeramuthu
2. Rengammal
3. Perumal
4. Viswanathan
5. Thiruppathi
6. Muthukrishnan



7. Durgadevi
8. Minor Sivasankari
9. Minor Sivadharshini
(Minor Respondents 8 & 9 are
represented by their mother and
Natural Guardian 7th Respondent)

... Respondents in C.M.A.(MD).No.426 of 2018

Prayer in C.M.A.No.423 of 2018:- Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 30.10.2017 made in M.C.O.P.No.832 of 2013 on the file of the Motor Accident Claims Tribunal, Additional District and Special Court, Pudukottai.

Prayer in C.M.A.No.424 of 2018:- Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 30.10.2017 made in M.C.O.P.No.58 of 2013 on the file of the Motor Accident Claims Tribunal, Additional District and Special Court, Pudukottai.

Prayer in C.M.A.No.425 of 2018:- Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 30.10.2017 made in M.C.O.P.No.686 of 2014 on the file of the Motor Accident Claims Tribunal, Additional District and Special Court, Pudukottai.

Prayer in C.M.A.No.426 of 2018:- Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 30.10.2017 made in M.C.O.P.No.728 of 2013 on the file of the Motor Accident Claims Tribunal, Additional District and Special Court, Pudukottai.

C.M.A.(MD).No.423 of 2018

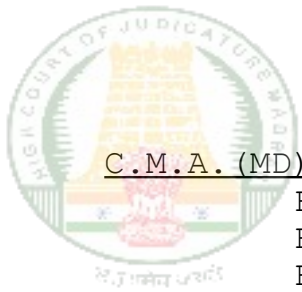
For Appellants	: Mr.G.Prabhu Rajadurai
For R1 to R3	: Mr.A.V.Rajasekaran
For R4 to R6	: Mr.K.N.Govardhanan

C.M.A.(MD).No.424 of 2018

For Appellants	: Mr.G.Prabhu Rajadurai
For R1 to R3	: Mr.P.Ganapathi Subramanian
For R4 & R5	: No appearance
For R6	: Mr.K.N.Govardhanan

C.M.A.(MD).No.425 of 2018

For Appellants	: Mr.G.Prabhu Rajadurai
For R1	: Mr.A.V.Rajasekaran
For R2	: Mr.K.N.Govardhanan



C.M.A. (MD).No.426 of 2018

For Appellants	: Mr.G.Prabhu Rajadurai
For R1 to R4	: Mr.C.M.Arumugam
For R5	: No appearance
For R6	: Mr.K.N.Govardhanan
For R7 to R9	: Mr.A.V.Rajasekaran

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

(Judgment of the Court was delivered by **K.KALYANASUNDARAM,J.**)

These appeals have been preferred by the Insurance Company against the common judgment and the award passed by the Motor Accident Claims Tribunal, Additional District and Special Court, Pudukottai made in M.C.O.P.Nos.832 of 2013, 58 of 2013, 686 of 2014 and 728 of 2013.

2. The facts in nutshell.

On 02.09.2012, the deceased Chinnadurai was driving his new Bajaj Pulsar Motorcycle, in which Ramesh @ Asaithambi and Sivakumar were the pillion riders. When the vehicle was proceeding near Kallakottai Government Higher Secondary School, at about 8.00 p.m., a Tractor bearing Registration No.TN 55 L 6693 was coming from opposite direction and hit against the motorcycle and in the impact, the rider of the two wheeler viz., Chinnadurai and the pillion rider viz., Ramesh @ Asaithambi died while Sivakumar sustained injuries. The wife and minor children of deceased Chinnadurai filed M.C.O.P.No.832 of 2013 seeking compensation of Rs.80,00,000/-, while the parents of the deceased Chinnadurai along with their sons filed a claim petition in M.C.O.P.No.728 of 2013 seeking compensation of Rs.99,00,000/-. The legal heirs of the deceased Ramesh @ Asaithambi filed M.C.O.P.No.58 of 2013 claiming compensation of Rs.20,00,000/-. The injured claimant filed M.C.O.P.No.686 of 2014 seeking compensation of Rs.5,00,000/-. The case of the claimants is that at the time of accident, the driver of the tractor came in a rash and negligent manner and dashed against the two wheeler.

3. The appellant filed a detailed counter disputing the manner of accident and the liability. It is further stated that the rider of the motorcycle was Grade-II Constable and since three persons were travelling in a two wheeler, they lost their balance and dashed against the tractor and hence, the claimants are not entitled for compensation.

4. The Tribunal upon consideration of the oral and documentary evidence came to the conclusion that the driver of the tractor was responsible for the accident and awarded compensation. Assailing the findings, these appeals have been preferred.



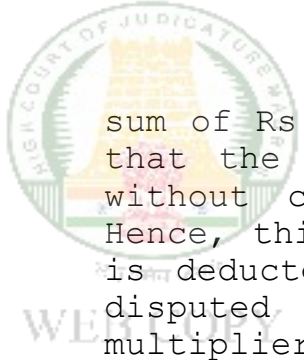
5. Heard both sides and perused the materials available on record.

