



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 07.10.2021

Delivered on : 09.12.2021

CORAM:

THE HONOURABLE MRS.JUSTICE R.THARANI

WEB COPY

C.M.A(MD) Nos.824, 825 and 1715 of 2013

and M.P.(MD)No.2 of 2013

C.M.A(MD) No.824 of 2013

1.Tmt.B.Poongodi

2.Minor Naveen

... Appellants

(Minor rep by his mother and
natural guardian B.Poongudi)

Vs.

1.R.Srinivasan

2.M/s. New India Assurance Company Limited,
Branch Office,
rep.by its Manager,
No.66, West Bouliward Road,
Trichy-620 008.

[R-1 set exparte by the Tribunal,
hence, notice may be given up
against 1st respondent]

... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Decree and Judgment, made in M.C.O.P.No. 381 of 2011 dated 17.12.2012, by the Motor Accident Claims Tribunal - District Judge, Karur.

For Appellants	: Mr.M.Karthikeya Venkitachallapathy
For R2	: Mr.J.S.Murali
R1	: Given up

C.M.A(MD) No.825 of 2013

1.Tmt.B.Poongodi

2.Minor Naveen

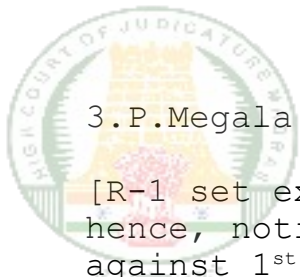
... Appellants

(Minor rep by his mother and
natural guardian B.Poongudi)

Vs.

1.R.Srinivasan

2.M/s. New India Assurance Company Limited,
Branch office,
rep. by its Manager,
No.66, west Bouliward Road,
Trichy-620 008.



3.P.Megala

[R-1 set exparte by the Tribunal,
hence, notice may be given up
against 1st Respondent]

... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Decree and Judgment made in MCOP No. 399 of 2011 dated 17.12.2012, by the Motor Accident Claims Tribunal (District Judge), Karur.

For Appellants	: Mr.M.Karthikeya Venkitachallapathy
For R1	: Given-up
For R2	: Mr.J.S.Murali
For R3	: No Appearance

C.M.A(MD) No.1715 of 2013

M/s. The New India Assurance Company Limited,
Branch Office, Represented by its Manager,
No.66, West Bouliwar Road,
Trichy-620 008.

... Appellant

Vs.

1.B.Poongodi
2.Minor Naveen

(Represented by his mother, natural
guardian and next friend the 1st respondent)

3.R.Srinivasan

(Notice to 3rd respondent may be
dispensed with since he remained
exparte before the Tribunal)

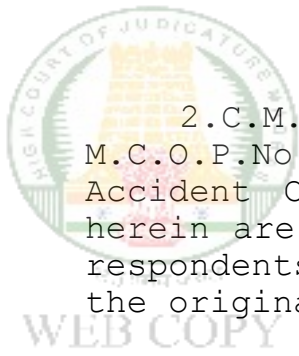
... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree in M.C.O.P.No. 381 of 2011 dated 17.12.2012, by the Motor Accident Claims Tribunal, District Court, Karur.

For Appellant	: Mr.J.S.Murali
For R1 & R2	: No Appearance
For R3	: Dispense with

COMMON JUDGMENT

C.M.A.(MD)No.824 of 2013 is filed against the award, made in M.C.O.P.No.381 of 2011 dated 17.12.2012, on the file of the Motor Accident Claims Tribunal - District Judge, Karur. The appellants herein are the claimants and the respondents herein are the respondents in the original claim petition.



2.C.M.A.(MD)No.825 of 2013 is filed against the award, made in M.C.O.P.No.399 of 2011 dated 17.12.2012, on the file of the Motor Accident Claims Tribunal - District Judge, Karur. The appellants herein are the claimants and the respondents 1 and 2 herein are the respondents and the third respondent herein is the third claimant in the original claim petition.

3.C.M.A.(MD)No.1715 of 2013 is filed against the award, made in M.C.O.P.No.381 of 2011 dated 17.12.2012, on the file of the Motor Accident Claims Tribunal - District Judge, Karur. The appellant herein is the second respondent and the respondents 1 and 2 herein are the claimants and the third respondent herein is the first respondent in the original claim petition.

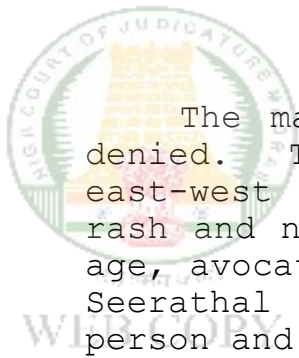
4. The averment set out in all the claim petitions are almost one and the same, a joined trial was conducted and a common judgment was passed by the Tribunal. Out of the four M.C.O.P cases, these appeals are filed against two cases.

