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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	Pronounced on
24.11.2021	23.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

and

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

C.M.A. (MD) Nos.1054 and 1055 of 2015

& Cros.Obj. (MD) Nos.29 and 30 of 2017

and

MP(MD) Nos.1 and 1 of 2018

C.M.A. (MD) No.1054 of 2015

The New India Assurance Company Ltd.,
83, T.S.R.Big Street,
Kumbakonam-612 001.

... Appellant/2nd Respondent

vs.

1. Mahamayee Ammal
2. Akash
3. Minor Aparna
4. Omprakash

... Respondents 1 to 3/Petitioners

... 4th Respondent/1st Respondent

(R2 was declared as major by order dated 09.03.2021
R3 represented through his guardian 1st respondent
R4 set exparte in Tribunal)

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree in M.C.O.P.No.50 of 2012 dated 31.03.2015 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Virudhunagar District at Srivilliputtur.

C.M.A. (MD) No.1055 of 2015

The New India Assurance Company Ltd.,
83, T.S.R.Big Street,
Kumbakonam-612 001.

... Appellant/2nd Respondent

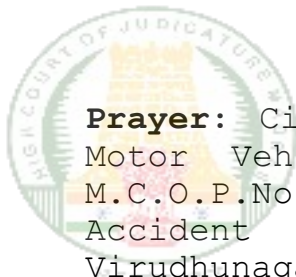
vs.

1. Akash
2. Minor Aparna
3. Omprakash

... Respondents 1 & 2/Petitioners

... 3rd Respondent/1st Respondent

(R1 was declared as major by order dated 09.03.2021
R2 represented through his guardian Mahamayee Ammal
R3 set exparte in Tribunal)



Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree in M.C.O.P.No.51 of 2012 dated 31.03.2015 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Virudhunagar District at Srivilliputtur.

In Both C.M.A. (MD) Nos.1054 and 1055 of 2015

For Appellant : Mr.J.S.Murali
For Respondents : Mr.A.V.Arun
For Mr.C.Meenakshi Rama Prabhu
(For R1 to R3 in CMA 1054/2015)
R1 &R2 in CMA(MD).1055 OF 2015

Cros.Obj.(MD) Nos.29 of 2017

1. Mahamayee Ammal
2. Akash
3. Minor Aparna ... Appellants/Respondents 1 to 3
(minor Appellant is represented by
guardian Mahamayee Ammal)
-vs.

1. The New India Assurance Company Ltd.,
83, T.S.R.Big Street,
Kumbakonam-612 001. ... Respondent No.1/Appellant
2. Omparakash ... Respondent No.2/Respondent No.4

(R2 was set exparte in Tribunal and he is not necessary party to this Cross Objection. Hence, R2 is hereby given up and notice to R2 is dispensed with)

Prayer: Cross Objection filed under Order XLI r/w Rule 22 of C.P.C. to enhance the award amount granted by the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Virudhunagar District at Srivilliputtur in M.C.O.P.No.50 of 2012 dated 31.03.2015 and dismiss the appeal filed by the Appellant / Respondent No.1 in C.M.A.(MD) No.1054 of 2015.

Cros.Obj.(MD) Nos.30 of 2017

1. Akash
3. Minor Aparna ... Appellants/Respondents 1 & 2
(minor Appellant is represented by
guardian Mahamayee Ammal)
-vs.

1. The New India Assurance Company Ltd.,
83, T.S.R.Big Street,
Kumbakonam-612 001. ... Respondent No.1/Appellant
2. Omparakash ... Respondent No.2/Respondent No.3



(R2 was set exparte in Tribunal and he is not necessary party to this Cross Objection. Hence, R2 is hereby given up and notice to R2 is dispensed with)

Prayer: Cross Objection filed under Order XLI r/w Rule 22 of C.P.C. to enhance the award amount granted by the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Virudhunagar District at Srivilliputtur in M.C.O.P.No.51 of 2012 dated 31.03.2015 and dismiss the appeal filed by the Appellant / Respondent No.1 in C.M.A.(MD) No.1055 of 2015.

