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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.08.2021

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
AND
THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

C.M.A.Nos.1551, 1792 of 2020 and 2307 and 2310 of 2021
and
C.M.P.Nos.11490 of 2020 and 12178 and 13185 of 2020

CMA.No.1551 of 2020
New India Assurance Company Limited,
No.45, Moore Street, V Floor,
Chennai - 600 001.

...Appellant/R2

Vs

1.G.Esther

2.G.Abishek Bernald

3.Minor G.Ashwin Bernald ...Respondent 1 to 3/Petitioner
(Minor 2nd respondent rep.
by his grand mother
S.Esther, as natural guardian)

4.L.Santhanam ...3rd Respondent/1st Respondent

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, praying to set aside the decree and judgment dated 20.04.2018, made in M.C.O.P.No.781 of 2015, on the file of the Motor Accident Claims Tribunal (Special Subordinate Court No.2 to deal with MCOP cases) Court of Small Causes of Madras.

For Appellant : Mr.J.Chandran

For Respondents : Mr.F.Terry Chella Raja



CMA.No.1792 of 2020

New India Assurance Company Limited,
No.45, Moore Street, V Floor,
Chennai - 600 001.

...Appellant/R2

Vs

1. G.Esther

2. G.Abishek Bernald

3. Minor G.Ashwin Bernald ...Respondent 1 to 3/Petitioner
(Minor 2nd respondent is rep.
by his grand mother S.Esther,
as natural guardian)

4.L.Santhanam ...4th Respondent/1st Respondent

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, praying to set aside the decree and judgment dated 20.04.2018, made in M.C.O.P.No.650 of 2015, on the file of the Motor Accident Claims Tribunal (Special Subordinate Court No.2 to deal with MCOP cases) Court of Small Causes of Madras.

For Appellant : Mr.J.Chandran

For Respondents : Mr.F.Terry Chella Raja

CMA.No.2307 of 2021

G.Esther (died)

1. G.Abishek Bernald

2. G.Ashwin Bernald

(2nd appellant declared as major vide
Court order dated 07.04.2021
made in CMP.No.6586/21 in
CMA.Sr.14747/21 (CSNJ)

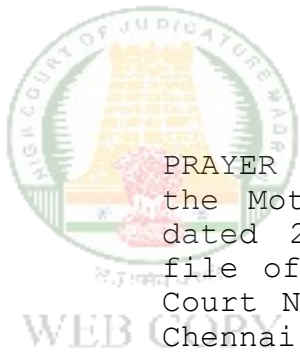
...Appellants/Petitioner

Vs

1. L.Santhanam

2. New India Assurance Company Limited,
No.45, Moore Street, V Floor,
Chennai - 600 001.
(R1 remained exparte before
the Tribunal)

...Respondents/Respondents



PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, praying to set aside the award dated 20.04.2018, made in M.A.C.T.O.P.No.781 of 2015, on the file of the Motor Accident Claims Tribunal, Special Subordinate Court No.2, Motor Accident Claims Petitions Small Causes Court, Chennai.

For Appellant : Mr.F.Terry Chella Raja

For Respondent : Mr.J.Chandran

R1 : Exparte

CMA.No.2310 of 2021

G.Esther (died)

1. G.Abishek Bernald

2. G.Ashwin Bernald

(2nd appellant declared as major vide
Court order dated 07.04.2021
made in CMP.No.6586/21 in
CMA.Sr.14747/21 (CSNJ)

...Appellants/Petitioners

Vs

1. L.Santhanam

2. The New India Assurance Company Limited,
No.45, Moore Street, V Floor,
Chennai - 600 001.

(R1 remained exparte before
the Tribunal)

...Respondents/Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, praying to set aside the award dated 20.04.2018, made in M.A.C.T.O.P.No.650 of 2015, on the file of the Motor Accident Claims Tribunal, Special Subordinate Court No.2, Motor Accident Claims Petitions Small Causes Court, Chennai.

For Appellant : Mr.F.Terry Chella Raja

For Respondents : Mr.J.Chandran



COMMON JUDGMENT

(Judgment of the court was delivered by T.V.THAMILSELVI.J.,)

The matters were heard through "Video Conference".

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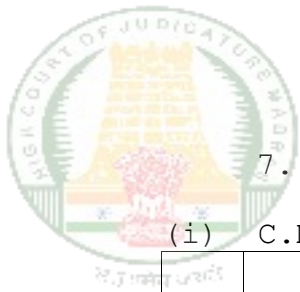
2. The appellants herein are the claimants in both M.A.C.T.O.P.Nos.650 and 781 of 2015 on the file of the Motor Accident Claims Tribunal (Small Causes Court), Chennai filed by them seeking compensation for the death of their parents viz., G.Esther and Gnanadas in a motor accident which happened on 11.05.2014.

3. The case of the claimants is that on 11.05.2014 at about 07.00 a.m., the father of the claimants viz., Gnanadas was driving a car, in which the claimants and their mother were travelling. While they were on Virudhunagar by-pass road bridge from Nagercoil to Chennai, the front left tyre of the said car burst and the said car dashed against the centre median and the car was stopped. While all were getting down from the car, a lorry belonging to the first respondent bearing Registration No.TN-73E-3148 came from the opposite direction in a rash and negligent manner with high speed, endangering public safety and dashed against the car, thereby, the parents of the claimants sustained grievous injuries and died. The claimants preferred the said claim petitions representing through their grand mother as they were minors at that time against the owner of the lorry and the insurance company.

