



C.M.A.No.1938 of 2016

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.10.2022

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THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.M.A.No.1938 of 2016

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C.M.A.No.1962 of 2022

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C.M.P.No.14939 of 2022

C.M.A.No.1938 of 2016

1.R.Amsa

2.Minor Santhosh

3.Minor Parthiban
...Appellants

Vs

1.K.S.Duraisamy

2.Oriental Insurance Co., Ltd.,
Branch Office
No.59, Raja Street,
Gobichettipalayam

1/18



C.M.A.No.1938 of 2016

Erode District.

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3.The Divisional Manager,
New India Assurance Co. Ltd.,
No.92, G.N.Chetty Road,
T.Nagar, Chennai.

... Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgement and Decree dated 05.02.2016 made in M.A.C.T.O.P.No.756 of 2013 on the file of the Motor Accidents Claims Tribunal (Special District Court), Krishnagiri.

For Appellants : Mr.C.Munusamy

For Respondent 1: Ex parte

For Respondent 2: Mr.K.Vinod

For Respondent 3: Mr.R.Rajesh

C.M.A.No.1962 of 2022

Oriental Insurance Company Limited,
Branch Office, 59, Raja Street,

2/18



C.M.A.No.1938 of 2016

Gobichettipalayam
Erode District.

...Appellant

Vs

1.R.Amsa

2.Minor Santhosh

3.Minor Parthiban

4.Duraisamy

5.Managing Director,
New India Assurance Company Limited,
92, G.N.Chetty Road, T.Nagar,
Chennai.

... Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgement and Decree dated 05.02.2016 made in M.C.O.P.No.756 of 2013 on the file of the Motor Accidents Claims Tribunal (Special District Court), Krishnagiri.

For Appellant : Mr.K.Vinod

For Respondents: Mr.C.Munusamy
1 to 3

3/18



C.M.A.No.1938 of 2016

WEB COPY

For Respondent 5: Mr.R.Rajesh

COMMON JUDGEMENT

Both the appeals arise out of the award passed by the Motor Accident Claims Tribunal (Special District Judge), Krishnagiri, in M.A.C.T.O.P.No.756 of 2013. C.M.A.No.1938 of 2016 is filed by the petitioners seeking an enhancement of the award. C.M.A.No.1962 of 2022 is filed by the Insurance Company seeking to exonerate themselves. The brief facts are as follows. The parties are referred to in the same ranking as before the Tribunal.

2. The petitioners are the legal heirs of one Ramajayam, who had died away in a road accident on 26.09.1998. The said Ramajayam was the owner of the lorry bearing Registration No.TN 29 B 3000 and was travelling with the load towards Coimbatore on the National

4/18



C.M.A.No.1938 of 2016

WEB COPY

Highway. At about 5.45 hours, when the lorry was nearing Mekala Garden on the Salem to Coimbatore main road, the driver of the lorry bearing Registration No.TN 33 1899, which was proceeding in front of the vehicle in which the deceased was travelling, suddenly applied the brakes and parked the vehicle on the middle of the road. As a result of which, the lorry in which the deceased was travelling hit against the lorry in front, as a result of which the deceased had sustained grievous injuries over his head, chest and other body parts.

3. The deceased was rushed to the Coimbatore Medical College Hospital, where he passed away on 03.10.1998, despite receiving treatment. The petitioners had claimed a compensation of a sum of Rs.4,00,000/- on the ground that the deceased was earning a sum of Rs.7,000/- per month as a lorry operator. The petitioners had impleaded the owner of the lorry bearing TN 33 1899 and its insurer as respondents as 1 and 2 respectively, as also the Insurance Company

5/18



C.M.A.No.1938 of 2016

WEB COPY

of the lorry in which the deceased was travelling as respondent 3.

4. The 2nd respondent Insurance Company had filed a counter inter alia contending that the FIR which has been filed on the basis of the complaint of an eye witness clearly shows that the entire negligence was only on the lorry in which the deceased was travelling and therefore the 1st and 2nd respondents cannot be held responsible for the accident and mulcted with the liability to compensate the petitioners.

