



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.02.2020

CORAM:

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THE HONOURABLE **MRS. JUSTICE R. THARANI**

C.M.A. (MD) Nos. 929 and 1068 of 2017
and C.M.P. (MD) No. 10903 of 2017

C.M.A. (MD) No. 929 of 2017

1. Muthulakshmi
2. Jayalakshmi
3. Minor. Anu

(Minor petitioner through her mother and
next guardian first petitioner herein)

: Appellants/Petitioners

Vs.

1. Shaji Kumar
2. The Oriental Insurance Company Limited,
Through its Branch Manager, DDJ Centre,
first Floor, Opposite to Vadasery Bus Stand,
Nagercoil.

: Respondents/ Respondents

Prayer: This Civil Miscellaneous Appeal is filed by the claimants under Section 173 of Motor Vehicles Act, 1988, against the award made in M.C.O.P.No.677 of 2010 on the file of the Motor Accident Claims Tribunal, (First Additional District Judge), Tirunelveli, dated 17.06.2014.

For Appellants	: Mr.T.Selvakumaran
For R1	: No appearance
For R2	: Mr.C.Jawahar Ravindran

C.M.A. (MD) No. 1068 of 2017

The Branch Manager,
Oriental Insurance Company Limited,
DDJ Centre, first Floor, Opposite to Vadasery Bus Stand,
Nagercoil. : Appellant/2nd Respondent

Vs.



- 1.Muthulakshmi
- 2.Jayalakshmi
- 3.Minor.Anu

(Minor R3 rep. through her mother and
next friend first respondent)

: Respondents 1 to 3/Petitioners

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- 4.Shaji Kumar

: 4th Respondent/1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed by the Insurance Company under Section 173 of Motor Vehicles Act, 1988, against the award passed in M.C.O.P.No.677 of 2010 on the file of the Motor Accident Claims Tribunal, (First Additional District Judge), Tirunelveli, dated 17.06.2014.

For Appellant	: Mr.C.Jawahar Ravindran
For R1 to R3	: Mr.T.Selvakumaran
For R4	: No appearance

COMMON JUDGMENT

C.M.A(MD)No.929 of 2017 is filed by the claimants against the award passed in M.C.O.P.No.677 of 2010 on the file of the Motor Accident Claims Tribunal / First Additional District Judge, Tirunelveli, dated 17.06.2014. C.M.A.(MD)No.1068 of 2017, is filed by the Insurance Company against the same award. Both the appeals are against the same award and hence a common order is pronounced.

2. The claimants in M.C.O.P.No.677 of 2010 filed a petition praying for a compensation of Rs.10,00,000/- under Sections 166 and 140 of the Motor Vehicles Act.The Tribunal awarded a sum of Rs.2,95,000/-. Against which, the appellants/claimants preferred C.M.A.(MD) No.929 of 2017, for enhancement of the award amount and the Insurance Company filed C.M.A.(MD)No.1068 of 2017, to set aside the award.

3. Brief substance of the petition in M.C.O.P.No.677 of 2010 is as follows:

The deceased Natarajan @ Murugan aged about 65 years, was working as a Painting Contractor and was earning a sum of Rs.15,000/- per month. On 15.12.2009, at about 06.30 p.m. when the deceased was crossing the river bridge in his bicycle along the Tirunelveli - Madurai North by-pass road, the first respondent's lorry bearing Registration No.KL 02 C 1769 was driven by the driver in a rash and negligent manner and dashed against the bi-cycle. Due to the said impact, Natarajan @ Murugan died on the spot. A case in Crime No.177 of 2009 was registered against the driver. The



petitioners are the dependents of the deceased. The vehicle was insured with the second respondent and the petitioners prayed a sum of Rs.10,00,000/- towards compensation.

4. Brief substance of the counter filed by the first respondent in M.C.O.P.No.677 of 2010 is as follows:

The accident occurred due to the negligent driving of the deceased, who drove the bi-cycle along the centre of the road and that the accident was not due to the rash and negligent driving of the first respondent / driver.

5. Brief substance of the counter filed by the second respondent in M.C.O.P.No.677 of 2010 is as follows:

The accident was due to the rash and negligent driving of the deceased and not due to the negligence of the first respondent. The amount claimed is excessive. The policy is invalid and the petition is to be dismissed as against the second respondent.

6. Brief substance of the Additional counter filed by the second respondent in M.C.O.P.No.677 of 2010 is as follows:

There was no permit for the vehicle, during the return journey, the first respondent loaded the vehicle with blue metal crusher powder, which was purchased from M/s.Bharath Blue Metal industries and three units of the sand valued at Rs.300/- was purchased from M/s. M.K. Hallo Blocks that belonging to the proprietor S.V.Ajith.

7. After considering both sides, the Tribunal passed an award of Rs.2,95,000/-. Against which, the appellants / claimants have preferred C.M.A.(MD)No.929 of 2017. The Insurance Company has preferred C.M.A.(MD)No.1068 of 2017.

