



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 29.10.2021

Delivered On : 11.02.2022

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)Nos.871, 872, 1143 to 1145 of 2012 and 669 of 2014

WEB COPY

C.M.A.(MD)No.871 of 2012 :

N.Jeyakumar

.. Appellant/2nd Respondent

Vs.

- 1.Arokkia Mary
- 2.Soosaiya Jacob
- 3.Immaculate Pushpa
- 4.Antoni Mariya Selvaraj
- 5.Sagaya Mary
- 6.Ramasamy
- 7.THE BRANCH MANAGER

NEW INDIA ASSURANCE CO LTD, NO.402, TENKASI,

ROAD, RAJAPALAYAM TOWN

.. Respondents/Petitioner

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the fair and decretal order dated 30.09.2011 made in MCOP No.78 of 2005 on the file of the Motor Accident Claims Tribunal (Principal District Judge), Virudhunagar District at Srivilliputhur.

For Appellant

: Mr.S.Srinivasa Raghavan

For Respondents 1 to 5

: Mr.S.Ramesh

For 6th Respondent

: Mr.M.Ashok Kumar

For 7th Respondent

: Mr.B.Vijay Karthikeyan

C.M.A.(MD)No.669 of 2014 :

- 1.Arokiyamaray
- 2.Susaiyacopu
- 3.Imaculate Pushpa
- 4.Anthony Maria Selvaraj
- 5.Sagayamaray

.. Appellants/Claimants

Vs.

- 1.P.Ramasamy
- 2.N.Jeyakumar
- 3.The New India Assurance Company Limited,
through its Branch Manager,
402, Tenkasi Road, Rajapalayam,
Virudhunagar District.

..1st to 3rd Respondents/

1st to 3rd respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the judgment and decree



C.M.A.(MD)Nos.871, 872, 1143 to 1145 of 2012 and 669 of 2014

passed by the Principal District Court, Virudhunagar District at Srivilliputtur in M.C.O.P.No.78 of 2005 dated 30.09.2011.

For Appellant : Mr.M.Jothi Basu
For 1st Respondent : Mr.M.Ashok Kumar
For 2nd Respondent : Mr.S.Srinivasa Raghavan
For 3rd Respondent : Mr.B.Vijay Karthikeyan

C.M.A.(MD)No.872 of 2012 :

N.Jeyakumar .. Appellant/2nd Respondent
Vs.
1.M.Subramanian ..1st respondent/Petitioner
2.Ramasamy ..2nd respondent/1st respondent
3.New India Assurance Co. Ltd.,
Rajapalayam Town. ..3rd Respondent/3rd Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to enhance the compensation granted by fair and decretal order dated 30.09.2011 and made in MCOP No.262 of 2005 on the file of the Motor Accident Claims Tribunal (Principal District Judge), Virudhunagar District at Srivilliputhur.

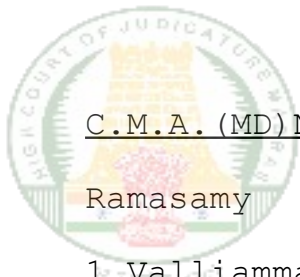
For Appellant : Mr.S.Srinivasa Raghavan
For 1st Respondent : Mr.S.Alagu Sundar
For 2nd Respondent : Mr.M.Ashok Kumar
For 3rd Respondent : Mr.B.Vijay Karthikeyan

C.M.A.(MD)No.1145 of 2012 :

Ramasamy .. Appellant/1st Respondent
Vs.
1.M.Subramanian ..1st & 2nd respondent/Claimants
2.Thikaimmal
3.N.Jeyakumar
4.New India Assurance Company Ltd.,
Through its Divisional Manager,
402, Tenkasi Road,
Rajapalayam. ..3rd Respondents
/2nd & 3rd Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the decree and judgment passed in M.C.O.P.No.262 of 2005 dated 30.09.2011 on the file of the learned Principal District Judge, Virudhunagar District at Srivilliputtur.

For Appellant : Mr.M.Ashok Kumar
For Respondents 1 and 2 : Mr.S.Alagu Sundar
For 3rd Respondent : Mr.S.Srinivasa Raghavan
For 4th Respondent : Mr.B.Vijay Karthikeyan



C.M.A. (MD)No.1143 of 2012 :

Ramasamy

.. Appellant/1st Respondent
Vs.