In Both Cros.Obj. (MD) Nos.29 and 30 of 2017

For Appellant : Mr.A.V.Arun
For Mr.C.Meenakshi Rama Prabhu
For Respondents : Mr.J.S.Murali For R1

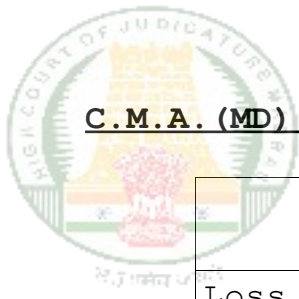
C O M M O N J U D G M E N T

S.VAIDYANATHAN, J.,
and
G. JAYACHANDRAN, J.,

These Appeals have been filed by the Insurance Company challenging the Awards dated 31.03.2015 passed by the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Virudhunagar District at Srivilliputtur in M.C.O.P.Nos.50 and 51 of 2012, directing the Appellant/Insurance Company to pay the Claimants a sum of Rs.86,35,060/- and Rs.36,91,000/- respectively as compensation for the death of the deceased, in an accident, which occurred on 02.09.2012 involving the Tipper Lorry insured with the Appellant/Insurance Company. Claimants 2 & 3 are the children of the deceased and the 1st Claimant is the grandmother of Claimants 2 & 3.

2. Before the Tribunal, the Respondents/Claimants claimed a sum of Rs.1,00,00,000/- & Rs.50,00,000/- respectively as compensation for the death of the deceased. On the side of the Respondents/Claimants in C.M.A.(MD) No.1054 of 2015, P.W.1 to P.W.2 were examined as witnesses and Exs.P1 to P11 were marked before the Tribunal. On the side of the Appellant/Insurance Company, neither a witness was examined nor Exhibits marked.

3. On consideration of the oral and documentary evidence available on record, the Tribunal has awarded a sum of a sum of Rs.86,35,060/- and Rs.36,91,000/- respectively as compensation to the Respondents/Claimants. Details of the compensation awarded by the Tribunal under the impugned Awards, are as follows :



C.M.A. (MD) No.1054 of 2015

<i>Heads</i>	<i>Amount awarded by the Tribunal (Rs.)</i>
Loss of Future Income	84,00,060/-
Loss of love and affection	2,00,000/-
Loss of Estate	10,000/-
Funeral Expenses	25,000/-
Total	Rs.86,35,060/-

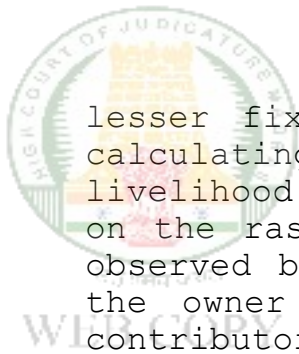
C.M.A. (MD) No.1055 of 2015

<i>Heads</i>	<i>Amount awarded by the Tribunal (Rs.)</i>
Loss of Future Income	34,56,000/-
Loss of love and affection	2,00,000/-
Loss of Estate	10,000/-
Funeral Expenses	25,000/-
Total	Rs.36,91,000/-

4. Aggrieved by both the awards, the Appellant/ Insurance Company is before this Court. Claimants have also filed Cross Objection, seeking to enhance the award amount, thereby dismissing the Appeal filed by the Insurance Company.

5. The Insurance Company has challenged the impugned awards on the ground that there was no strict proof in respect of the age, income and occupation of the deceased persons, without which, the amount of compensation arrived at under the head loss of future income is unjust. The owner of the Indica Car bearing Regn.No.TN.67-AV.1690 and the insurer of the said vehicle have not been arrayed as a party respondent and therefore, the claim petition itself was not maintainable before the Tribunal for want of necessary party. It was submitted that from the sketch, it could be easily seen the manner of accident to prove that the driver of the Tipper Lorry bearing Regn.No.TN-31-AD-9192 was not at all at fault for causing the accident. According to the Appellant, the earning of the deceased was wrongly taken into account based on the income tax return for the year 2010-2011, 2011-2012 and 2012-2013, which have been filed after the demise of the deceased. Thus, it was submitted that the overall compensation awarded by the Tribunal is on the higher side and the same needs to be reduced.

6. The respondents / claimants contended that there was a
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lesser fixation of the monthly income and the Tribunal erred in calculating the same, thereby seriously caused prejudice to the livelihood of the claimants. The entire accident had occurred solely on the rash and negligent driving of the Tipper Lorry, as rightly observed by the Tribunal and therefore, there is no need to array the owner of the deceased car and insurer and the question of contributory negligence does not arise at all. Hence, it was prayed that the Appeals preferred by the insurance company are liable to be dismissed and the claimants are entitled to enhanced compensation.

