



C.M.A.No.3000 of 2014

WEB COPY IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED : 30.09.2022

CORAM:

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.M.A.No.3000 of 2014

Periyanayagam

...Appellant/Petitioner

Vs.

1.Shajahan

2.Reliance General Insurance Company Limited,
I Floor, Varinjam Towers, Division XLI,
Bldg.No.108, of Kollam Corporation,
Residency Road, Quilon,
Kerala.

3.Malathi

4.United India Insurance Company Limited,
Divisional Manager,
46, Nehru Street,
pondicherry.

5.Kasinathan

... Respondents/Respondents



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Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act against the Award and Decree dated 01.03.2014 in M.C.O.P.No.92 of 2013 on the file of the learned Special District Judge to deal with MCOP Cases, Villupuram.

For Appellant : Mr.M.Sivakumar

For Respondents : Mr.K.Moorthy for R2

Ms.R.Rathna Thara for R4

R1 – No appearance

R3 and R5 – Served – No appearance

JUDGMENT

The claimant has preferred the above appeal challenging the Award passed by the learned Special District Judge to deal with MCOP Cases, Villupuram, in M.C.O.P.No.92 of 2013, in and by which the Tribunal has awarded a compensation of a sum of Rs.4,74,000/- and out of which, 50% of the Award amount was



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directed to be paid by the 1st and 2nd respondents jointly to the petitioner and the remaining 50% to be paid by the 3rd respondent to the petitioner.

2.The facts in brief are as follows:

The deceased Sivasankar, a substitute driver whose mother has filed the above claim petition, was travelling in a TATA Turbo Cooler belonging to the 3rd respondent and insured with the 4th respondent. It is the case of the appellant that on 13.11.2010 at about 01.30 a.m. when her son Sivasankar was travelling in the 3rd respondent's vehicle, namely, TATA Turbo Inter Cooler, bearing Registration No.TN 31AC 5107, as a substituting driver from Pondicherry to Kollam, as the vehicle had reached Devadanam Sastha Koil Vilaku on the Thenkasi to Rajapalayam NH 208 road, a bus belonging to the 1st respondent and insured with the 2nd respondent coming in the opposite direction in a rash and negligent manner dashed against the Tata Turbo lorry. As a result of which, the said Sivasankar, son of the appellant died on



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the spot in the cabin. Therefore, the appellant had claimed a compensation of a sum of Rs.10 lakhs.

3.The 4th respondent/United India Insurance Company as the insurer of the Turbo Truck had filed a counter denying the manner of the accident and also the age, income and the occupation of the deceased and also contending that the claim amount was on the higher side.

4.The Tribunal, after considering the evidence has come to the conclusion that the accident had occurred on account of the negligence of the driver of the 1st respondent's vehicle as well as the driver of the 3rd respondent's vehicle and apportioned the liability 50% on each of them. The Tribunal has arrived at a low compensation of Rs.4,74,000/-. The 1st and 2nd respondents ultimately were jointly and severally liable to pay the remaining 50% of the amount i.e., Rs.2,37,000/-. The Tribunal had exonerated the 4th



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respondent/Insurance Company. The Tribunal has held that the deceased can only be considered a gratuitous passenger as the licence held by him was to drive a Light Motor Vehicle and not a transport vehicle. This was valid till 03.09.2009 and he has not renewed it thereafter. Therefore, the Tribunal held that he cannot be the driver. The Tribunal has also fixed a notional income of Rs.4,500/- per month.

5.Heard the learned counsels appearing on either side and perused the papers.

6.The deceased Sivasankar has sustained fatal injuries on account of the 1st respondent's vehicle and he claims to be a driver. This is clear from the claim statement. Therefore, the income of the deceased is enhanced to a sum of Rs.7000/- per month. The Tribunal has not considered the future prospects which is 40% according to his age. Therefore, the monthly notional income arrived at by adding 40%



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future prospects for the loss of earning is a sum of Rs.9,800/- [Rs.7,000/- x 40% = Rs.9,800/-] and the annual income would be a sum of Rs.1,17,600/- [Rs.9,800/- x 12 =1,17,600/-]. Out of which, considering the fact that there is only one claimant 50% is deducted towards personal expenses. Therefore, the monthly contribution to the family would be a sum of Rs.58,800/-. The deceased was aged about 30 years and the appropriate multiplier is 17. Therefore, the Award would be a sum of Rs.9,99,600/- under the head of loss of dependency. Further, the 1st petitioner/mother is entitled to a sum of Rs.40,000/- towards loss of love and affection and a sum of Rs.15,000/- each is granted under head of transportation charges and loss of estate. In all other respects, the Award remains unaltered. The enhanced compensation would be a sum of Rs.10,74,600/-. Therefore, taking into consideration the above aspects, the modified amount is as follows:



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S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted or reduced
1.	Loss of dependency	Rs.4,59,000/-	Rs.9,99,600/-	Enhanced
2.	Funeral expenses	Rs.5,000/-	Rs.5,000/-	Confirmed
3.	Loss of love and affection	Rs.10,000/-	Rs.40,000/-	Enhanced
4.	Transportation charges	-	Rs.15,000/-	Granted
5.	Loss of estate	-	Rs.15,000/-	Granted
	TOTAL	Rs.4,74,000/-	Rs.10,74,600/-	

The enhanced compensation would be a sum of Rs.10,74,600/-.

7.The contention of the respondents that the deceased Sivasankar did not possess a valid driving license which has to be necessarily upheld. Admittedly, the deceased was only in possession of LMV license. The vehicle in which he is traveling was a lorry. Therefore, it is crystal clear that the deceased was not in possession of license for driving the lorry, is the violation of the provisions of the



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Act. Therefore, the petitioner would be entitled to claim compensation from the owner of the vehicle. Hence, the 4th respondent/Insurance Company is exonerated from paying 50% of the Award amount to the petitioner since there is a violation of the provisions of the act. The deceased did not possess a valid driving license to drive the lorry. He claims to be a substitute driver. Therefore, since he is travelling in the 3rd respondent's lorry, the finding that the petitioner was a gratuitous passenger in the 3rd respondent's vehicle is upheld. Therefore, the petitioner is entitled to 50% of the award amount from the 3rd respondent/owner of the vehicle.

8. Accordingly, this Civil Miscellaneous Appeal is allowed. The 1 and 2 respondents are directed to deposit 50% of the compensation amount to the petitioner and the 3rd respondent/owner of the vehicle is directed to deposit 50% of the compensation amount to the petitioner, less the amount already deposited, with proportionate accrued interest



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and costs, to the credit of M.C.O.P.No.92 of 2013 on the file of the learned Special District Judge to deal with MCOP Cases, Villupuram, within a period of six weeks from the date of receipt of a copy of this Judgment, if not deposited earlier. On such deposit, the petitioner is permitted to withdraw the entire award amount with proportionate accrued interest and costs, by making necessary applications.

The claimant is directed to pay the Court fee for the compensation amount, if required. The Tribunal below shall not disburse the amount till such time as proof of payment of Court Fee has been produced by the claimant. No costs.

30.09.2022

Index : Yes/No
Internet : Yes/No
Speaking order / Non speaking order
mps

To

The Special District Judge to deal with MCOP Cases,
Villupuram.

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P.T. ASHA, J,

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