1.Valliammal

2.Somasundari

3.Minor Vellammal

4.Minor Velmurugan

(Minor 3 and 4 respondents represented

by their mother and natural guardian first respondent)

..1st to 4th respondent/Claimants

5.N.Jeyakumar

6.The New India Assurance Co. Ltd.,

Through its Divisional Manager,

402, Tenkasi Road,

Rajapalayam.

..5th & 6th Respondents/
2nd & 3rd Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the decree and judgment passed in M.C.O.P.No.238 of 2003 dated 30.09.2011 on the file of the learned Principal District Judge, Virudhunagar District at Srivilliputtur.

For Appellant

: Mr.M.Ashok Kumar

For 1st Respondent

: Mr.S.Sathesh Kumar

For Respondents 3 and 4

: Minors

For 5th Respondent

: Mr.S.Srinivasa Raghavan

For 6th Respondent

: Mr.B.Vijay Karthikeyan

C.M.A. (MD)No.1144 of 2012 :

Ramasamy

.. Appellant/Claimant

Vs.

1.N.Jeyakumar

2.The Divisional Manager,

New India Assurance Company Ltd.,

Tenkasi Main Road,

Rajapalayam.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the decree and judgment passed in M.C.O.P.No.206 of 2004 dated 30.09.2011 on the file of the learned Principal District Judge, Virudhunagar District at Srivilliputtur.

For Appellant

: Mr.M.Ashok Kumar

For 1st Respondent

: Mr.S.Srinivasa Raghavan



For 2nd Respondent

: Mr.B.Vijay Karthikeyan

COMMON JUDGMENT

These Civil Miscellaneous Appeals have been filed against the common award passed in M.C.O.P.Nos.238 of 2003, 206 of 2004, 78 of 2005 and 262 of 2005 dated 30.09.2011, on the file of the Motor Accident Claims Tribunal, Principal District Judge, Virudhunagar District at Srivilliputhur.

2.The appellant in C.M.A.(MD)No.871 of 2012 is the second respondent, the respondents 1 to 5 are the claimants and the respondents 6 and 7 are the respondents 1 and 3 in the claim petition in M.C.O.P.No.78 of 2005. The respondents 1 to 5 herein / claimants have filed a claim petition in M.C.O.P.No.78 of 2005 claiming compensation for the death of one Anthony (cyclist), in an accident that took place on 16.08.2003.

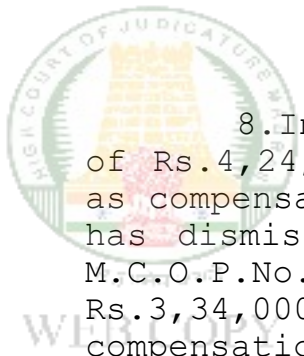
3.The appellants in C.M.A.(MD)No.669 of 2014 are the claimants, the respondents are the respondents in the claim petition in M.C.O.P.No.78 of 2005.

4.The appellant in C.M.A.(MD)No.872 of 2012 is the second respondent, the first respondent is the claimant. The respondents 2 and 3 are the respondents 1 and 3 in the claim petition in M.C.O.P.No.262 of 2005. The first respondent herein / claimant has filed a claim petition in M.C.O.P.No.262 of 2005 claiming compensation for the death of one Kamaraj (rider of the two wheeler), in an accident that took place on 16.08.2003.

5.The appellant in C.M.A.(MD)No.1145 of 2014 is the first respondent (owner of the tractor), the respondents 1 and 2 are the claimants and the respondents 3 and 4 are the respondents 2 and 3 in the claim petition in M.C.O.P.No.262 of 2005.

6.The appellant in C.M.A.(MD)No.1143 of 2014 is the first respondent (owner of the two wheeler), the respondents 1 to 4 are the claimants and the respondents 5 and 6 are the respondents 2 and 3 in the claim petition in M.C.O.P.No.238 of 2003. The respondents 1 to 4 herein/ claimants have filed a claim petition in M.C.O.P.No.238 of 2003 claiming compensation for the death of one Periyasamy (driver of the tractor), in an accident that took place on 16.08.2003.

7.The appellant in C.M.A.(MD)No.1144 of 2014 is the claimant (owner of the tractor) and the respondents are the respondents in the claim petition in M.C.O.P.No.206 of 2004. The appellant herein has filed a claim petition in M.C.O.P.No.206 of 2004 claiming compensation for the damages of a tractor, in an accident that took place on 16.08.2003.



