

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.07.2020

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THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No.1884 of 2009

and

M.P.No.1 of 2009

(Through Video Conferencing)

National Insurance Co. Ltd.,
Kumbakonam,
No.62, T.S.R.Big Street,
Kumbakonam. ... Appellant/2nd Respondent

Vs.

1.V.R.Karthikeyan (died) ...R1/Petitioner

2.S.Viswanahan ...2nd Respondent/
1st Respondent

3.Mangalam

4.Vimala

5.Minor Devikash
rep. by next friend and mother Vimala
.... Respondents 3 to 5/
Proposed Respondents 3 to 5

[Third to Fifth respondents brought on record as LRS of
the deceased 1st respondent vide order dated 28.07.2020
(today), made in C.M.P.Nos.6594, 6600 and 6635 of
2020.]

Civil Miscellaneous Appeal filed under Section 173 of Motor
Vehicles Act, 1988, against the award and decree dated
21.03.2005 made in O.P.No.643 of 2003 on the file of the Motor
Accidents Claims Tribunal and Additional District Court (Fast
Track Court No.5), Ariyalur.

For appellant : Mr.S.Arunkumar

J U D G M E N T

The Insurance Company is the appellant. It is aggrieved by the impugned Judgment and Decree dated 21.03.2005 passed by the Motor Accidents Claims Tribunal and Additional District Court (Fast Track Court No.5, Ariyalur, in M.C.O.P.No.643 of 2003.

2. By the impugned Judgment and Decree, the Tribunal has awarded a sum of Rs.7,89,000/- as compensation together interest at 9% from the date of the claim petition till the date of deposit, payable by the appellant Insurance Company, to the 1st respondent/claimant for injury suffered by him in a motor accident.

3. Aggrieved by the same, the appellant Insurance Company has filed this Civil Miscellaneous Appeal. During the pendency of this appeal, the 1st respondent, who was the sole claimant before the Tribunal, died. Therefore, the 3rd to 5th respondents were impleaded vide order dated 28.07.2020 (today) of this Court in C.M.P.Nos.6594, 6600 and 6635 of 2020 as his legal representatives. Though the notice ought to have been sent to the 3rd to 5th respondents, who were impleaded as legal representatives of the 1st respondent/claimant, I find no necessity for the same as a portion of the award amount has been already disbursed and considering the fact that the appeal filed by the appellant Insurance Company is liable to be dismissed.

4. The brief facts of this case are that on 19.01.2002, when the 1st respondent/ claimant (since deceased) was driving a motorcycle (Hero Honda) bearing registration No.TN-46-B-0517 on the Jeyamkondam to Kumbakonam main road, a Mahindra Van bearing registration No.TN-46-A-5711 belonging to the 2nd respondent insured with the appellant Insurance Company coming from the opposite direction, driven by its driver in a rash and negligent manner, hit the 1st respondent/claimant (since deceased). As a result of the accident, the 1st respondent/claimant (since deceased) sustained multiple injuries.

5. Therefore, the 1st respondent/claimant (since deceased) filed a claim petition. After considering the evidence on record, the Tribunal has awarded the aforesaid compensation to the the 1st respondent/claimant (since deceased).

6. In this appeal, the appellant Insurance Company has challenged the impugned Judgment and Decree on the ground that the amount awarded to the 1st respondent/claimant (since deceased) was exorbitant based on 54% disability though the 1st respondent/claimant (since deceased) has failed to prove the loss of earning.

7. It is submitted that the Tribunal also erred in applying multiplier under Section 163-A of the Motor Vehicles Act, 1988 when the claim petition was made under Section 166 of the Act. It is submitted that the impugned Judgment and Decree is unsustainable as per the decision of the Hon'ble Supreme Court in M.V.Jayadevappa Vs. Oriental Fire and General Insurance Company Limited, reported in 2005 (1) TN MAC 511 and the decision of this Court in United India Insurance Co. Ltd. Vs. Veluchamy and Another, reported in 2005 (1) CTC 38.