4. Both the parties have contested the case and on hearing both sides, the Tribunal concluded that the accident happened due to the rash and negligent driving of the lorry and fastened the liability upon the insurance company. At the time of passing of the award, the Tribunal failed to pass the award for the loss of love and affection to the claimants. So they preferred CMA.Nos.2307 and 2310 of 2021. Aggrieved by the liability fixed by the Tribunal upon the owner of the lorry, the Insurance Company preferred the appeals in CMA.Nos.1551 and 1792 of 2020.

5. As per the contention of the claimants, they raised objections only with regard to the award of the Tribunal with respect to love and affection and all other heads have been accepted.

6. A perusal of the records reveals that in both the claim petitions, while passing the award, the Tribunal has not awarded compensation for the loss of parental consortium. As far as CMA.Nos.2307 and 2310 of 2021 are concerned, the legal heirs/minor children are entitled to loss of parental consortium. Accordingly, Rs.1,00,000/- in each appeal is awarded.



7. Accordingly, the modified compensation payable would be:

(i) C.M.A.No.2307 of 2021 (M.A.C.T.O.P.No.781 of 2015)

Sl. No.	Heads for compensation	Compensation awarded by the Tribunal	Compensation awarded by this Court
		Amount (in Rs.)	
1	Loss of dependency Rs.4,88,376/- x 30%	55,02,369.60/-	55,02,369.60/-
2	Loss of estate	15,000.00/-	15,000.00/-
3	Funeral expenses	15,000.00/-	15,000.00/-
4	loss of parental consortium	-	1,00,000.00/-
	Total	55,32,369.60/-	56,32,369.60/-
	Rounded off to	55,32,400/-	56,32,400/-

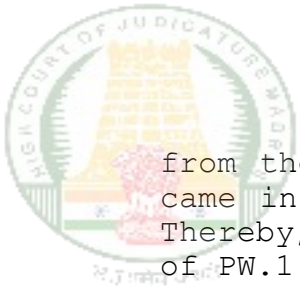
(ii) C.M.A.No.2310 of 2021 (M.A.C.T.O.P.No.650 of 2015)

Sl. No.	Heads for compensation	Compensation awarded by the Tribunal	Compensation awarded by this Court
		Amount (in Rs.)	
1	Loss of pecuniary benefits	52,66,650.40	52,66,650.40
2	Loss of estate	15,000.00/-	15,000.00/-
3	Funeral expenses	15,000.00/-	15,000.00/-
4	loss of parental consortium	-	1,00,000.00/-
	Total	52,96,650.40	53,96,650.40
	Rounded off to	52,96,700/-	53,96,700/-

8. C.M.A.No.1551 and 1792 of 2020:

The learned counsel for the appellant insurance company vehemently argued that the accident happened due to sudden stoppage of the car without noticing the lorry. Learned counsel further submitted that without considering this aspect, the Tribunal erroneously fixed the liability upon the driver of the lorry.

9. By way of reply, the learned counsel for the claimants submits that due to blast of the car tyre, the occupants/claimants got down and their parents were also about to get down



from the car. At that time, the lorry without noticing the Car, came in a rash and negligent manner and dashed against the car. Thereby, their parents died on the spot. Further, the evidence of PW.1 is extracted as follows:

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..... நான் காரைவிட்டு இறங்கியதும் காரின் பக்கத்தில் நின்றதால் எனக்கு அடிபட்டது. காரைவிட்டு நான் இறங்கியதும் 2, 3 நிமிடங்களில் லாரி காரின் மீது மோதியது.

10. The evidence of PW-1 makes it clear when the deceased were about to get down from the Car, the lorry dashed against the Car. Therefore, the objection raised by the Insurance Company that the accident was not due to the negligent driving of the lorry by the driver is unsustainable.

11. The Tribunal rightly considered this aspect and fixed the liability upon the Insurance Company, which calls for no interference by this Court.

12. In the result,

(i) C.M.A.Nos.2307 and 2310 of 2021 are partly allowed. The Insurance Company is directed to pay the modified award amount of Rs.56,32,400/- [Rupees fifty six lakhs thirty two thousand and four hundred only] and Rs.53,96,700/- [Rupees fifty three lakhs ninety six thousand and seven hundred only] within a period of six weeks from the date of receipt of a copy of this order, after deducting the amount already deposited, if any. On such deposit being made, the Tribunal is directed to transfer the respective shares of claimants along with proportionate interest and costs to their respective bank accounts through RTGS within a period of one week thereon.

(ii) CMA.Nos.1551 and 1792 of 2020 are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

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To

The Special Subordinate Court No.2,
(Motor Accidents Claims Tribunal)
Court of Small Causes, Madras.



Copy To

The Section Officer,
VR Section
High Court,
Madras.

+2cc to Mr.J.Chandran, Advocate, S.R.No.41822, 41821

+2cc to Mr.F.Terry Chellaraja, Advocate, S.R.No.41612, 41611

C.M.A.Nos.1551, 1792 of 2020 2307 and 2310 of 2021

SV-I (CO)

RGA(09/09/2021)