8. In M.C.O.P.No.238 of 2003, the Tribunal has awarded a sum of Rs.4,24,000/- (Rupees Four Lakhs and Twenty Four Thousand only) as compensation to be paid by the owner of the tractor. The Tribunal has dismissed the claim petition, in M.C.O.P.No.206 of 2004. In M.C.O.P.No.78 of 2005, the Tribunal has awarded a sum of Rs.3,34,000/- (Rupees Three Lakhs and Thirty Four Thousand only) as compensation to be paid by the owner of the two wheeler. In M.C.O.P.No.262 of 2005, the Tribunal has awarded a sum of Rs.3,92,000/- (Rupees Three Lakhs and Ninety Two Thousand only) as compensation to be paid by the owner of the tractor and the owner of the two wheeler. Against the common order passed in the above M.C.O.Ps, the appellants have preferred these appeals.

9. A brief substance of the claim petition in M.C.O.P.No.238 of 2003 is as follows:

The petitioners are the dependants of the driver of the tractor. The first respondent was the owner of the tractor bearing registration No.TN-51-W-2896 and the trailer bearing registration No.TN-67-V-2719 and he failed to maintain the vehicle in a proper manner. He failed to obtain fitness certificate and failed to insure the vehicle. The tyres were old and were in a dangerously flat condition. On 16.08.2003, at about 06.00 a.m., the first respondent permitted the deceased Periyasamy to drive the tractor. The back side tyre burst and the tractor dragged to the right side of the road and four loadmen fell and they sustained injuries. The rider of the two wheeler bearing registration No.TN-67-W-7871 drove the vehicle in a rash and negligent manner and dashed against the tractor and the tractor suddenly got fire. A lady nearby and a cyclist sustained injuries. The rider of the two wheeler died on the spot. The deceased who was the driver of the tractor sustained burn injuries and he was admitted in Madurai Government Rajaji Hospital and he died on 16.08.2013. He was aged about 40 years and at the time of the accident, he was earning Rs.5,000/- (Rupees Five Thousand only) as monthly income. The petitioners are his dependants and they claimed a sum of Rs.10,60,000/- (Rupees Ten Lakhs Sixty Thousand only) as compensation.

10. A brief substance of the claim petition in M.C.O.P.No.206 of 2004 is as follows:

The petitioner is the owner of the tractor. The deceased Periyasamy drove the vehicle, without the knowledge of the petitioner. One Kamaraj who was rider of a two wheeler that came from the opposite direction with a Can containing 35 litres of diesel in a rash and negligent manner and dashed against the tractor. The diesel split and the tractor got fire. Both the rider of the two wheeler and the driver of the tractor and a cyclist died due to burn injuries. The tractor was completely burnt down. The value of the vehicle is Rs.1,50,000/- (Rupees One Lakh and Fifty Thousand only). The owner of the two wheeler and the insurance



company are liable to pay compensation to the petitioner.

11.A brief substance of the claim petition in M.C.O.P.No.78 of 2005 is as follows:

The petitioners are the dependants of the cyclist- Anthony, who died in the accident. The tractor was driven by its driver in a rash and negligent manner and the tractor suddenly stopped in the middle of the road and some person fell down from the tractor. At the same time, a two wheeler which was driven by its rider in rash and negligent manner dashed against the tractor and a fire burst out. Deceased Anthony was riding his bicycle nearby. The petitioners are his dependants and they claim a sum of Rs.5,00,000/- (Rupees Five Lakhs only) as compensation.

12.A brief substance of the claim petition in M.C.O.P.No.262 of 2005 is as follows:

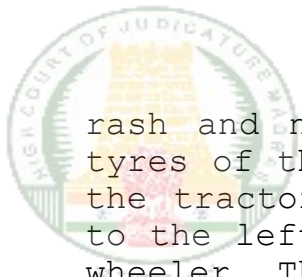
The petitioners are the dependants of the rider of the two wheeler. The back side tyre of the tractor burst suddenly and the tractor got fire. The driver of the tractor and loadmen sustained injuries. The deceased Kamaraj was riding his two wheeler in a careful and cautious manner but the fire in the tractor affected the motorcycle and the deceased sustained burn injuries and he died. The deceased was 27 years old and he was earning Rs.4,000/- (Rupees Four Thousand only) per month. The petitioners are his dependants and they claim a sum of Rs.4,00,000/- (Rupees Four Lakhs only) as compensation.