5.Brief substance of the petitions, in both M.C.O.P.Nos.381 of 2011 and 399 of 2011, is as follows:-

On 28.05.2011, one Balaji, his wife - Poongodi, Son - Naveen, Mother - Seerathal, Sister - Megala and Sister's daughter - Surya were proceeding in a Santro Car bearing Registration No.PY-01-AB-6364 from Oothur at Dharapuram Taluk, Tiruppur District to Pondicherry, Balaji drove the car along the Palayam-Trichy road from west to east. When the car was proceeding near Thogamalai K.M.P. quarry at 12.30 hours, the driver of the first respondent's bus drove the the bus in a rash and negligent manner, came from the opposite direction, dashed against the car. As a result of which, Balaji and Seerathal died on the spot Poongodi and Naveen sustained fractures and other injuries. The injured persons were taken to Kaveri Medical Centre and Hospital, Tiruchirappalli and then, to Ganga Medical Centre and Hospital, Coimbatore. They suffered disability. The deceased Balaji was doing money lending business at Karur and Pondicherry and he was doing agricultural work in his own land and was earning Rs.4,00,000/- per annum. The claimants in M.C.O.P.No.381 of 2011 are the dependants of the deceased/Balaji. They claimed a sum of Rs.35,00,000/- as compensation.

6. Seerathal died in the same accident. The deceased Seerathal was doing agricultural work and she was also doing milk vending business and was earning Rs.1,00,000/- per annum. The claimants, in M.C.O.P.No.399 of 2011, claimed a sum of Rs.3,00,000/- as compensation.

7.Brief substance of the counter, in both M.C.O.P.Nos.381 of 2011 and 399 of 2011, is as follows:-



The manner of the accident as claimed by the petitioners was denied. The accident took place on the extreme southern side of east-west road. It is clear that the accident has happened due to rash and negligent driving of the Santro Car driver / Balaji. The age, avocation and income of the deceased/ Balaji and the deceased / Seerathal are all false. There is no disability to the injured person and the claim is excessive.

8. In all the claim petitions, the first respondent was set *exparte*. On the side of the petitioners, two witnesses were examined and thirty documents were marked. On the side of the respondents, no witness was examined and no document was marked.

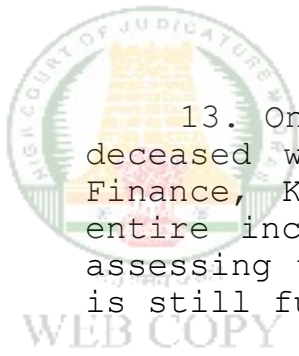
9. After considering both sides, the Tribunal awarded a sum of Rs.26,44,955/- as compensation in M.C.O.P.No.381 of 2011 and awarded a sum of Rs.1,30,000/- as compensation in M.C.O.P.No.399 of 2011 and passed a common order. Against the award in M.C.O.P.No.381 of 2011, the claimants / appellants have filed an Appeal in C.M.A. (MD)No.824 of 2013 for enhancement and the second respondent / appellant has filed an appeal in C.M.A.(MD)No.1715 of 2013. Against the award in M.C.O.P.No.399 of 2011, the claimants have filed an Appeal in C.M.A.(MD)No.825 of 2013 for enhancement.

C.M.A. (MD)Nos.824 and 825 of 2013

10. On the side of the appellants / claimants, it is stated that the Tribunal has failed to consider that the deceased - Balaji was a partner in Ponmagal Finance, Karur and he owned agricultural lands at Aravenkurichi and he earned a sum of Rs.4,00,000/- per annum. The Tribunal has failed to see that the deceased - Balaji was an Income Tax assessee and has failed to consider Ex.P20 to Ex.P23, Income Tax Returns. The Tribunal has failed to consider Ex.P.30-Form-A and has failed to consider that the deceased was a partner of M/s.Ponmagal Finance, Karur. The Tribunal ought to have applied multiplier "18" to assess the loss of income. The Tribunal has failed to consider the future prospects of the deceased - Balaji and prayed the award to be enhanced.

11. On the side of the appellants, it is further stated that the Tribunal has assessed the income only as Rs.2,00,000/- per annum and the same is erroneous. PAN card of the deceased / Balaji was marked as Ex.P19 and agricultural income was not considered by the Tribunal.