8. I have considered the arguments advanced by the learned counsel for the appellant. I have also perused the evidence on record and the impugned Judgment and Decree passed by the Tribunal.

9. The facts of the case are that the 1st respondent/claimant (since deceased) had filed the claim petition under Section 166 of the Motor Vehicles Act, 1988, in respect of the accident which resulted in the injury suffered by the 1st respondent/claimant (since deceased). As per deposition of P.W.4 Doctor, the 1st respondent/claimant (since deceased) sustained grievous injuries, i.e., in his right tibia bone fractured and dislocated, as a result of which, movement of the limb bone of his leg was reduced by 70% and movement of tarsal of the leg was reduced by 35% and 5 metatarsals were also broken. Considering the above, the Tribunal has awarded the compensation under the following heads:-

Heads and Calculation	Amount of compensation
Partial permanent disability	Rs. 54,000/-
Transport	Rs. 40,000/-
Medical expenses	Rs.2,55,000/-
Pain and sufferings	Rs. 10,000/-

Heads and Calculation	Amount of compensation
Nourishment	Rs. 10,000/-
Mental agony	Rs. 10,000/-
Special incentive for loss of matrimonial life	Rs. 10,000/-
Loss of future earning	Rs. 40,000/-
Loss of income (3,000 x 12 x 10)	Rs.3,60,000/-
Total	Rs.7,89,000/-

10. Considering the nature of the injury and considering the calculation given by the Tribunal, the Tribunal has come a right conclusion that the 1st respondent/appellant (since deceased) was entitled to receive a sum of Rs.7,89,000/- as compensation. I therefore do not find any merits in this appeal to interfere with the impugned Judgment and Decree. The impugned order had permitted the 1st respondent/claimant (since deceased) to withdraw a sum of Rs.3,89,000/- and interest thereon. It was informed that already the aforesaid amount was withdrawn by the 1st respondent/1st claimant (since deceased) during his life time.

11. Therefore, if the appellant Insurance Company has not deposited the balance amount of compensation awarded by the Tribunal, it is directed to deposit the same together with interest as directed by the Tribunal, less any amount already deposited, within a period of six weeks from the date of receipt of a copy of this Judgment.

12. On such deposit of Rs.4,00,000/- (7,89,000 - 3,89,000), the legal representatives of the 1st respondent/claimant who were impleaded vide order dated 28.07.2020 (today) as the 3rd to 5th respondents, are entitled to receive the compensation awarded to 1st respondent/claimant (since deceased) in the following proportion:-

- i. The 3rd respondent-mother of the deceased (1st respondent/claimant) be and hereby is entitled to receive a sum of Rs.75,000/- together with interest thereon.
- ii. The 4th respondent-wife of the deceased (1st respondent/claimant) be and hereby is entitled to

receive a sum of Rs.1,25,000/- together with interest thereon.

iii. The 5th respondent-son of the deceased (1st respondent/claimant be and hereby is entitled to receive a sum of Rs.2,00,000/- together with interest thereon.

13. The 3rd and 4th respondents are permitted to withdraw their shares together with interest accrued thereon, by filing suitable application before the Tribunal. Since the 5th respondent is minor, his share shall be deposited in anyone of the Nationalised Bank under reinvestment scheme till he attains age of majority. The 3rd respondent being the guardian of the minor 5th respondent, she is permitted to withdraw the accrued interest from the minor's deposit once in three months directly from the said Bank. On attaining majority, the 5th respondent may be permitted to withdraw his share, by filing suitable application before the Tribunal.

14. This Civil Miscellaneous Appeal stands dismissed accordingly. No cost.

-s/d-
Assistant Registrar

True Copy
Sub-Assistant Registrar

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To:

The Motor Accidents Claims Tribunal and
Additional District Court, (Fast Track Court No.5),
Ariyalur.

2. The Section Officer, सत्यमेव जयते
VR Section
High Court Madras

+1 cc to Mr.S.Arunkumar Advocate sr25696

C.M.A.No.1884 of 2009
and M.P.No.1 of 2009

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