13.Brief substance of the counter filed by the owner of the tractor/first respondent in M.C.O.P.No.238 of 2003 and in M.C.O.P.No.78 of 2005 is as follows:

The deceased Periyasamy never worked under the first respondent at the time of accident. The deceased Periyasamy was not permitted to drive the tractor. Without the permission of the owner of the tractor, the deceased Periyasamy got the tractor from his son, by name Sanjeev kumar and hence, the first respondent is not liable to pay compensation. The vehicle was kept in a good condition. The tractor and trailer were new and it is wrong to state that the tyres burst at the time of the accident. It was the rider of the two wheeler who brought a can with 35 litres of diesel in a rash and negligent manner and he dashed against the tractor and he caused the accident.

14.Brief substance of the counter filed by the owner of the two wheeler/second respondent in M.C.O.P.Nos.238 of 2003, 78 of 2005 and 262 of 2005 and the first respondent in M.C.O.P.No.206 of 2004 is as follows:

The second respondent is the owner of the two wheeler. His friend Kamaraj borrowed the vehicle. Kamaraj was having a valid driving licence. He drove the vehicle in a careful and cautious manner. It was the driver of the tractor who drove the vehicle in a



rash and negligent manner. Due to heavy load in the tractor, the tyres of the tractor burst and due to the negligence on the part of the tractor driver, the tractor got fired. The vehicle was dragged to the left edge of the road and the tractor dashed against the two wheeler. The accident took place as the tractor was not maintained properly and there was excessive repair in the tractor. The two wheeler was insured with the third respondent. This respondent is not liable to pay compensation.

15.Brief substance of the additional counter filed by the owner of the two wheeler/second respondent in M.C.O.P.Nos.238 of 2003, 78 of 2005 and 262 of 2005 and the first respondent in M.C.O.P.No.206 of 2004 is as follows:

The manner of the accident as narrated in the petition is wrong. The second respondent never permitted his friend Kamaraj to carry diesel in the two wheeler. The accident took place, only because of the bursting of the tractor tyre.

16.Brief substance of the counter filed by the insurance company for the two wheeler / third respondent in all the claim petitions is as follows:

The manner of the accident as narrated in the petition is denied. The accident took place, on 10.08.2003 at about 08.15 a.m. The first respondent vehicle was not maintained properly. At the time of accident, it was overloaded and due to overload in the tractor, the right back side tyre burst and the tractor got fire. Only due to the tyre burst, the tractor hit the two wheeler. The two wheeler was driven by its rider in a careful and cautious manner. It was the driver of the tractor who was responsible for the accident.

17.Brief substance of the additional counter filed by the Insurance company in all the claim petitions is as follows:

If at all the rider of the two wheeler was carrying diesel, it is against the policy conditions and hence, the third respondent is not liable to pay compensation as the policy conditions are violated.

18.In the joint trial, four witnesses were examined and 18 documents were marked on the side of the claimants. Three witnesses were examined and three documents were marked, on the side of the respondents. In M.C.O.P.No.238 of 2003, the Tribunal has awarded a sum of Rs.4,24,000/- (Rupees Four Lakhs and Twenty Four Thousand only) as compensation to be paid by the owner of the tractor. The Tribunal has dismissed the claim petition in M.C.O.P.No.206 of 2004. In M.C.O.P.No.78 of 2005, the Tribunal has awarded a sum of Rs.3,34,000/- (Rupees Three Lakhs and Thirty Four Thousand only) as compensation to be paid by the owner of the two wheeler. In M.C.O.P.No.262 of 2005, the Tribunal has awarded a sum of Rs.3,92,000/- (Rupees Three Lakhs and Ninety Two Thousand only) as



compensation to be paid by both the owner of the tractor and by the owner of the two wheeler. Against the above orders, the appellants have preferred these Civil Miscellaneous Appeals.