5. The 2nd respondent would further deny the contentions of the petitioners that the driver of the lorry bearing registration No.TN 33 1899 had suddenly stopped the vehicle, on the contrary it is their contention that the vehicle was parked on the side of the road, as the lorry driver and the cleaner were doing some repair works under the body of the lorry. They had further contended that the compensation

6/18



C.M.A.No.1938 of 2016

claimed was rather excessive.

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6. The 3rd respondent Insurance Company had filed a counter inter alia contending that the accident had been caused only on account of the negligence of the driver of the lorry belonging to the 1st respondent. They had also contended that the owner of the vehicle was not covered under the policy of Insurance. Hence, no liability can be fastened on them.

7. The Tribunal below after considering the evidence on record particularly the evidence of P.W.2, eye witness, held that the accident had occurred only on account of the negligence on the part of the lorry bearing registration No. TN 33 1899 and proceeded to award a total compensation of Rs.8,67,800/-. The Tribunal had adopted a notional monthly income of a sum of Rs.5,100/-.



C.M.A.No.1938 of 2016

WEB COPY

8. Aggrieved by the fact that the Tribunal had not taken into consideration the contents of the FIR, which would clearly show that the accident had occurred only on account of the negligence of the driver of the lorry bearing registration No. TN 29 B 3000, (lorry belonging to the deceased), the Insurance Company has come by way of an appeal. The petitioners on the other hand had filed an appeal seeking enhancement of the award passed by the Tribunal below.

9. Mr.K.Vinod, learned counsel appearing on behalf of the 2nd respondent Insurance Company would submit that the Tribunal has deemed it fit to accept a portion of the FIR and not the FIR in toto. The learned counsel would submit that the Tribunal has appreciated the FIR in so far as it gives details about the accident but has rejected the FIR in as much as the eye witness therein had stated that the accident had occurred only on account of the negligent driving by the driver of the lorry insured with the 3rd respondent and in which the

8/18



C.M.A.No.1938 of 2016

deceased was travelling.

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10. In support of the said contention, the learned counsel would rely upon the following Judgements:

(i) **2007 ACJ 1928** – Oriental Insurance Co. Ltd., Vs. Premlata Shukla and others.

(ii) **2018 ACJ 1466** - Nishan Singh and others Vs. Oriental Insurance Co. Ltd., and others.

11. Without prejudice to the above contentions, the learned counsel would submit that the quantum of compensation is on the higher side..

12. Per contra, Mr.C.Munusamy, learned counsel appearing on behalf of the petitioners would submit that the FIR cannot be treated as a gospel truth. The learned counsel would further submit that the

9/18



C.M.A.No.1938 of 2016

WEB COPY

contents of the FIR has not been proved by the Insurance Company by examining either the driver of the lorry insured with them or the person who has given the complaint. Therefore, the learned counsel would submit that the Tribunal has rightly rejected the contents of the FIR in so far as it relates to the negligence on the part of the lorry in which the deceased was travelling. The learned counsel would further submit that the notional income fixed by the Tribunal is rather low.

13. Heard the learned counsels on both the sides.

14. Admittedly, the Insurance Company has not taken any steps to examine the person who has given the complaint or the driver of the vehicle bearing registration No.TN 29 B 3000 to substantiate the contents of the FIR. Without proof of the same, the Court cannot come to the conclusion that the accident had occurred on account of the negligence on the part of the driver of the lorry bearing TN 29 B

10/18



15. On the contrary, the petitioners have examined the eye witness as P.W.2 who in very clear terms would say that the accident had occurred only on account of the negligence on the part of the driver of the lorry bearing registration No.TN 33 1899. However, a perusal of the documents would clearly indicate that the driver of the lorry bearing registration number TN 29 B 3000 has also contributed to the accident. A perusal of the documents and evidence would show that the driver was driving through the night and there was some rains. Considering the above, the possibility of the driver having shut his eye for a few seconds cannot be ruled out. That apart, if the driver have maintained requisite distance between the two vehicles, the accident would not have occurred.



C.M.A.No.1938 of 2016

WEB COPY

16. Therefore, this Court is fastening the liability on the drivers of both the vehicles. As regards the driver of the lorry bearing TN 29 3000, the negligence is 25% and the negligence of 75% is fastened on the driver of the lorry bearing TN 33 1899.