8. The case of the appellants/ claimants in C.M.A.(MD)No.929 of 2017 is that the age of the deceased was not correctly fixed by the Tribunal and the deceased was 65 years at the time of accident. It is stated that in calculating the loss of income instead of Rs.15,000/- per month, the Tribunal has fixed the monthly income only at Rs.4,500/- which is very low even at that time.

9. On the side of the appellant/Insurance Company in C.M.A.(MD) No.1068 of 2017, it is stated that the offending vehicle is a goods vehicle and was having permit only to receive load from Kerala and to drop the same in Tamilnadu and there was no permission to pickup or drop any goods en-route within the State and further, the vehicle in question was loaded with blue metal crusher powder without any permit. It is further stated that the deceased was 69 years old and the multiplier and the award passed by the Tribunal is highly excessive and hence, prayed that the award is to be set aside.



10. The vehicle was a goods carrier. Respondent has not produced any documents to prove that there was policy violations. The allegations raised by the appellant is not acceptable. Policy was in force. Hence, the liability fixed by the Tribunal is correct.

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11. The case was filed in the year 2010. At the time of death, the deceased was aged about 65 years and the income stated by the appellants was not proved by way of oral or documentary evidence. Only the quantum is being questioned by the appellants. The age of the deceased is stated as 65 years in the petition and 69 years in the F.I.R. Hence, Multiplier '5' as applied by the Tribunal is correct.

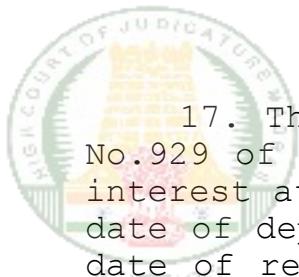
12. On the side of the claimants, it is further stated that Rs.25,000/- under the head of funeral expenses and Rs.50,000/- for loss of love and affection for the children and Rs.1,00,000/- towards loss of love and affection for the wife is to be included in the award amount. It is further stated that after deducting 1/3rd of the income from Rs.15,000/-, the deceased might have contributed Rs.10,000/- to the family members and 7 years loss of income must be calculated as Rs.8,40,000/-.

13. The notional monthly income of the deceased is modified as Rs.6000/- per month, the deceased might have spent 1/3rd of his salary for his own expenses and he might have contributed a sum of Rs.4,000/- to his family members. The total contribution is calculated as Rs.4,000/- X 12 X 5 = Rs.2,40,000/-. Hence, the loss of income is enhanced to Rs.2,40,000/-.

14. Towards funeral expenses, loss of love and affection, transport and other expenses and for loss of consortium the Tribunal has awarded a sum of Rs.1,20,000/-. Since, the deceased is having a wife and 2 daughters, this Court is inclined to modify the award towards the other heads as Rs.1,30,000/-. Hence, as a total this Court enhance the award amount from Rs.2,95,000/- into Rs.3,70,000/-.

15. Out of the total award amount (i.e.Rs.3,70,000/-), the first appellant is entitled for a sum of Rs.2,20,000/-, the second appellant is entitled for a sum of Rs.50,000/- and the minor third appellant is entitled for a sum of Rs.1,00,000/-. Hence, the Appeal in C.M.A.(MD)No.929 of 2017 is partly allowed and the award passed in M.C.O.P.No.677 of 2010 on the file of the Motor Accident Claims Tribunal, (First Additional District Judge), Tirunelveli, is modified.

16. In view of the decision made in C.M.A.(MD)No.929 of 2017, there is no merits in the appeal in C.M.A.(MD)No.1068 of 2017 and hence, C.M.A.(MD)No.1068 of 2017 is dismissed. No costs. Connected Miscellaneous Petition is closed.



17. The second respondent/Insurance Company Ltd., in C.M.A (MD) No.929 of 2017, is directed to deposit the award amount along with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit, with cost within a period of eight weeks from the date of receipt of a copy of this order, if not already deposited. On such deposit, the major claimants / appellants 1 & 2, in C.M.A (MD) No.929 of 2017, are permitted to withdraw their share without filing any formal permission petition before the Tribunal. The shares of the third appellant / minor claimant, in C.M.A (MD) No.929 of 2017, shall be deposited in a Nationalised Bank in Fixed Deposit till the minor attains majority. The interest accruing on such deposit is permitted to be withdrawn by the first appellant, in C.M.A (MD) No.929 of 2017, who is the mother of the minor, once in three months directly from the bank. No costs.

Sd/-

Assistant Registrar (II)

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/ /2020

Sub Assistant Registrar(CS)

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To

1. The First Additional District Judge,
Motor Accident Claims Tribunal,
Tirunelveli.
2. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.(2)

+1 CC to M/s.C.JAWAHAR RAVINDRAN, Advocate SR-7303.

+1 CC to M/s.T.SELVAKUMARAN, Advocate, SR-6991.

C.M.A. (MD) Nos.929 and 1068 of 2017

18.02.2020

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