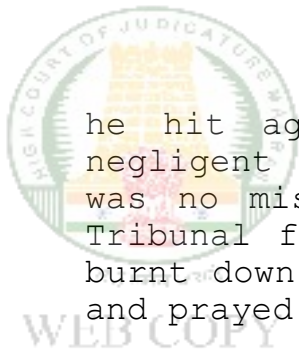
19. Since a common order was passed by the Tribunal, a common order is passed by this Court and C.M.A.(MD)No.871 of 2012 is taken as the lead case.

20. Two vehicles were involved in the accident. One is a tractor and other is a two wheeler. Both the driver of the tractor and the rider of the two wheeler died in the accident. The dependants of the tractor driver filed a claim petition in M.C.O.P.No.238 of 2003 and the dependants of the rider of the two wheeler filed a claim petition in M.C.O.P.No.262 of 2005. A rider of the bicycle and a lady who was fetching water from the street tap were also injured due to the accident. The dependents of the cyclist filed a claim petition in M.C.O.P.No.78 of 2005. The owner of the tractor filed a claim petition in M.C.O.P.No.206 of 2004 claiming damages for the tractor.

21. The owner of the tractor filed an appeal in C.M.A.(MD) No.1143 of 2012 against the award passed in M.C.O.P.No.238 of 2003. The owner of the two wheeler/second respondent in M.C.O.P.No.262 of 2005 has filed an appeal in C.M.A.(MD)No.872 of 2012. The owner of the tractor has filed an appeal in C.M.A.(MD)No.1145 of 2012 against the award passed in M.C.O.P.No.262 of 2005. Against the award of compensation, the claimants in M.C.O.P.No.78 of 2005 has filed an appeal in C.M.A.(MD)No.699 of 2012 for enhancement of compensation. The owner of the two wheeler/second respondent in M.C.O.P.No.78 of 2005 has filed an appeal in C.M.A.(MD)No.871 of 2012. The owner of the tractor has filed an appeal in C.M.A.(MD)No.1144 of 2012 against the dismissal of the order in M.C.O.P.No.206 of 2004.

22. The contention of the owner of the tractor/appellant in all the C.M.As. is as follows:

The Tribunal has come to a wrong conclusion that the accident took place due to tyre burst. The trial Court failed to consider that the rider of the two wheeler that came from the opposite direction in a rash and negligent manner with a Can of 35 litres of diesel and dashed against the trailer and due to that impact, the tyre of the tractor burst. The person who ride the two wheeler died of burn injuries, which clearly proves that the accident took place only due to the diesel that was transported in the two wheeler. The two wheeler dashed against the stationed tractor and non maintenance of the tractor is not a cause for the accident and that the tractor was well maintained. The Tribunal ought to have fastened the liability on the insurance company. The driver of the tractor has taken away the tractor without the knowledge and permission of the appellant. It was the rider of the two wheeler who was carrying 35 litres of diesel can and since he could not balance the two wheeler,



he hit against the tractor. The rider of the two wheeler was negligent in bringing 35 litres of diesel in a plastic can. There was no mistake on the part of the driver of the tractor. The Tribunal failed to consider that the entire tractor was completely burnt down and that the entire business of the appellant was ruined and prayed compensation to be paid towards damage to his vehicle.

23.The contention of the owner of the two wheeler/appellant in all the C.M.As. is as follows:

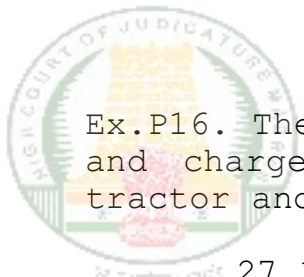
The Tribunal holding a joint trial in four claim petitions is bound to render a finding on the negligence in a uniform manner. The Tribunal passed an order in one case in one way and in the remaining three cases in another way, which is unacceptable. The accident in question took place because of the non maintenance of the tractor and the Tribunal ought to have directed the owner of the tractor to pay compensation. In Paragraph no.51 of the judgment, the Tribunal has given a findings that the accident in question took place on account of the negligence on the part of the owner of the tractor, who failed to maintain the tractor in a proper manner and hence, the Tribunal is not justified in holding that this appellant is liable to pay compensate to the legal heirs of the rider of the two wheeler. Having given a finding that the accident took place due to the non maintenance of the tractor, the Tribunal is wrong in fixing the liability in M.C.O.P.No.78 of 2005 against the owner of the two wheeler.

