



WEB COPY

C.M.A. (MD) Nos. 655 of 2014 and 1253 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 22.10.2021

Delivered On : 24.11.2021

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A. (MD) Nos. 655 of 2014 and 1253 of 2016

C.M.A. (MD) No. 655 of 2014 :

The Oriental Insurance Company Limited,
Through its Branch Manager,
Vijay Complex, II Floor,
Opp. Theni Bus Stand,
Theni.

.. Appellant/Respondent No.4

Vs.

1. Murugeswari	... Respondent No.1/ Petitioner No.1
2. Sugashini	... Respondent No.2/ Petitioner No.2
3. K.R. Sathish Kumar	... Respondent No.3/ Respondent No.1
4. The United India Insurance Company Limited, Through its Branch Manager, Door No.406, Theni to Periyakulam Road, Theni Taluk.	... Respondent No.4/ Respondent No.2
5. R.K. Balamurugan	... Respondent No.5/ Respondent No.3

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the judgment and decree in M.C.O.P.No.87 of 2012 on the file of the Motor Accidents Claims Tribunal, Sub Court, Periyakulam dated 06.03.2014.

For Appellant	: Mr.C.Ramachandran
For Respondent Nos.1 and 2	: Mr.R.Shankar Ganesh
For 4 th Respondent	: Mr.B.Rajesh Saravanan
For Respondent Nos.3 and 5	: No Appearance

C.M.A. (MD) No. 1253 of 2016 :

The Branch Manager,
United India Insurance Co. Ltd.,
406, Theni - Periyakulam Road,
Theni & Taluk,
Theni District.

.. Appellant/ 2nd Respondent

<https://hcservices.ecourts.gov.in/hcservices/>



Vs.

1. Murugeswari

2. Sugashini

3. K.R. Sathish Kumar

4. R.K. Balamurugan

5. The Branch Manager,

The Oriental Insurance Co. Ltd.,

2nd Floor, Sri Vijay Complex,

Theni & Taluk,

Theni District.

.. Respondents/ Claimants

.. Respondent/ 1st Respondent

.. Respondent/ 3rd Respondent

.. Respondent/ 4th Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the judgment and decree in M.C.O.P.No.87 of 2012 on the file of the Motor Accidents Claims Tribunal, Sub Court, Periyakulam dated 06.03.2014.

For Appellant	: Mr.B.Rajesh Saravanan
For Respondent Nos.1 and 2	: Mr.R.Shankar Ganesh
For 5 th Respondent	: Mr.C.Ramachandran
For Respondent Nos.3 and 4	: No Appearance

COMMON JUDGMENT

These Civil Miscellaneous Appeals have been filed against the award passed in M.C.O.P.No.87 of 2012 dated 06.03.2014, on the file of the Motor Accident Claims Tribunal, Sub Judge, Periyakulam.

2.The appellant in C.M.A.(MD)No.655 of 2014 is the fourth respondent, the respondents 1 and 2 in C.M.A.(MD)No.655 of 2014 are the petitioners and the respondents 3 to 5 in C.M.A.(MD)No.655 of 2014 are the respondents 1 to 3 in the claim petition. The appellant in C.M.A.(MD)No.1253 of 2016 is the second respondent, the respondents 1 and 2 in C.M.A.(MD)No.1253 of 2016 are the petitioners and the respondents 3 to 5 in C.M.A.(MD)No.1253 of 2016 are the respondents 1,3 and 4 in the claim petition. The claimants have filed a claim petition in M.C.O.P.No.87 of 2012, claiming compensation for the death of one Sudhagar, in an accident that took place on 04.02.2012. The Tribunal has awarded a sum of Rs.10,00,000/- (Rupees Ten Lakhs only) as compensation. Against which, the appellants have preferred these appeals.