7. Heard the learned counsel appearing on both sides and perused the material documents available on record.

8. In an accident occurred on 02.09.2012 owing to the rash driving of the driver of the Tipper Lorry, bearing Regn. No.TN-31-AD-9192, there was a loss of two lives and to the saddest part at the core, two minor children lost their parents. It was mainly contended by the Appellant / Insurance Company that in order to claim more benefits, the income tax returns have been filed. Admittedly, the accident had taken place on 02.09.2012 and the income tax returns were filed by the claimant / grandmother with a delay and the Authorities have levied a fine for delay in submitting the form. Normally, the Court will not entertain any income tax return filed after the demise of a person, provided, the same has not been filed within the time stipulated by the Income Tax Department.

9. In the present case on hand, it is not in dispute that the income tax returns have been filed well within time, except for the year 2012-2013, which was owing to the accident and death of the deceased and the same was duly entertained by the Income Tax Authorities. Therefore, there is no error in the award of the Tribunal and this Court finds no fault in arriving at the compensation based on the income tax returns by the Tribunal. Regarding the the future prospects, the compensation arrived at by the Tribunal, by applying the principles laid down by the Hon'ble Supreme Court in **Sarla Verma and others Vs. Delhi Transport Corporation and another** reported in **2009 (6) SCC 121** followed by **National Insurance Company Limited vs. Pranay Sethi and others**, reported in **2017 (16) SCC 680**, under the head loss of future income is just and proper.

10. Insofar as compensation under the head "love and affection" is concerned, for the loss of love and affection of the parents of children and son of the claimant in C.M.A.(MD) No.1054 of 2015, the Tribunal has adequately awarded the amount, which is in consonance with the proposition laid down in **National Insurance Company Limited vs. Pranay Sethi and others**(supra) and is not contrary to the settled principles of law.



11. Finding that the awards of the Tribunal are well reasoned one, we are of the view that the awards of the Tribunal are perfectly correct and do not warrant any interference by this Court. Accordingly, the amount awarded by the Tribunal is confirmed as such. Accordingly, the Appellant / Insurance Company is directed to deposit the award amount along with the accrued interest to the credit of M.C.O.P.Nos.50 & 51 of 2012 dated 31.03.2015 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Virudhunagar District at Srivilliputtur, less the amount, if any already deposited, within a period of three weeks from the date of receipt of a copy of this order. On such deposit, the said amount shall be credited to the Claimants' account as per the ratio of apportionment mentioned in the award of the Tribunal. The Tribunal is expected to follow the ratio laid down by this Court in The Divisional Engineer, The Oriental Insurance Company Ltd., Kannur Vs. Rajesh and others reported in MANU/TN/0606/2016 : 2016 (3) CTC 128. The methodology prescribed by this Court for remittance of compensation has been affirmed by the Hon'ble Supreme Court in the case of Bajaj Allianz General Insurance Company Private Ltd., Vs. Union of India and others [W.P.(Civil) No. 534 of 2020, dated 16.11.2021]. Since the 1st Respondent / Claimant in C.M.A.(MD) No.1055 of 2015, namely, Akash has already been declared as major, the 1st Respondent / Claimant is entitled to withdraw his share. The amount of compensation due to the minor Aparna shall be deposited in anyone of the nationalized Bank till the minor attains majority. The grandmother / the 1st Respondent / Claimant in C.M.A.(MD) No.1054 of 2015, namely, Mahamayee Ammal is permitted to withdraw the accrued interest in respect of the share of Aparna once in three months for the welfare of the minor.

12. In the result, ***C.M.A. (MD) Nos. 1054 and 1055 of 2015 are hereby dismissed and Cross Objection (MD) Nos.29 and 30 of 2017 are disposed of.*** No costs. Consequently, connected Miscellaneous Petitions, if any are closed.

Sd/-

Assistant Registrar (CS-III)

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/ /2022

Sub Assistant Registrar(CS)

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To:

1. The Motor Accident Claims Tribunal,
Chief Judicial Magistrate Court,
Virudhunagar District at Srivilliputtur

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2. The Section Officer,
V.R. Section,
High Court of Madras,
Chennai 600 104. (2 COPIES)

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+2 CC to M/s.J.S.MURALI, Advocate (SR-40336, SR-40337[F] dated
23/12/2021)

C.M.A. (MD) Nos.1054 and 1055 of 2015
& Cros.Obj. (MD) Nos.29 and 30 of 2017
23.12.2021

RD(04.02.2022) 7P 6C