24.On the side of the owner of the two wheeler, it is stated that the driver of the tractor by his rash and negligent driving has contributed to the accident and the owner of the tractor has contributed to the accident by not maintaining the vehicle in a proper manner. The contention of the owner of the two wheeler is that there was no insurance for the tractor. There was no fitness certificate for the tractor and that the tractor was poorly maintained and that the right back side tyre blasted, since the tractor was heavily loaded. No negligence can be fixed on the rider of the two wheeler. The tribunal has erroneously fixed the liability on the owner of the two wheeler.

25.The contention of the insurance company in all the Civil Miscellaneous Appeals is as follows:

Instead of fixing liability on a particular person, the Tribunal has fixed liability on the owner of the tractor in two cases and on the owner of the two wheeler in two cases. Exonerating the insurance company is reasonable, since the policy conditions are violated.

26.Copies of FIR were marked as Ex.P1, Ex.P5, Ex.P10 and Ex.P15. The copies of the Motor Vehicle report for the tractor and trailer were marked as Ex.P3, Ex.P7, Ex.P11, Ex.P18 and Ex.P9. Copies of the chargesheet were marked as Ex.P4, Ex.P6, Ex.P13 and



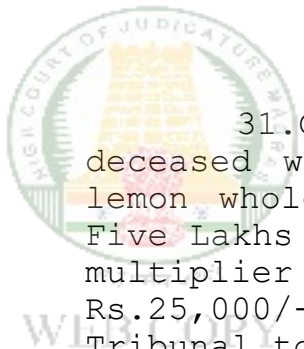
Ex.P16. The copy of the observation mahazer was marked as Ex.P8, FIR and chargesheet were registered against both the driver of the tractor and the rider of the two wheeler.

27.It is seen that the oral evidence of witness revealed that the tractor was heavily loaded. It is stated that the vehicle was not maintained properly. The tyres were worn out and almost flat and due to the heavy load, the right back side tyre blasted. The evidence of P.W.1 reveals that the back side of the tractor burst and the tractor suddenly stopped. The owner of the tractor has contributed to the accident by not maintaining the tractor in a proper condition. It is seen that the two wheeler that came from the opposite direction was used for transporting a can of 35 litres of diesel and the two wheeler dashed against the tractor and due to the spread of diesel, a fire broke out. The rider of the two wheeler has contributed to the accident by his negligent act. Since the owner of the two wheeler has permitted the deceased Kamaraj to use his vehicle to transport diesel, the owner of the two wheeler is also responsible for the accident.

28.The accident took place due to the non maintenance of the tractor and due to the rash and negligent act of the rider of the two wheeler. Hence, it is decided that the owner of the tractor and the rider of the two wheeler are responsible for the accident and the negligence is fixed as 50% each. The policy for the two wheeler was in force at the time of accident. Since the owner of the two wheeler has permitted the deceased to transport diesel in the two wheeler, policy conditions are violated. Hence, the insurance company of the two wheeler has to pay 50% of the amount due to the claimants and the insurance company is permitted to recover the same from the owner of the two wheeler.

29.In M.C.O.P.No.78 of 2005, the Tribunal has award Rs.3,34,000/- to the claimants to be paid by the owner of the two wheeler. C.M.A.(MD)No.871 of 2012 and C.M.A(MD)Nos.669 of 2014 are appeals against the order in M.C.O.P.No.78 of 2005, filed by the owner of the two wheeler and by the claimants respectively. The claimants are the Legal Representatives of the cyclist - Anthoy On the side of the owner of the two wheeler, it is stated that the cyclist Anthony sustained burn injuries due to the fire that broke at the time of the accident and that the fire was caused due to the burst of the tractor tyre. As already discussed above, the owner of the two wheeler has permitted his vehicle to be used for transporting diesel and hence, he is also equally responsible for the accident. His liability is 50%.

30.The claimants, who are the dependants of the cyclist, has filed an appeal in C.M.A.(MD)No.669 of 2014 for enhancement of compensation. The contention of the claimants is that the Tribunal has awarded a sum of Rs.3,34,000/-, which is very low.