17. Coming to the question of compensation awarded, the Tribunal has failed to appreciate the fact that the deceased was the owner of the lorry, in which goods are being transported. The Tribunal has fixed the notional monthly income of a sum of Rs.5,100/- , which is on the lower side. Therefore, this Court taking into account the year of the accident fixes the notional income at a sum of **Rs.6,500/-**. The petitioners have themselves claimed only a sum of Rs.7,000/- per month as an income. To this, **10% is added towards future prospects**. Therefore, monthly income would be **Rs.7,150/-**. An annual income would be a sum of **Rs.85,800/-**, out of this 1/3 has



C.M.A.No.1938 of 2016

WEB COPY

to be deducted towards personal expenses. Therefore, the family would have the annual income of **Rs.57,200/-**.

18. The deceased is aged about 31 years and the appropriate multiplier is 16. Therefore, the amount under the head of Loss of Income would be a sum of **Rs.9,15,200/-**. The 1st petitioner is entitled to a sum of **Rs.40,000/-** towards Loss of Consortium. The 2nd and 3rd petitioners should be entitled to a sum of **Rs.40,000/-**, each towards Loss of Love and Affection. That apart, a sum of **Rs.15,000/-**, each under the head of Loss of Estate and Funeral Expenses have to be added. The amounts under the head of Transportation Charges and Damage to clothings is removed.

19. The deceased has incurred medical expenses of a sum of



C.M.A.No.1938 of 2016

WEB COPY

Rs.86,500/-. Therefore, the total compensation would be a sum of **Rs.11,51,700/-**. The 2nd respondent Insurance Company shall deposit the sum of **Rs.8,63,775/-**, constituting the compensation for their 75% liability.

20. The deceased being the owner of the vehicle himself, the 3rd respondent Insurance Company stands exonerated.

21. The award of the Tribunal below is re-worked as follows:

<i>Heads</i>	<i>Award of the Tribunal</i>	<i>Award of the High Court</i>
Loss of Income	Rs.6,52,800/-	Rs.9,15,200/-. (Enhanced)
Transportation Charges	Rs.5,000/-	
Damage to Clothes	Rs.3,500/-	
Medical Expenses	Rs.86,500/-	Rs.86,500/- (Confirmed)
Loss of consortium	Rs.60,000/-	Rs.40,000/- (Reduced)
Loss of Love and Affection	Rs.50,000/-	Rs.80,000/- (Enhanced)



C.M.A.No.1938 of 2016

<i>Heads</i>	<i>Award of the Tribunal</i>	<i>Award of the High Court</i>
Funeral Expenses	Rs.10,000/-	Rs.15,000/- (Enhanced)
Loss of Estate		Rs.15,000/- (Granted)
Total	Rs.8,67,800/-	Rs.11,51,700/- (Enhanced)
Total Compensation to be paid to the petitioners (75% of the award amount)		Rs.8,63,775/- together with interest at 7.5% p.a.

22. When the original claim petition was filed in the year 2002, the 2nd and 3rd petitioners were aged about 8 and 4 respectively. Now, the 2nd and 3rd petitioners should have attained majority. Though no application has been taken out to declare them as a major, this Court *suo motu* takes into account the age given in the claim petition and also taking into account the efflux of time, declares the 2nd and 3rd petitioners as major and discharges their mother from the guardianship.



C.M.A.No.1938 of 2016

WEB COPY

23. The 2nd respondent Insurance company is directed to deposit the award amount along with interest and costs, less the amount already deposited within a period of six weeks from the date of receipt of a copy of this Judgement, to the credit of M.A.C.T.O.P.No.756 of 2013. On such deposit, the petitioners are permitted to withdraw their respective share of the award amount, as per the apportionment fixed by the Tribunal, along with proportionate interest and costs, less the amount if any, already withdrawn, by filing necessary application before the Tribunal.

24. In the result, the Civil Miscellaneous Appeal in C.M.A.No.1938 of 2016 is allowed and C.M.A.No.1962 of 2022 is partly allowed. Consequently, connected Civil Miscellaneous Petition is closed. No costs.

11.10.2022

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16/18



C.M.A.No.1938 of 2016

Index : Yes/No

Speaking order/non-speaking order

To,

The Motor Accidents Claims Tribunal
(Special District Court),
Krishnagiri.

P.T.ASHA, J.,

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C.M.A.No.1938 of 2016

C.M.A.No.1938 of 2016

11.10.2022