6. In order to prove the negligence, Rengasamy, who witnessed the accident was examined as P.W.3 and he narrated the manner of accident in tune with the averments in the claim petitions. P.W.5 is the Inspector of Police. Ex.P1 / First Information Report shows a criminal case was registered against the driver of the tractor and a final report was filed against him under Ex.P24. Reports of the Motor Vehicle Inspector were marked as Ex.Nos.P11, 22 and 26. D.W.1 and D.W.2 were examined by the Insurance Company in support of their case that the rider of the motorcycle lost control of the vehicle and hit against the tractor. The Tribunal in Para - 8 of the judgment after thorough analysis, in our view, reached the right conclusion fixing negligence on the driver of the Tractor.

7. With regard to the quantum, the C.M.A.No.423 of 2018 is filed against the award of the Tribunal in M.C.O.P.No.832 of 2013 and the C.M.A.No.426 of 2018 is filed against the award of the Tribunal in M.C.O.P.No.728 of 2013. As stated supra, two claim petitions came to be filed for the death of Chinnadurai. One by the wife and children and another one by his parents and brothers. The Tribunal has awarded a sum of Rs.50,81,200/- as total compensation. The deceased was a Grade I Police Constable, his monthly salary was Rs.20,700/- and he died at the age of 34 years. Evidence of P.W.5 and Ex.P3 were relied upon to prove the age and salary of the deceased. On the basis of the evidence, the Tribunal has taken a sum of Rs.20,700/- as monthly income of the deceased and by adding Rs.10,350/- (50%) towards future prospects, taken the income as Rs.31,050/-, from which $1/4^{th}$ is deducted towards his personal and living expenses. After deducting $1/4^{th}$, contribution to the family comes to Rs.31,050/-. It is not in dispute that the deceased was 34 years old on the date of accident and the proper multiplier is '16'. The Tribunal by applying multiplier '16' awarded Rs.44,71,200/- towards loss of income. As per the decision of the Hon'ble Supreme Court in the case of **National Insurance Company Limited vs. Pranay Sethi** and others reported in (2017) 16 SCC 680, Rs.70,000/- has to be awarded for conventional damages. Hence, the claimants are entitled for Rs.45,41,200/- (Rs.44,71,200/- + Rs.70,000/-).

8. In view of the above finding, the award is reduced from Rs.50,81,200/- to Rs.45,41,200/-. Out of the award amount, the mother is entitled for Rs.5,00,000/-, the father is entitled for Rs.3,60,000/-, the minor children are entitled for Rs.12,00,000/- each and the wife is entitled for Rs.12,81,200/-. In fine, the appeal is partly allowed and the award is modified as stated above.

9. The C.M.A.No.424 of 2018 is filed against the award of the Tribunal in M.C.O.P.No.58 of 2013. The Tribunal has awarded a sum of Rs.14,78,000/- as total compensation. The Tribunal has taken a



sum of Rs.6,000/- as monthly income of the deceased. P.W.6 deposed that the deceased was earning Rs.10,000/- p.m. but the Tribunal without considering the same, fixed the income as Rs.6,000/-. Hence, this Court takes the income as Rs.10,000/-, from which 1/4th is deducted towards his personal and living expenses. It is not disputed that the age of the deceased was 30 and the proper multiplier is '17'. After deducting 1/4th, loss of income comes to Rs.10,000/- x 12 x $\frac{3}{4}$ x 17 = 15,30,000/-. As per the decision of the Hon'ble Supreme Court in the case of **National Insurance Company Limited vs. Pranay Sethi** and others reported in (2017) 16 SCC 680, Rs.70,000/- has to be awarded for conventional damages. Hence, the claimants are entitled for Rs.16,00,000/-. It is settled law that the Court has to award just compensation. In the result, the award of Rs.14,78,000/- is enhanced to Rs.16,00,000/-. Out of this amount, the mother is entitled for Rs.2,00,000/-, the father is entitled for Rs.1,00,000/-, the wife is entitled for Rs.5,00,000/- and the minor children are entitled for Rs.4,00,000/- each.

10. The award passed by the Tribunal in M.C.O.P.No.686 of 2014 is confirmed, in view of the fact that the claimant had sustained injuries and the Tribunal relying on evidence of P.W.4 and Ex.P21 awarded Rs.33,600/-.

11. For the foregoing reasons, the award of the Tribunal is modified in C.M.A.Nos.423, 426 and 424 of 2018 and the award of the Tribunal is confirmed in C.M.A.No.425 of 2018. The award shall carry interest at the rate of 7.5%.

12. It is represented that the Insurance Company has deposited the original award amount and the balance amount will be deposited by the Insurance Company within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the major claimants are permitted to withdraw their share together with interest and the share of the minor claimants shall be deposited in the Indian Bank, High Court Branch, Madurai, till they attain majority. It is made clear, if any excess amount is deposited by the Insurance Company, the same shall be returned to them. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar (CS)

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To
The Managing Director,
Tamil Nadu State Transport Corporation,
Division II, Periyamilaguparai,
Trichy.

Copy to
The Section Officer,
V.R.Section, Madurai Bench of Madras High Court,
Madurai. (2 copies)

+3CC TO MR.C.M.ARUMUGAM, Advocate Sr. No.50722
+1CC TO MR.A.V.RAJASEKARAN, Advocate Sr. No.50709
+4CC TO MR.G.PRABHU RAJADURAI, Advocate Sr. No.50408 TO 50411

C.M.A. (MD) .Nos.423 to 426 of 2018
27.02.2019

TR (16.04.2019) 6P 12C