3.A brief substance of the claim petition in M.C.O.P.No.87 of 2012 is as follows:

On 04.02.2012, at about 02.45 p.m., one Sureshkumar was riding a two wheeler bearing registration No.TN-60-H-4744 along with Sudhagar, who travelled as a pillion rider from Periyakulam to Theni along the left edge of the road. At the time, another two wheeler



bearing registration No.TN-60-E-2795 was driven by its rider in a rash and negligent manner dashed against the motorcycle of the claimants and both the riders sustained injuries. They were admitted in Periyakulam Government Hospital and then in Theni Government Hospital. The said Sureshkumar died in the hospital. The injured Sudhagar was sent to Madurai Government Rajaji Hospital on 08.02.2012 and he died there. The rider of the offending vehicle also sustained injuries. The pillion rider of the offending vehicle has lodged a complaint. The deceased Sudhagar was doing II year B.C.A. The claimants were his legal heirs and they claim a sum of Rs.10,00,000/- (Rupees Ten Lakhs only) as compensation.

4.Brief substance of the counter filed by the first respondent therein is as follows:

The vehicle was insured with the second respondent. The rider of the vehicle Sathishkumar was having valid driving licence. The manner of the accident as narrated in the petition is wrong. When the Sathishkumar was riding his motor bike with a pillion rider by name Sibi, the deceased Sureshkumar came from the opposite direction in a rash and negligent manner and dashed against the first respondent's vehicle and he invited the accident. The deceased Sureshkumar was not having valid driving licence. Both Sureshkumar and Sudhagar were aged about 19 years. Fixing monthly income for the deceased Sudhagar was wrong. Both the first respondent and the second respondent are not liable to pay compensation. The petitioners are liable to prove the age and income of the deceased.

5.Brief substance of the counter filed by the second respondent therein is as follows:

The petitioner has to prove the averments set out by him in the claim petition. The first respondent is not responsible for the accident. It was the rider of the two wheeler bearing Registration No.TN60-H-4744 who was rash and negligent and was responsible for the accident. A criminal case was registered against the rider of the vehicle that belong to the third respondent. Hence, the second respondent is not liable to pay compensation. There was no income for the deceased and the age, and income are to be proved. Only the respondents 3 and 4 are liable to pay compensation.

6.Brief substance of the counter filed by the fourth respondent therein is as follows:

The claimants have to prove the involvement of the vehicle that belong to the third respondent in the accident. The claimants have to prove that the rider of the vehicle was having valid driving licence and he was duly permitted by the owner to ride the vehicle. The vehicle documents are to be proved. The first respondent's driver is responsible for the accident. There is no loss of income due to the death of the deceased. The petitioners have to prove that the registration certificate of the vehicle was valid at the time of accident.



7. The third respondent was set exparte. On the side of the claimants, two witnesses were examined and 4 documents were marked. On the side of the respondents, one witness was examined and one document was marked. After trial, the Tribunal has awarded a sum of Rs.10,00,000/- (Rupees Ten Lakhs only) as compensation to be paid by the respondents therein. Against which, the appellants have preferred these Civil Miscellaneous Appeals.

8. On the side of the appellant in C.M.A. (MD) No. 655 of 2014, it is stated that the Tribunal is wrong in fixing 50% liability towards this appellant. The Tribunal failed to consider the evidence of R.W.1. The deceased was a bachelor and a non earning member. He was doing II year degree course. The Tribunal is wrong in fixing the notional monthly income as Rs.6,249/- instead of deducting 50% towards his own expenses, the Tribunal erroneously deducted 1/3 of the income. For a college student studying third year degree course, only a sum of Rs.3,27,000/- was awarded by this Court in a case **New India Assurance Co. Ltd., v. Amirthavalli and others** reported in **2011 (2) TNMAC 308**. The Tribunal ought to have applied only multiplier '15' by considering the age of the mother, who was aged about 42 years at the time of accident and applying multiplier '18' is wrong. The award under various other heads also are wrong. The award is excessive.

9. On the side of the appellant in C.M.A. (MD) No. 1253 of 2016, it is stated that the Tribunal is wrong in holding that the appellant is liable to pay compensation without appreciating the evidence on record. The accident has occurred only due to the negligent driving of the rider of the two wheeler bearing registration No. TN-60-H-4744. The evidence of P.W.2 is not reliable. P.W.2 was not present at the time of the accident. He is only an interested witness. The Tribunal failed to consider the rough sketch. The rider of the bike bearing Registration No. TN-60-H-4744 came from the wrong side and he invited the accident. The Tribunal failed to consider the age of the claimant for calculating the loss of income.