12. The respondent / Insurance Company in C.M.A.(MD)No.824 of 2013 has filed another C.M.A. questioning the very same award in C.M.A.(MD)No.1715 of 2012. Though the Insurance Company is the appellant in C.M.A.(MD)No.1715 of 2013, for the sake of convenience, the Insurance Company is mentioned only as respondent in this common judgment.



13. On the side of the Insurance Company, it is stated that the deceased was 32 years old. Though he is a partner in Ponmagal Finance, Karur, he can get only a portion of the profit and the entire income of the Firm cannot be taken into consideration for assessing the income of the deceased - Balaji. More over, the Firm is still functioning and there is no loss of income from the Firm.

14. On the side of the Insurance Company, it is further stated that as the Financial Company in Karur is still functioning, there is no loss to the claimants and the agricultural lands are also with the claimants and they can engage some one and get income from the agricultural land. The claimants are not entitled for loss of income.

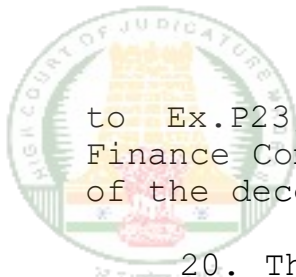
15. On the side of the respondent / Insurance Company, it is stated the Income Tax officials were not examined to substantiate the Income Tax Returns and the Auditor was not examined. The Income fixed by the Tribunal is excessive. The deceased - Balaji was not the sole Proprietor of the concerned partnership Firm and the other partners failed to enter into the Box, to prove the income. P.W.1 is an interested witness. P.W.2 is not a witness to speak about the I.T. returns. The validity of the I.T returns was not proved by the claimants.

16. On the side of the claimants/appellants, it is stated that the I.T returns are the self assessment of income filed by the deceased - Balaji before the Income Tax Department. The status of partner was not questioned and the income tax returns are sufficient to fix the income.

17. The claimants filed two appeals for enhancement. The Insurance Company filed only one Appeal, not against the other award. The Tribunal has fixed the liability on the driver of the Bus, which is reasonable and the Bus was insured with the respondent in C.M.A. (MD) No. 824 of 2013 and the appellant in C.M.A. (MD) No. 1715 of 2013. Hence, the Insurance Company is liable to pay compensation.

18. The deceased - Balaji was aged about 32 years at the time of accident. Post mortem certificate was marked as Ex.P14, wherein, the age of the deceased was mentioned at 32 years. The Tribunal fixed the age as 32 years and the same is reasonable. PAN card of the deceased - Balaji was marked as Ex.P19. The claim of the claimants is that the deceased was running a Finance Business and he was doing agricultural works and he was earning Rs.4,00,000/- per annum. Ex.P.20 to Ex.P23 were the Income Tax returns for the year 2008-2009, 2009-2010, 2010-2011 and 2011-2012.

19. On the side of the respondent, it is stated that the Income Tax officials and the Auditor are not examined as witnesses to substantiate Ex.P.20



to Ex.P23, memorandum of articles of Association for Ponmagal Finance Company was not filed. Particulars as to what was the share of the deceased was not furnished.

20. The averment of the claimants is that the deceased - Balaji was having landed properties and through agriculture, he earned a considerable sum. On the side of the respondent, it is stated that the agricultural lands are still available with the claimants and there is no loss of agricultural income.

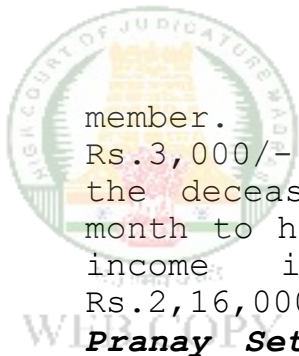
21. It is seen that the deceased was having some landed properties and he is an Income Tax Assessee. Though the amount is not certain, there is no doubt that the deceased was having earnings from agricultural work and from the Finance Company. Considering the fact that the deceased was an income tax assessee and considering that after the death of the deceased - Balaji, the claimants may not be having the same income from agricultural lands and from the finance company, the income of the deceased per month is fixed at Rs.15,000/-. After deducting 1/3rd for his own expenses, the deceased - Balaji might have contributed Rs.10,000/- to the family. After including 40% for future income, the salary is to be calculated as Rs.14,000/- per month. By applying multiplier '16', the loss of income is calculated as Rs.26,88,000/- [Rs.14,000* 12*16= Rs.26,88,000/-]. As per the dictum of the Hon'ble Supreme Court in **Pranay Sethi's** case, Rs.70,000/- is awarded towards conventional charges. Hence, it is decided that the claimants are entitled to Rs.27,58,000/- as compensation in M.C.O.P.No.381 of 2011.

