

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.07.2020

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.Nos.570 of 2013 & 507 of 2014

and

M.P.No.1 of 2013

C.M.A.No.570 of 2013

The New Indis Assurance Co. Ltd.,
Rathna Buildings, 231 TTK Road,
Alwarpet, Chennai - 18.

... Appellant

..Vs..

1.K.Kasthuri

2.P.Krishnamoorthy

3.Vetrivel Constructions (P) Ltd,

No.417-A, Anna Salai,

Nandanam, Chennai - 35

(3rd respondent ex parte in
Lower Court)

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgement and Decree in M.C.O.P.No.88 of 2010 dated 27.09.2012 on the file of the Motor Accident Claims Tribunal, II Additional District Court, Tiruvallur at Poonamallee.

For Appellant : Mr.M.B.Raghavan

For Respondents 1 & 2: Mr.K.Varadhakamaraj

R3 - ex parte

C.M.A.No.507 of 2014

1.K.Kasthuri

2.P.Krishnamoorthy

... Appellant

सत्यमेव जयते ..Vs..

1.Vetrivel Constructions (P) Ltd,

No.417-A, Anna Salai,

Nandanam, Chennai - 35

2.The New Indis Assurance Co. Ltd.,

Rathna Buildings, 231 TTK Road,

Alwarpet, Chennai - 18.

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgement and Decree in M.C.O.P.No.88 of 2010 dated 27.09.2012 on the file of the Motor Accident Claims Tribunal, II Additional District Court, Tiruvallur at Poonamallee.

For Appellants : Mr.K.Varadhakamaraj
For Respondent 2 : Mr.M.B.Raghavan
R1 - ex parte

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

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

C.M.A.No.570 of 2013 has been filed by the Insurance Company and C.M.A.No.507 of 2014 has been filed by the claimants. Both of them have challenged the same award dated 27.09.2012 passed by the Motor Accident Claims Tribunal, II Additional District Court, Poonamallee by its common award in MCOP.Nos.77, 80, 88, 89, 95 & 102 of 2010.

2. The Insurance company/Appellant in C.M.A.No.570 of 2013 has challenged the findings of negligence against them and they have also challenged the quantum of compensation assessed by the Tribunal. The claimants/Appellant in C.M.A.No.507 of 2014 has sought for enhancement of compensation.

3. Heard Mr.M.B.Raghavan, learned counsel for the Insurance Company and Mr.K.Varadhakamaraj, learned counsel for the claimants.

4. At the outset, the learned counsel for the insurance company would submit that relating to the same accident, in respect of some other claimants, the Division Bench of this Court by its common order dated 26.10.2017 passed in C.M.A.No.756, 757, 758, 759, 2077, 2098, 2099, 2100 & 2101 of 2013 confirmed the finding of negligence as against the vehicle insured with the Insurance Company.

5. The Tribunal under the impugned award has given a finding of negligence in the ratio 50:50 and fixed the negligence of the vehicle insured with the Insurance company at 50% and directed the Insurance company to pay 50% of the total compensation amount assessed by the Tribunal. In such circumstances, it has become necessary for this Court only to deal with the question as to whether the quantum of compensation

awarded by the Tribunal is a just compensation or not.

6. According to the Insurance Company, the loss of income fixed by the Tribunal at Rs.11,311/- is excessive. As seen from the impugned award, the Tribunal ought to have applied 17 multiplier for assessing the loss of dependency, considering the fact that the age of the deceased was 27 years at the time of the accident. But the Tribunal has erroneously applied 11 multiplier under the impugned award. The age of the deceased P.K.Arun was proved through Ex.P16 - postmortem certificate. No contra evidence has also been produced by the Appellant Insurance company to disprove the age of the deceased.

7. The Tribunal has awarded a sum of Rs.15,38,052/- together with interest and costs to the claimants for the death of P.K.Arun who was a bachelor at the time of the accident as detailed hereunder:

1.Loss of income	:	14,93,052
2.Loss of Love and affection	:	25,000
3.Transport expenses	:	10,000
4.Funeral expenses	:	10,000

		15,38,052

8. The Insurance company towards its 50% contributory negligence was directed to pay 50% of the assessed compensation amount to the claimants by the Tribunal.

9. Before the Tribunal, on the side of the claimants 36 documents were marked as Ex.P1 to Ex.P36. The age and salary details of the deceased has been duly proved as seen from the exhibits marked before the Tribunal. No contra evidence has been produced by the Insurance company to disprove the salary certificate namely Ex.P36 submitted by the claimants. However, the claimants have not produced the payment disbursement slip issued by the employer for having paid the monthly slip to the deceased at Rs.18,850/-. It has been a consistent stand of the Insurance Company that the deceased would not have earned Rs.18,850/- per month at the time of the accident. Therefore, the claimants ought to have produced the payment disbursement slip issued by the employer. The Tribunal however has deducted only 1/3rd towards personal expenses of the deceased, though as per settled law, the deceased being bachelor, the Tribunal ought to have deducted 50%.

10. Considering all these factors and taking an over all perspective of the matter, this court is of the considered view that the quantum of compensation awarded by the Tribunal under the impugned award is a just compensation. Therefore grounds raised by the Insurance Company and the claimants does not deserve any merit.

Conclusion:

11. Accordingly both these appeal are dismissed. The Appellant Insurance Company is directed to deposit 50% of 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.88 of 2010 within a period of four weeks from the date of receipt of a copy of this Common Judgment. On such deposit being made, the respondents are permitted to withdraw the award amount lying to the credit of MCOP.No.88 of 2010 along with accrued interest by filing an appropriate application. Consequently, connected miscellaneous petition is closed. No costs.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The IInd Additional District Court
Motor Accident Claims Tribunal
Tiruvallur at Poonamallee

Copy to:

The Section Officer

V.R.Section, High Court of Madras.

सत्यमेव जयते

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C.M.A.Nos.570 of 2013 & 507 of 2014

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