WEB COPY

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED : **15.04.2019**

CORAM

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

**C.M.A.(MD).No.598 of 2018**
**and**
**C.M.P.(MD).No.6910 of 2018**

The New India Assurance Company Limited,
Through its Branch Manager,
Office at No.200-F, First Floor,
Panchayat Union Road,
Valliyoor, Tirunelveli District. ... Appellant / 2nd Respondent

Vs.

1.Vijila Esther Janet
2.Priya Esther
3.Freeda Merline
4.Minor Jubal Augustin Jebakumar ... Respondents 1 to 4/
Petitioners 1 to 4

(Minor represented through his mother
and next friend the 1st respondent)

Esther (Died)
5.Ganesan ... 5th Respondents/1st Respondent

**Prayer:-** Civil Miscellaneous Appeals are filed under Section 173 of the Motor Vehicles Act, 1988, to setaside the decree and judgment dated 08.03.2018 made in M.C.O.P.No.981 of 2017, on the file of the I Additional District Judge, Tirunelveli.

For Appellant : Mr.A.Ilango
For R-1 to R-4
for Caveator : Mr.V.Sasikumar
For R-5 : No Appearance

**J U D G M E N T**

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

This Civil Miscellaneous Appeal is preferred by the Insurance Company against the judgment passed in M.C.O.P.No.981 of 2017, by the learned Motor Accidents Claims Tribunal / I Additional District Judge, Tirunelveli.

https://hcservices.ecourts.gov.in/hcservices/

**2.** The brief facts of the case are as follows:-

WEB COPY

**2.1.** The wife and the minor children of the deceased Gnanaraj Christopher filed a Claim Petition seeking compensation of Rs.75,00,000/-. According to the claimants, on 12.03.2017, the deceased was riding his motorcycle bearing Registration No.TN.72 AV 3637 from North to South direction on Donavoor-Eruvadi Main Road and when he was nearing Suriyapuram, a Swaraj Mazda Lorry bearing registration No..TN 76 D 4851 which belongs to the fifth respondent and insured with the appellant came from the opposite direction in a very high speed and dashed against the deceased, as a result of which, the deceased was thrown away and sustained multiple fractures and injuries all over the body. Immediately, he was taken to Thiraviam Hospital at Nagercoil and he took treatment as inpatient from 12.02.2017 to 24.03.2017. Thereafter, he was taken to KIMS Hospital at Thiruvandrum, where he was succumbed to injuries on 22.04.2017.

**2.2.** The appellant / Insurance Company resisted the Claim Petition by filing a detailed counter stating that the Claim Petition is not maintainable in law. The appellant / Insurance Company has also disputed the age, nature of work and earning of the deceased. It is the specific case of the appellant that the driver of the fifth respondent was not having a valid driving license at the time of the accident and hence, he was only responsible for the accident and therefore, the Insurance Company is not liable to pay the compensation.

**2.3.** In order to fortify the case, the claimants examined three witnesses as P.W.1 to P.W.3 and marked Ex.P.1 to Ex.P.21. On the side of the appellant, two witnesses are examined as R.W.1 and R.W.2 and Ex.R.1 to Ex.R.3 were marked. Ex.X-1 is the report of the Driving License of the fifth respondent.

**2.4.** The Tribunal, upon consideration of the oral and documentary evidence held that the driver of the lorry was responsible for the accident and awarded compensation of Rs.30,19,000/- together with interest at 6.75% per annum. Aggrieved over the same, the present Appeal has been filed by the Insurance Company.

**3** .Heard Mr.A.Ilango, learned counsel appearing for the appellant and Mr.V.Sasikumar, learned counsel appearing for the respondents 1 to 4.

**4.** Mr.A.Ilango, learned counsel appearing for the appellant would argue that the Tribunal has erroneously fixed the notional income of the deceased at Rs.9000/-, when there is no material to prove that the deceased was running a Grocery Shop. He would further argue that the award amount of Rs.15,16,500/- towards medical expenses is exorbitant and excessive.

https://hcservices.ecourts.gov.in/hcservices/

**5.** Per contra, Mr.V.Sasikumar, learned counsel, appearing for the respondents 1 to 4 submitted that the award of the Tribunal is

WEB COPY

fair and reasonable, which does not warrant any interference of this Court.