C.M.A. (MD)No.825 of 2013

22. The deceased - Seerathal was aged about 60 years at the time of accident and it is stated that she was earning Rs.1,00,000/- per annum from doing agricultural work and by doing milk vending business. The claimants claimed a sum of Rs.3,00,000/- as compensation. The Tribunal has awarded Rs.1,30,000/- as compensation. Against the same, the appellants have approached this Court for enhancement of compensation.

23. On the side of the appellants, it is stated that the Tribunal has failed to consider the fact that the deceased - Seerathal was an agriculturist and was doing milk vending business and was earning Rs.1,00,000/- per annum. The Tribunal ought to have taken a notional income of Rs.3,000/- per month in the absence of income proof. The award for other heads are also to be enhanced.

24. On the side of the respondent, it is stated that the deceased was 60 years old and she was depending on the income of her son, viz., Balaji. The deceased - Seerathal was not capable of doing any other work and she is only a house wife and not an earning



member. Notional income of the deceased - Seerathal is fixed at Rs.3,000/- per month and after deducting $1/3^{\text{rd}}$ for his own expenses, the deceased - Seerathal might have contributed Rs.2,000/- per month to her family. Hence, by applying multiplier '9', the loss of income is calculated as Rs.2,16,000/- [Rs.2,000*12*9 = Rs.2,16,000/-]. As per the dictum of the Hon'ble Supreme Court in **Pranay Sethi's** case, Rs.70,000/- is awarded towards conventional charges. Hence, it is decided that the claimants are entitled to Rs.2,86,000/- as compensation in M.C.O.P.No.399 of 2011.

25. Hence, **C.M.A. (MD)No.824 of 2013 is partly allowed** and the award, made in M.C.O.P.No.381 of 2011 dated 17.12.2012, on the file of the Motor Accident Claims Tribunal - District Judge, Karur, is hereby **enhanced from Rs.26,44,995/- to Rs.27,58,000/-**. **C.M.A. (MD) No.1715 of 2013 is dismissed. C.M.A. (MD)No.825 of 2013 is partly allowed** and the award, made in M.C.O.P.No.399 of 2011 dated 17.12.2012, on the file of the Motor Accident Claims Tribunal - District Judge, Karur, **is enhanced from Rs.1,30,000/- to Rs.2,86,000/-**.

26. **The second respondent/ New India Assurance Company is directed to deposit Rs.27,58,000/-, in M.C.O.P.No.381 of 2011 and Rs.2,86,000/-, in M.C.O.P.No.399 of 2011, along with interest at the rate of 7.5% p.a from the date of petition till the date of deposit and with cost within a period of eight weeks from the date of receipt of a copy of this judgment, less the amount already deposited. On such deposit, the first appellant / major claimants in both the cases are permitted to withdraw their respective shares as per the ratio of apportionment fixed by the Tribunal with proportionate interest and cost after deducting any amount received by them earlier. The Tribunal is directed to deposit the share of the minor claimant, as per the ratio of apportionment fixed by the Tribunal with proportionate interest, in any one of the Nationalised Banks, in a Fixed Deposit scheme, till he attains majority. The mother and guardian of the minor claimant, is permitted to withdraw the accrued interest once in three months directly from the bank, only for the welfare of minor. The Registry is directed to draft the decree after receipt of Court fee for the enhancement amount, from the claimants. No costs. Consequently, connected Miscellaneous Petition is closed.**

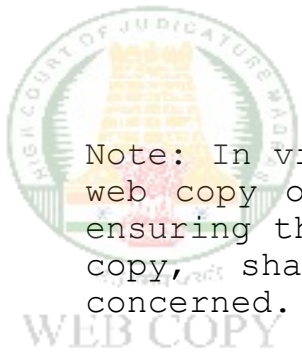
Sd/-

Assistant Registrar (CS-III)

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/ /2022

Sub Assistant Registrar(CS)



Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The District Judge,
The Motor Accident Claims Tribunal -
Karur.

2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

COPY TO:-

THE SUB ASSISTANT REGISTRAR (CO)
CO SECTION,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+2 CC to M/s.K.BALASUBRAMANI, Advocate (SR-37951 & 37952[F]
dated 09/12/2021)

+3 CC to M/s.J.S.MURALI, Advocate (SR-38158, 38159 & 38160[F]
dated 10/12/2021)

Judgment made in
C.M.A(MD) Nos.824, 825 and 1715 of 2013
09.12.2021

KMK (CO)
GC(27.01.2022) 8P 10C