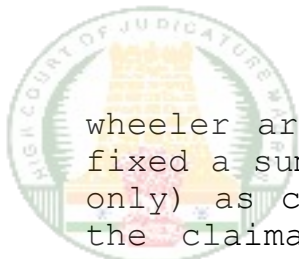


31. On the side of the claimants, it is stated that the deceased was running a grocery shop and was doing business as a lemon wholesale merchant and he was earning Rs.5,00,000/- (Rupees Five Lakhs only) per month. The deceased was aged about 55 years and multiplier '11' is to be applied. The Tribunal ought to have awarded Rs.25,000/- towards funeral expenses. No amount was awarded by the Tribunal towards transport expenses. The award is to be enhanced.

32. Considering the date of accident, notional income for a self employed person is fixed as Rs.3,000/- (Rupees Three Thousand only) per month. The deceased was having more than four dependants. $\frac{1}{4}^{\text{th}}$ is to be deducted towards his own expenses. After deducting $\frac{1}{4}^{\text{th}}$ towards his own expenses, the loss of income is calculated as Rs.2,250/- (Rupees Two Thousand Two Hundred and Fifty only) per month. The total loss of income would be calculated as Rs.2,97,000/- (Rupees Two Lakhs Ninety Seven Thousand only). A sum of Rs.3,000/- (Rupees Three Thousand only) is awarded towards transport expenses. A sum of Rs.70,000/- (Rupees Seventy Thousand only) is awarded towards conventional charges. In total, a sum of Rs.3,70,000/- (Rupees Three Lakhs Seventy Thousand only) is awarded as compensation. Both the owner of the tractor and the owner of the two wheeler are equally liable to pay compensation. Since the policy was in force on behalf of the owner of the two wheeler, the Insurance company has to pay 50% of the amount due and the Insurance Company is at liberty to recover the same from the owner of the two wheeler. Both the appeals are partly allowed.

33. In M.C.O.P.No.262 of 2005, the claimants are the Legal Representatives of the rider of the two wheeler. The Tribunal has directed both the owner of the two wheeler and the owner of the tractor to pay a sum of Rs.3,92,000/- as compensation to the claimants. Against the award of Rs.3,92,000/- (Rupees Three Lakhs and Ninety Thousand only) in M.C.O.P.No.262 of 2005, the owner of the two wheeler has filed C.M.A.(MD)No.872 of 2012 and the owner of the Tractor has filed C.M.A.(MD)No.1145 of 2012. This Court has already decided that the owner of the tractor and the rider of the two wheeler are equally responsible for accident. Since the deceased was carrying diesel in a two wheeler in a negligent manner, the deceased was responsible for the accident. Since the deceased himself is responsible for the accident, it is decided that the claimants, who are the Legal Representatives of the deceased, are not entitled for any compensation. Hence, both the appeals are allowed.

34. In M.C.O.P.No.238 of 2003, the Tribunal has awarded Rs.4,24,000/- as compensation to the Legal Representatives of the driver of the tractor (Periyasamy) to be paid by the owner of the Tractor. Against that order, the owner of the tractor has filed an appeal in C.M.A.(MD)No.1143 of 2012. As already decided by this Court, both the owner of the tractor and the rider of the two



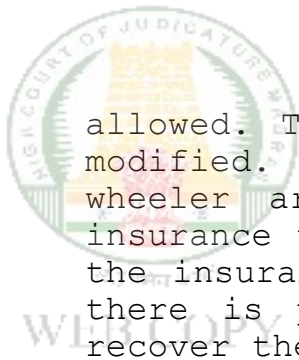
wheeler are equally responsible for the accident. The Tribunal has fixed a sum of Rs.4,24,000/- (Rupees Four Lakhs Twenty Four Thousand only) as compensation. There is no cross objection on the side of the claimants. The compensation amount fixed by the Tribunal is reasonable. The award is modified to the effect that the owner of the tractor and the owner of the two wheeler are liable to pay 50% of the amount due. On behalf of the owner of the two wheeler, the insurance company of the two wheeler is directed to pay 50% of the amount due to the claimants and the Insurance Company is at liberty to recover the same from the owner of the two wheeler. The appeal is partly allowed.

35. The owner of the tractor has filed M.C.O.P.No.206 of 2014 claiming compensation for the damages to the tractor. The tribunal has dismissed the claim petition against the owner of the tractor. Against the dismissal of M.C.O.P.No.206 of 2014, the owner of the tractor has filed an appeal in C.M.A.(MD)No.1144 of 2012. As already decided, both the rider of the two wheeler and the owner of the tractor are responsible for the accident. When the tractor was purchased by the petitioner, what was the value of the vehicle at the time of the accident, what were the damages and what was the expenses incurred by him were not clearly stated in the petition. No documentary evidence was produced by the owner of the tractor, to prove the value of the vehicle. Non maintenance of the tractor is one of the reason for the accident. In the above circumstances, it is decided that the claimant is not entitled to claim any amount towards damages and the appeal is dismissed.