10. On the side of the appellant in C.M.A. (MD) No. 1253 of 2016, it is stated that fixing 50% compensation to be paid by this appellant is erroneous. The quantum fixed by the Tribunal is excessive.

11. It is seen that two vehicles were involved in the accident. Both the vehicles are two wheelers. Two passengers in one two wheeler bearing registration No. TN-60-H-4744 died in the accident. The pillion rider in the two wheeler bearing registration No. TN-60-E-2795 gave a complaint to the police and the police registered the FIR against the rider of the other two wheeler. Both the pillion rider and the rider of the two wheeler bearing



registration No.TN-60-H-4744 died due to the accident. FIR registered on the basis of the complaint given by the pillion rider of another two wheeler cannot be taken as sufficient evidence. P.W.2 has deposed that the accident took place due to the rash and negligent driving of the rider of the first respondent vehicle. P.W.2 has deposed that it was the rider of the first respondent vehicle, who drove the motorcycle in a rash and negligent manner. It is stated that P.W.2 was travelling in a bus that crossed the accident spot. How far a person travelling in a bus can see the entire accident is doubtful. In the above circumstances, it is decided that the rider of both vehicles are responsible for the accident. There is no dispute regarding the insurance policy and hence, the appellants in both appeals are equally liable to pay compensation.

12.The Tribunal has fixed the age of the deceased as 19 years. The deceased was a student doing II year degree course at the time of the accident and the document was marked as Ex.P3. The claimants are the legal heirs of the deceased. For a person doing degree II year course, the Tribunal has fixed the monthly income as Rs.6,249/-. The Tribunal applied multiplier method '18', which is also reasonable. But the Tribunal has deducted only 1/3th towards the own expenses of the deceased, which is to be modified.

13.Considering the age of the deceased and considering that the deceased was student at the time of the accident, it is decided that the notional monthly income is to be fixed as Rs.6,500/- (Rupees Six Thousand and Five Hundred only). Since the deceased was unmarried, 50% is to be deducted towards his own expenses. The claimants are entitled to a sum of Rs.7,02,000/- towards loss of income. The compensation awarded by the Tribunal under various other heads are reasonable. The total compensation is fixed as Rs.8,22,000/- (Rupees Eight Lakhs and Twenty Two Thousand only).

14.In the result, these Civil Miscellenaous Appeals are partly allowed. The claimants are entitled to a sum of Rs.8,22,000/- (Rupees Eight Lakhs and Twenty Two Thousand only) as compensation with interest at the rate of 7.5% from the date of the claim petition till the date of realization.

15.The appellants in both appeals are directed to deposit Rs.4,11,000/- (Rupees Four Lakhs and Eleven Thousand only) each with 7.5% interest from date of the claim petition till the date of realization and the amount if not deposited earlier, has to be deposited within a period of 8 weeks from the date of receipt of copy of this order. On such deposit, the claimants are permitted to withdraw the award amount in equal share, with proportionate interest after deducting any amount received by them earlier. Excess amount, if any deposited shall be refunded to the appellants herein.



The claimants are not entitled for interest for the default period, if there is any. No Costs.

Sd/-

Assistant Registrar (CS-II)

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Sub Assistant Registrar(CS)

MRN

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 Motor Accidents Claims Tribunal,
Sub Judge,
Periyakulam.

2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai. (2 COPIES)

+1 CC to M/s.B.RAJESH SARAIVANAN, Advocate (SR-35602[F] dated 24/11/2021)

+1 CC to M/s.R. SHANKAR GANESH, Advocate (SR-35774[F] dated 24/11/2021)

+1 CC to M/s.C. RAMACHANDRAN, Advocate (SR-36212[F] dated 26/11/2021)

C.M.A. (MD) Nos. 655 of 2014 and 1253 of 2016

24.11.2021

RD(23.02.2022) 6P 7C