



C.M.A.Nos.426 & 427 of 2006

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.10.2023

CORAM :

THE HONOURABLE MR. JUSTICE **M. DHANDAPANI**

C.M.A.Nos.426 & 427 of 2006

The Oriental Insurance Company,
Udumalaipettai.

... Appellant in both CMAs

Vs.

1.Vasanthamani

... 1st Respondent in C.M.A.No.426 of 2006

2.V.Dass

... 1st Respondent in C.M.A.No.427 of 2006

3.Jayapal

... 2nd Respondent in both CMAs

4.Rajasekar & Company,
103-C, Kamaraj Road,
Udumalaipet.

... 3rd Respondent in both CMAs

[2nd and 3rd respondents herein were the first and second respondents before the Tribunal and they remained exparte before lower court. Hence, summons to 2nd and 3rd respondents herein may be dispensed with]

Prayer in C.M.A.No.426 of 2006 : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the decree and judgment dated 11th day of July, 2003, made in M.C.O.P.No.267 of 1999 on the file of Motor Accident Claims Tribunal and Sub Court, Udumalaipettai.



C.M.A.Nos.426 & 427 of 2006

Prayer in C.M.A.No.427 of 2006 : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the decree and judgment dated 11th day of July, 2003, made in M.C.O.P.No.310 of 1999 on the file of Motor Accident Claims Tribunal and Sub Court, Udumalaipettai.

For Appellant : Mr.K.Vinodh
(in both CMAs)

For Respondents : Mr.V.Parthiban
(in both CMAs) for M/s.H.Nazarudeen [R1]

COMMON JUDGEMENT

Both the appeals arise out of a single accident.

2. The claimants in both the claim petitions are the mother and father of the deceased D.Karthick Kumar @ Thirumalaisami. On 05.04.1999 at about 07.30 p.m., when the deceased was walking in the left extreme of the Udumalai-Pollachi road in Poolankinar, the first respondent driven the car bearing Reg.No.TN-41-4777 in a rash and negligent manner and he hit against the deceased, as a result of which, the deceased sustained grievous injuries all over his body and lost his life. Thereafter, since the parents were divorced, the mother/Vasanthamani filed a claim petition in M.C.O.P.No.267 of 1999 claiming a sum of



C.M.A.Nos.426 & 427 of 2006

Rs.5,00,000/- and the father/V.Dass filed another claim petition in M.C.O.P.No.310 of 1999 claiming a sum of Rs.8,53,900/- before the Motor Accident Claims Tribunal and Sub Court, Udumalaipettai.

3. Before the Tribunal, though the claimants not examined any witnesses, however, marked 7 documents viz., Ex.P.1 to Ex.P.7. No witnesses were examined nor any documents were marked on the side of the respondents. After adjudication, the Tribunal, allowed the petitions and awarded a sum of Rs.4,00,600/- with interest at the rate of 9% p.a. by directing the insurance company to pay a sum of Rs.2,00,300/- to each of the claimants/parents of the deceased. Aggrieved by the said award, the insurance company has preferred the present appeals.

4. The learned counsel appearing for the appellant submitted that the parents of the deceased raised separate claim petition for the death of their son, which is not sustainable. He also submitted that, in the claim petitions, at the time of death, the mother claimed that the deceased was earning a sum of Rs.6,000/- per month, whereas the father claimed that the deceased was a school going child and there was no income.



C.M.A.Nos.426 & 427 of 2006

However, without considering the contra stand taken by the parents, the Tribunal had fixed the monthly income of the deceased at Rs.2,700/- and the Tribunal had given compensation in favour of the parents, which is wholly unsustainable. Accordingly, he prays for allowing the appeals.

5. The learned counsel appearing for the first respondent in both the appeals submitted that, at the time of death, the deceased was aged about 16 years. If the deceased was employed in a part time job, he would have earned a sum of Rs.100/- per day and a sum of Rs.3,000/- per month. However, the Tribunal had fixed the monthly income at Rs.2,700/- and awarded compensation a sum of Rs.3,75,600/- towards loss of income, which is not excessive and the compensation awarded under the other heads are just and reasonable, which does not require any interference. Accordingly, he prays for dismissal of the appeals.

6. Heard the learned counsel appearing for the insurance company and the learned counsel appearing for the claimants and perused the



C.M.A.Nos.426 & 427 of 2006

materials available on record.

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7. The factum and manner of the accident is not disputed by the parties and so also the liability. Therefore, this Court is not entering into the said aspect. With regard to individual claim petitions filed by the parents of the deceased, who are since divorced, though it is claimed by the insurance company that the said procedure is impermissible, however, in view of the fact that the parents of the deceased had divorced, they are equally entitled to claim compensation for the death of their son, which cannot be said to be impermissible. Accordingly, the said submission is rejected.

8. The further grievance of the appellant/insurance company is with regard to the quantum of compensation awarded by the Tribunal. It is claimed by the one of the claimants that, at the time of accident, the deceased was earning a sum of Rs.6,000/-. However, in order to substantiate the claim and to compute the income under the head "loss of income", no document in support of proof of the income of the appellant has been filed. In the absence of any document to prove the income of the



C.M.A.Nos.426 & 427 of 2006

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deceased, the Tribunal had rightly fixed the national income at Rs.2,700/- and by adopting the multiplier at 16, the Tribunal had awarded a sum of Rs.3,75,600/- towards "loss of income", which is just and reasonable and the same does not require any interference. Further, the compensation awarded by the Tribunal under the other heads are just and reasonable, which does not require any interference. Hence, this Court is not inclined to interfere with the award of the Tribunal and the appeals are liable to be dismissed.

9. Accordingly, these Civil Miscellaneous Appeals are dismissed reducing the rate of interest from 9% to 7.5% per annum. The appellant/Insurance Company is directed to deposit a sum of Rs.2,00,300/- to the credit of M.C.O.P.No.267 of 1999 and 310 of 1999 on the file of the Motor Accident Claims Tribunal and Sub Court, Udumalaipettai, along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs, less, the amount, if any already deposited, within a period of four (4) weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the said amount directly to the



C.M.A.Nos.426 & 427 of 2006

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bank account of the respective first respondent/claimants through RTGS

within a period of two (2) weeks thereafter. No costs.

09.10.2023

Index : Yes / No

Speaking order / Non-speaking order

Neutral Citation Case : Yes / No

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To

1.The Motor Accident Claims Tribunal and Sub Court,
Udumalaipettai.

2.The Section Officer,
V.R.Section,
High Court, Madras.



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C.M.A.Nos.426 & 427 of 2006

M.DHANDAPANI, J.,

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C.M.A.Nos.426 & 427 of 2006

09.10.2023