**6.** In the case on hand, the deceased Gnanaraj Christopher died in the motorcycle accident occurred on 12.03.2017 is not in dispute. The claimants by examining P.W.2, as an eye-witness to this case and by marking Ex.P.1-First Information Report, stated that the Driver of the Swaraj Mazda Lorry was responsible for the accident. Ex.P.10-Final Report shows that the charge sheet has been laid against the driver of the Swaraj Mazda for the offences under Sections 279 and 304 (A) I.P.C. The Tribunal accepting the evidence referred above in our considered view, has rightly come to the conclusion that the fifth respondent was negligent at the time of the accident.

**7.** The first claimant as P.W.1 deposed before the Tribunal that her husband took treatment as inpatient in Thiruviam Hospital at Nagercoil and thereafter, at KIMS Hospital at Thiruvandrum from the date of the accident i.e., 12.03.2017 and till he died on 22.04.2017. Ex.P.5 is the medical bills and Ex.P.17 to Ex.P.19 are X-Ray, CT Scan Report and MRI Scan report of the deceased. Ex.P.5 shows that the claimant has spent Rs.15,16,500/- towards the medical expenses.

**8.** According to P.W.1, her husband had completed a Diploma Course in Motor rewinding in the year 1990 and he was issued with a Diploma Certificate for Air Conditioning and Refrigeration by Gemini Institute of Engineering Technology and he was in abroad for three years and earning Rs.50,000/- per month. On the date of accident, he was in India and doing grocery business, but no documentary evidence was produced to prove the income of the deceased.

**9.** The Tribunal fixed notional income at Rs.9,000/- per month and added 25% towards future prospectus and by applying Multiplier '14', (Rs,11,250x12x14x3/4), has awarded a sum of Rs.14,17,500/-. towards Loss of Income.

**10.** After considering the oral and documentary evidence, we are of the opinion that it would be appropriate to fix the notional income at Rs.7,500/- and to add 25% towards future prospectus, thereby, the income is arrived at (Rs.7500+Rs.1875)=Rs.9,375/- from which 1/4$^{th}$ is deducted towards personal expenses (Rs.9375-2343) and hence the contribution would be Rs.7,032/-. Considering the age of the deceased, this Court applies Multipler '13' and awards Rs.10,96,992/- (Rs.7032x12x13) towards Loss of Dependency. This Court awards a sum of Rs.40,000/- towards Loss of Consortium. The award of Rs.40,000/- towards funeral expenses is hereby reduced to Rs.15,000/-. This Court confirms the award of Rs.15,000/- towards Loss of Estate and another sum of Rs.15,000/- towards transportation. The Tribunal has already awarded Rs.15,16,500/- towards Medical expenses based on Ex.P.5 and the same is confirmed

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

**11**. In fine, the claimants would be entitled for Rs.26,98,492/- as compensation along with the interest at 7.5%. which is rounded off to Rs.27,00,000/-. Out of the modified compensation amount, the first respondent is entitled for Rs.12,00,000/- and the children of the deceased are entitled for Rs.5,00,000/- each.

**12**. It is represented by the learned counsel appearing for the appellant that the entire award amount has been deposited and the claimants were also permitted to withdraw 50% of the award amount. In view of the disposal of the appeal, the claimants are permitted to withdraw their share along with proportionate interest and costs. The share of the minor claimant / fourth respondent shall be deposited in the Indian Bank, High Court Branch, Madurai, till he attains majority. It is made clear, if any excess amount is deposited by the Insurance Company, the same shall be returned to them.

**13**. Accordingly, this Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-I)

// True Copy //

Sub Assistant Registrar(CS)

tsg

To
1.The I Additional District Judge, Tirunelveli.
2.The Manager, Indian Bank, High Court Branch,
Madurai.

COPY TO
The Record keeper,
Madurai Bench of Madras High Court,
Madurai.(2 COPIES)

+1CC TO MR.V.SASI KUMAR, Advocate Sr. No. 61077

**C.M.A.(MD).No.598 of 2018**
**15.04.2019**

DB(CO)
TR (10.06.2019) 4P 6C

https://hcservices.ecourts.gov.in/hcservices/