



WEB COPY



C.M.A.Nos.3311 of 2017 and 3389 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 10.02.2022

CORAM

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
and
THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

C.M.A.Nos.3311 of 2017 and 3389 of 2021

& C.M.P. No.20961 of 2017

Shriram General Insurance Co. Ltd.,
2nd Floor, City Centre Complex,
No.60, Thirumalai Pillai Road,
T.Nagar, Chennai – 17.

... Appellant in
C.M.A.No.3311 of 2017

-VS-

1.Saratha
2.Minor Dharshini
3.Minor Kowsik
Minor petitioners No.2 and 3 are represented
by their Next friend, Guardian, Mother – Saratha
4.Govintharaj
5.Ramani @ Sarathamani
6.Selvam
7.Sekar

... Respondents in
C.M.A.No.3311 of 2017

1.Saradha
2.Minor Dharshini
3.Minor Kowsik
4.Govindharaj
5.Ramani @ Saradhamani
Minor petitioners No.2 and 3 are represented
by their Next friend, Guardian, Mother – Saradha

... Appellants in
C.M.A.No.3389 of 2021



C.M.A.Nos.3311 of 2017 and 3389 of 2021

-VS-

1.Selvam
2.Sekar
3.Shriram General Insurance Co. Ltd.,
2nd Floor, City Centre Complex,
No.60, Thirumalai Pillai Road,
T.Nagar, Chennai – 17.

... Respondents in
C.M.A.No.3389 of 2021

PRAYER in C.M.A.No.3311 of 2017: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the Judgment and Decree dated 21.06.2017 made in M.C.O.P.No.763 of 2011 on the file of the Motor Accident Claims Tribunal (Sub Court), Sankagiri.

PRAYER in C.M.A.No.3389 of 2021: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to enhance the award in the Judgment and Decree dated 21.06.2017 and M.A.C.T.O.P.No.763 of 2011 on the file of the Motor Accident Claims Tribunal, Subordinate Judge Court, Sankagiri.

In C.M.A.No.3311 of 2017:

For Appellant	: Mr.S.Dhakshnamoorthy For
Respondents	: Mr.T.S.Arthanareeswarn for Mr.C.Paraneedharan for R1 to R5
	R6-Notice Served- No Appearance
	R7-Not ready in Notice

In C.M.A.No.3389 of 2021:

For Appellant : Mr.T.S.Arthanareeswarn

For Respondents :



C.M.A.Nos.3311 of 2017 and 3389 of 2021

Mr.S.Dhakshnamoorthy for R3

WEB COPY

R1 & R2 – Exparte

COMMON JUDGMENT

(Judgment of the Court was made by **K.KALYANASUNDARAM, J.,**)

C.M.A.No.3311 of 2017 is preferred by the Insurance Company, questioning the award passed by the Sub Judge, Motor Accident Claims Tribunal, Sankagiri in M.C.O.P.No.763 of 2011 vide order dated 21.06.2017, whereas C.M.A.No.3389 of 2021 is filed by the claimants in the Original Petition seeking for enhancement of compensation.

2. Brief facts of the case are that one Venkatesh, aged about 33 years died in an accident, occurred on 18.09.2011. His wife, minor children and parents filed the claim petition, seeking compensation of Rs.10 lakhs. It is their case that on the fateful day, the deceased-Venkatesh was travelling in a TATA Ace bearing Registration No.TN 22 AL 2126 on Sankagiri - Tiruchengodu Main Road and when the vehicle was near Naranappan Savadi Bus Stop, it was driven by its driver in a rash and negligent manner and hit



against a tree. In the accident, he sustained injuries and died on the spot.

WEB COPY

3. According to the claimants, the deceased died at the age of 33 years and he was earning Rs.10,000/- per month. Since the accident had occurred due to the negligence of the driver of the TATA Ace, the owner as well as the insurer are liable to pay the compensation.

4. The appellant/Insurance Company resisted the claim petition by filing a detailed counter, wherein they disputed the liability to pay the compensation.