36.In the result, C.M.A.(MD)No.669 of 2014 and C.M.A(MD) No.871 of 2012 are **partly allowed**. The award of the Tribunal is modified. The award is enhanced from Rs.3,34,000/- to Rs.3,70,000/-. Both the owner of the tractor and the two wheeler are liable to pay 50% of the compensation amount with interest and costs. On behalf of the owner of the two wheeler, the insurance company of the two wheeler is directed to pay 50% of the amount due to the claimants and the insurance company is permitted to recover the same from the owner of the two wheeler/appellant.

37.The owner of the tractor and the insurance company of the two wheeler are directed to deposit 50% of Rs.3,70,000/- (Rupees Three Lakhs Seventy Thousand only) 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 their respective shares, with proportionate interest after deducting any amount received by them earlier. The claimants are not entitled for interest for the default period, if there is any.

38.In the result, C.M.A.(MD)No.1143 of 2012 is partly



allowed. The award of the Tribunal in M.C.O.P.No.238 of 2003 is modified. Both the owner of the tractor and the owner of the two wheeler are liable to pay 50% of the compensation. Since the insurance was in force, on behalf of the owner of the two wheeler, the insurance company is directed to pay 50% of the amount due and there is policy violation the insurance company is permitted to recover the same from the owner of the two wheeler.

39.The owner of the tractor/appellant and the insurer of the two wheeler/6th respondent are directed to deposit each 50% of Rs.4,24,000/- (Rupees Four Lakhs and Twenty Four Thousand only) 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. The 6th respondent/insurance company is directed to pay the claimants and the insurance company is permitted to recover the same from the owner of the two wheeler/5th respondent. On such deposit, the claimants are permitted to withdraw their respective shares, with proportionate interest after deducting any amount received by them earlier. The Tribunal is directed to deposit the share of the minor claimants in any one of the Nationalised Banks, in a Fixed Deposit scheme, till they attain majority. The first respondent, who is the mother and guardian of the minor claimants, is permitted to withdraw the accrued interest once in three months directly from the bank, only for the welfare of minor. The claimants are not entitled for interest for the default period, if there is any.

40. In the result, C.M.A.(MD)No.1144 of 2012 is dismissed and the order passed in M.C.O.P.No.206 of 2004 on the file of the learned Principal District Judge, Virudhunagar District at Srivilliputtur is confirmed.

41. In the result, both the C.M.A.(MD)No.872 of 2012 and C.M.A.(MD)No.1145 of 2012 are allowed. The claimants in M.C.O.P.No.262 of 2005 were not entitled to any compensation. The order of the tribunal is set aside and the claim petition is dismissed. No costs.

Sd/-

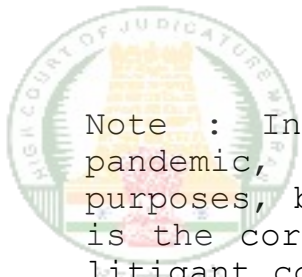
Assistant Registrar (CS-II)

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/ /2022

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.

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To

1.The Motor Accidents Claims Tribunal,
Principal District Judge,
Virudhunagar District, Srivilliputhur.

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

+1 CC to M/s.B.VIJAY KARTHIKEYAN, Advocate (SR-6089[F] dated 15/02/2022)

+1 CC to M/s.V.RAGHAVACHARI, Advocate (SR-5646[F] dated 11/02/2022)

+1 CC to M/s.S.SRINIVASA RAGHAVAN, Advocate (SR-5637[F] dated 11/02/2022)

+1 CC to M/s.S.ALAGUSUNDAR, Advocate (SR-5772[F] dated 11/02/2022)

+1 CC to M/s.G.M.LAW OFFICE, Advocate (SR-6042[F] dated 14/02/2022)

C.M.A.(MD)Nos.871, 872, 1143 to 1145 of 2012 and 669 of 2014
11.02.2022

KMK(CO)
KB(10.03.2022) 14P 9C