

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 24.08.2020	Pronounced on: 27.08.2020
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THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.M.A.No.373 of 2016

1.Lakshmi
2.Nandakumar
3.Nallammal

...Appellants/Claimants

/versus/

1.The Correspondent,
Star Matric & Higher Secondary School,
Periyamanali Post,
Tiruchengode -TK, Namakkal District.

(Notice to R1 may be dispensed with for
the set exparte before the Tribunal)

2.The Oriental Insurance Co. Ltd.,
KVA Complex 90-A, Thuraiyur Road,
Namakkal-637 001.

..Respondents/Respondents

Prayer: Appeal filed under Section 173 of the Motor Vehicles Act
against the Decree and Judgment in M.C.O.P.No.124 of 2014, dated
15.09.2015, on the file of the Motor Accidents Claims Tribunal,
Principal District Judge, Namakkal.

For Appellants : Mr.C.Paraneedharan
For R1 : Exparte
For R2 : Mr.J.Chandran

J U D G M E N T

(The case has been heard through video conference)

This appeal is for enhancement of compensation awarded
under the Motor Vehicles Act for the fatal accident of one
Natesan.

2. On 28/02/2013, near the Elementary School, Ambedkar
Nagar at Mallasamuthram, when Natesan was riding his TVS XL

moped bearing registration No. TN 34 P 5388. the driver of the School van bearing registration No. TN 34 P 4639 suddenly applied break without giving signal. Natesan dashed the back of the school van and fell down. He sustained severe head injury. On the way to hospital, he died. His wife, son and mother joined together to file claim petition seeking compensation of Rs.10 lakhs against the owner of the school van and its insurer.

3. The Insurance Company contested the claim on the ground that the accident occurred due to the negligence of the deceased. He without noticing the stationed van, rash and negligently dashed against the van and sustained the fatal injury. The van driver had no driving license thereby violated the policy condition. The assertion of the claimants that the deceased was 52 years and earning Rs.30,000/- as coolly in Summer India Textiles Ltd denied.

4. Before the Tribunal, on behalf of the claimants, the wife of the deceased was examined as PW-1. The occurrence witness was examined as PW-2 and a colleague of the deceased was examined as PW-3. Six exhibits Ex.P-1 to Ex.P-6 were marked through these witnesses. On behalf of the respondent, the Junior Assistant of RTO Office and the Deputy General Manager of the Insurance Company were examined as RW-1 and RW-2. Through these witnesses Ex.R-1 to Ex.R-4 documents were marked.

5. The Tribunal accepted the evidence of PW-2 in respect of accident and the rash driving of the first defendant's driver. For want of material evidence about the income and salary particulars, did not accept the evidence of PW-3 and fixed a notional income at Rs.4,500/-. After deducting 1/3rd towards personal income by applying multiplier 11 taking his age as 52 years, awarded Rs.3,96,000/- for loss of dependency and Rs.10,000/- towards love and affection and Rs.10,000/- towards consortium for the first claimant was awarded.

6. In the appeal, the learned counsel for the claimant submitted that, the evidence of PW-2 that the deceased was working along with him in Summer India Textile Ltd and earning Rs.30,000/- pm was not accepted by the Tribunal for flimsy reason. Apart from low fixation of income notionally, the Tribunal did not give any consideration of future prospect. The deceased was working in a Export Company and earning Rs.30,000/- in an average. He was 52 years at the time of the accident. For love and affection and for loss of consortium only Rs.20,000/- was awarded by the Tribunal without taking note of the suffering of the widow, mother and son. Hence sought for enhancement.

7. The learned counsel appearing for the Insurance Company submitted that, in fact the petition ought to have been filed only under Section 163 A and not under 166 of the MV Act. It was the deceased who dashed against a parked vehicle. Even

otherwise, the claimant failed to produce any document to show the deceased was working at a textile company and earning Rs.30.000/- pm. PW-2 did not produce any document that he was authorised to depose on behalf of the company or he is an employee of the said company. The Tribunal has rightly recorded that without any documentary evidence pertaining to the appointment, attendance register and acquaintance registers, the employment or income cannot be fixed based on the oral evidence. However the learned counsel for the respondent would fairly submit that in view of the subsequent judgments of the Hon'ble Supreme court, the claimants are entitled for future prospects at 10% and a higher Compensation for consortium, love and affection and other non conventional heads. Hence, a reasonable amount shall be fixed as per Pranay's Sethi case.