5. During the trial, the parties adduced oral and documentary evidences. On the side of the claimants P.W's.1 to 3 were examined and Exs.P.1 to 7 were marked and on the side of the appellant/Insurance Company Ex.R.1 only marked, no oral evidence was given.

6. On appreciation of evidence, the Tribunal held that the driver of the TATA Ace is responsible for the accident and awarded compensation of Rs.22,55,000/- along with interest at the rate of 7.5%.



7. Challenging the same, above appeals have been filed.

8. The learned counsel appearing for the appellant/Insurance Company, Mr.S.Dhakshnamoorthy would submit that the deceased was not a permanent employee. The Tribunal instead of adding 40% towards future prospectus added 50%. It is also contended that the amounts awarded under the heads of Loss of consortium and Loss of love and affection are contrary to the decisions of the Apex Court.

9. Per contra, the learned counsel appearing for the claimants would argue that the Tribunal on proper analysis of the evidence and taking note of the facts of the case, awarded just and reasonable compensation, which does not warrants interference of this Court.

10. We have heard the rival submissions and perused the materials available on record.

11. In the instant case, it is an admitted fact that the deceased- Venkatesh died in an accident, while he was travelling in a TATA Ace



bearing Registration No.TN 22 AL 2126 and there is no dispute that at the relevant point of time, the vehicle was insured with the appellant Insurance company. The claimants have proved that the deceased was a loadman and he was earning Rs.10,000/- per month by examining the P.W.3, co- employee. However, the Tribunal fixed the income of the deceased as Rs.8,000/- and added 50% for future prospectus.

12. As rightly pointed out by the learned counsel for the appellant/Insurance company, it would be appropriate to add 40% under the head of future prospects. Hence, income of the deceased would come at Rs.11,200/- (Rs.8,000/- x 40%). The appropriate multiplier would be '16' and after deducting 1/4th towards the personal expenses of the deceased, the amount under the head, loss of income is arrived at **Rs.16,12,800/-** (Rs.11,200/- x 12 x 16 x $\frac{1}{4}$). As per the decision of the Hon'ble Apex Court cited supra, the claimants being five in number, we award an amount of **Rs.2 lakhs** towards the head of consortium and parental consortium. Another, **Rs.30,000/-** is awarded under the head of funeral expenses and loss of estate.

13.Thus, the claimants will be entitled for a total sum of **Rs.18,42,800/-** with interest at the rate of 7.5% from the date of petition, till



C.M.A.Nos.3311 of 2017 and 3389 of 2021

the date of realization. The Insurance Company shall deposit the modified compensation with interest with cost, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the major claimants are permitted to withdraw the award amount, less the amount already withdrawn, if any, together with proportionate interest and costs. Insofar as the claimants 2 and 3/minors are concerned, their share shall be deposited by the Tribunal in any Fixed Deposit Scheme in any one of the Nationalised Banks and it shall be renewed periodically till they attain majority and the interest accrued thereon shall be withdrawn by the first claimant/mother once in three months directly from the bank. The apportionment of shares as fixed by the Tribunal to the claimants is hereby confirmed.

14.In the result, the appeal preferred by the appellant/Insurance Company in C.M.A.No.3311 of 2017 is partly allowed and the appeal preferred by the claimants in C.M.A.No.3389 of 2021 stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.



C.M.A.Nos.3311 of 2017 and 3389 of 2021

(M.K.K.S.J.) (V.S.G.J.)

10.02.2022

Jer

Index: Yes/No

Internet: Yes/No

Speaking order/Non-speaking order

To

1.The Motor Accident Claims Tribunal
Sub Court, Sankagiri.

2.The Section Officer

V.R.Section

High Court of Madras, Chennai – 104.

K.KALYANASUNDARAM, J.

and

V.SIVAGNANAM, J.

Jer

C.M.A.Nos.3311 of 2017 and 3389 of 2021



WEB COPY



C.M.A.Nos.3311 of 2017 and 3389 of 2021

& C.M.P. No.20961 of 2017

10.02.2022