

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.07.2020

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.861 of 2012

and

M.P.No.1 of 2012

The New India Assurance Co. Ltd.,
490 A First Floor, Avinashi Road,
(Near Nava India), Peelamedu,
Coimbatore ... Appellant/ 3rd respondent

..Vs..

1.Mettilda
2.K.V.Mathew
3.Nisha ...respondents/ petitioners
4.A.Suresh ...Respondent/ I Respondent
5.V.Rukmani ...Respondent/ II Respondent

6.The Oriental Insurance Company Limited,
707, Suguna Buildings,
II Floor, Avinashi Road,
Coimbatore ...Respondent/ 4th Respondent
(The fourth and fifth
respondents herein were the
first and second respondents
before the Tribunal and they
remained exparte before the
Tribunal. Hence, the summons to
the fourth and fifth respondents
herein may be dispensed with)

Prayer: Civil Miscellaneous Appeal filed under Section 173 of
the Motor Vehicles Act, 1988, against the decree and judgment
dated 30th day of September 2011 made in M.C.O.P.No.404 of 2010
on the file of the Motor Accident Claims Tribunal and First
Additional District Judge, Coimbatore.

For Appellant : Mr.K.Vinod
for Mr.El.Veera Ravindran
For Respondents 1 to 3 & 6 : No appearance
R4 & R5 - ex parte

J U D G M E N T

(This Appeal has been taken up for hearing through Video conferencing)

This Civil Miscellaneous Appeal has been filed by the Insurance company challenging the award dated 30.09.2011 passed by the Motor Accident Claims Tribunal (First Additional District Judge, Coimbatore) in MCOP No.404 of 2002.

Brief facts leading to the filing of this Appeal:

2. A person by name George Anish died on 27.10.2009, as a result of an accident caused by a private bus bearing Registration No.TN 39 AM 6977 owned by the 5th respondent and insured with the Appellant while he was riding his Hero Honda Splendor Plus motor cycle bearing registration No.KL 07 AW 3323. The legal representatives of the deceased George Anish namely respondents 1 to 3 preferred a claim before the Motor Accident Claims Tribunal seeking compensation for the death of George Anish as a result of the accident against the driver, owner of the bus and the insurance companies of both the bus and the motor cycle in MCOP.No.404 of 2010.

3. The Tribunal under the impugned award directed the Appellant insurance company who is the insurer of the bus to pay the claimants a sum of Rs.25,42,000/- together with interest and costs and exonerated the owner of the bus and the insurer of the motor cycle which was driven by the deceased.

4. Aggrieved by the award dated 30.09.2011 passed in MCOP No.404 of 2010, this appeal has been preferred by the insurance company who is the insurer of the bus.

5. Heard Mr.K.Vinod, learned counsel for the Appellant. There is no representation on the side of respondents 1 to 3 & 6. Respondents 4 & 5 were set exparte both before the Tribunal as well as before this Court.

6. The only ground raised by the Appellant in this appeal is that the compensation awarded by the Tribunal is excessive. They have not disputed the accident, nor have they disputed their liability to pay compensation. But they have disputed only the quantum of compensation awarded by the Tribunal. According to them, the Tribunal was wrong in assessing the annual income of the deceased which is inclusive of loss of future prospects at Rs.6,15,000/- p.a.. It is their case that the Tribunal ought not to have considered the performance pay of the deceased while calculating his annual income. According to the them, since the performance pay is fluctuating and varies, the same ought not to

have been considered by the Tribunal for assessing the annual income of the deceased. The same defence was raised before the Tribunal by the Appellant. The Tribunal has duly considered the defence raised by the Appellant and has observed that "the performance pay claimed by the claimants for the deceased is reasonable". Further the Tribunal has also considered Ex.P17, dated 25.06.2009, which is the compensation revision certificate issued by the employer and entitles the deceased to get performance pay. The employer has been examined as PW3, who himself has confirmed that the deceased is entitled for performance pay. Only based on the materials and evidence placed on record, the Tribunal has rightly assessed the annual income of the deceased.