8. Considering the rival submissions and perusal of the records, this Court finds that the submission of the respondent counsel is fair and reasonable. The Tribunal award of Rs.4,21,000/- with 7.5 % interest is modified and enhanced as below:

Loss of dependency (4500 + 450 = 4950) x 2/3 x 12 x 11	Rs. 4,35,600
Transport and clothings	Rs. 10,000
Loss of consortium first claimant	Rs. 40,000
Loss of love and affection second and third claimants	Rs. 40,000
Funeral expenses	Rs. 15,000
Total	Rs.5,40,600/-

9. The award amount shall be apportioned by the claimants as below:

First claimant (wife) and second claimant (son) each Rs.2,50,000/-. The Third claimant (mother) Rs.40,600/-.The respondent insurer is directed to deposit the award amount with interest at the rate of 7.5% from the date of petition till the date of deposit within 8 weeks from today. The claimants are permitted to withdraw the award amount as per the proportion mentioned above.

10. In the result, the Civil Miscellaneous Appeal partly allowed with costs.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

rpl

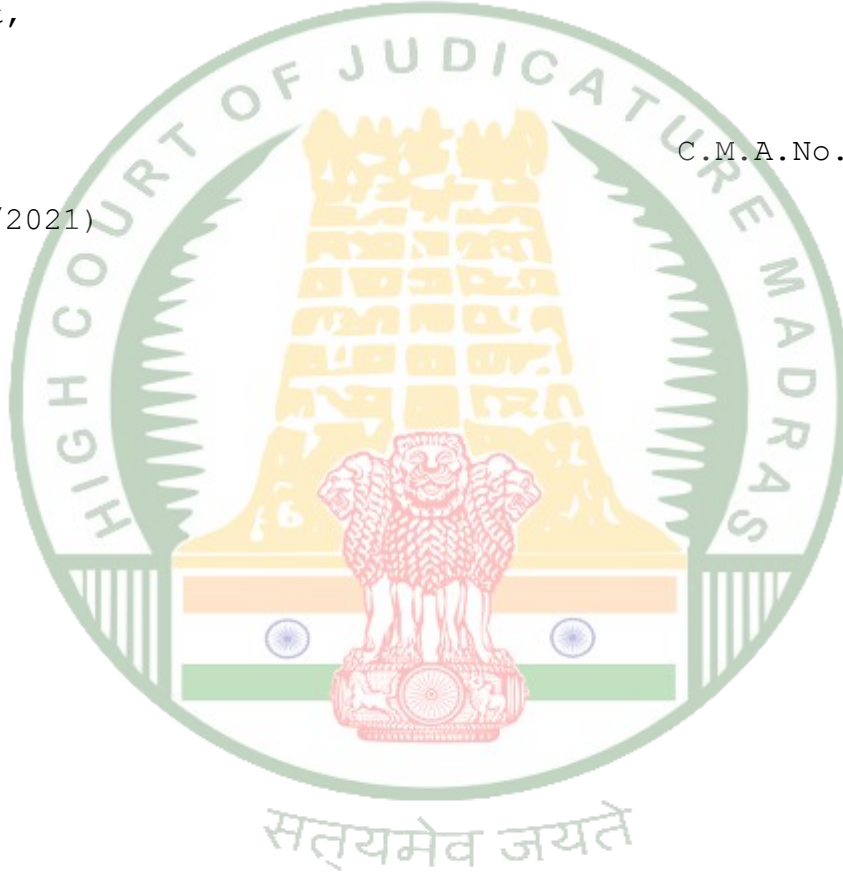
To

1.The Motor Accidents Claims Tribunal,
Principal District Judge,
Namakkal.

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

RSV (CO)
RMP (21/01/2021)

C.M.A.No.373 of 2016



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