7. Before the Tribunal, the claimants have filed 19 documents, which were marked as Ex.P1 to Ex.P19 and three witnesses were examined on their side viz., PW1, the mother of the deceased; PW2, an eyewitness to the accident and PW3, the employer of the deceased. On the side of the respondents 1 to 3, four documents were marked as Exs.R1 to R4 and one witness has been examined as RW1. No contra evidence has been produced by the Appellant to disprove the contention of the claimants that the deceased was entitled for performance pay as the claimants have established conclusively that the deceased was entitled to performance pay from his employer. The Tribunal has rightly included the performance pay for the purpose of calculating the annual income of the deceased. Therefore, the grounds raised in this appeal by the Appellant does not deserve any merit.

Conclusion:

8. Accordingly, this appeal shall stand dismissed. The Appellant Insurance Company is directed to deposit the Award amount together with interest from the date of claim till the date of deposit and costs as assessed by the Tribunal after deducting the amount already deposited to the credit of MCOP.No.404 of 2002 within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the respondents are permitted to withdraw the respective shares of award amount lying to the credit of MCOP.No.404 of 2010 along with accrued interest by filing an appropriate application. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar(AR I)

//True Copy//

Sub Assistant Registrar

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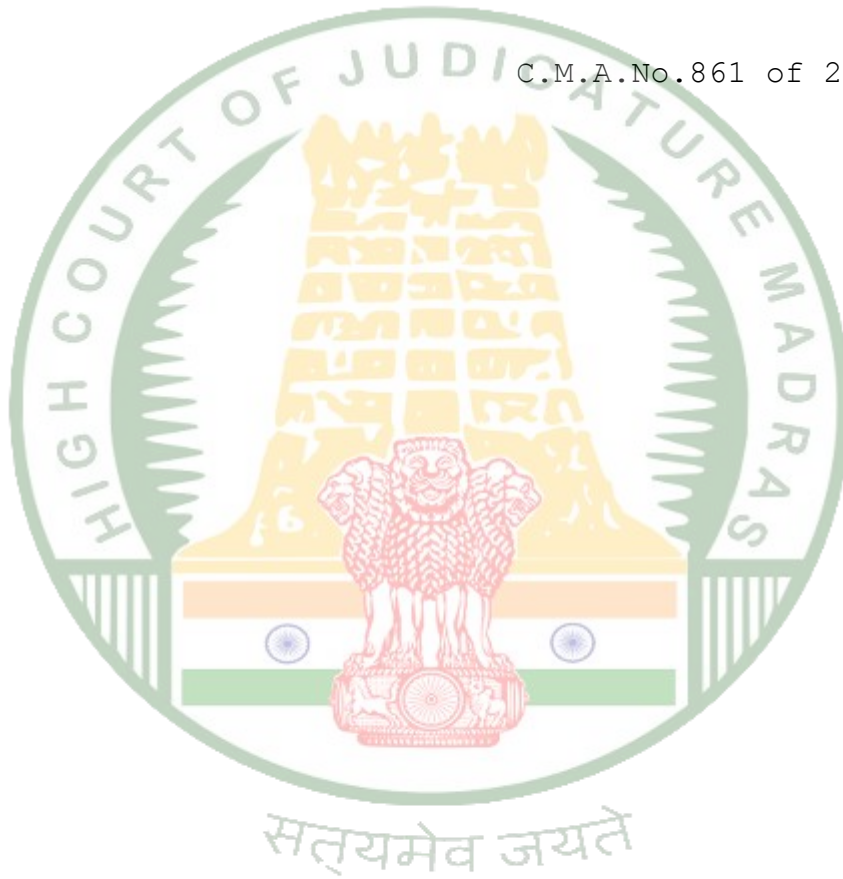
1. The I Additional District Judge,
Coimbatore

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The Section Officer
V.R.Section, High Court of Madras.

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