



C.M.A.Nos.197 & 1502 of 2011 and 3607 of 2014
3740 of 2010

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.06.2023

CORAM

THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

C.M.A.Nos.197 & 1502 of 2011 and 3607 of 2014
3740 of 2010

C.M.A.Nos.197 & 1502 of 2011 and 3607 of 2014

The New India India Insurance Co.Ltd
Motor Third Party Cell, No.46, Moore Street
Regina Mansion, Chennai – 600 001

.. Appellant

Versus

1.Krishnaveni
2.Thulakanam

3.M/s.Asvini Fisheries Ltd
No.136 & 139, Old Mahabalipuram Road
Karapakkam, Chennai – 96

4.National Insurance Co.Ltd
Motor Third Party Cell,
No.66, Greaves Road, Thousand Lights
Chennai – 600 006

5.S.Selvam

.. Respondents

C.M.A.No.3740 of 2010

1.Krishnaveni
2.Thulakanam

.. Appellants

Versus



C.M.A.Nos.197 & 1502 of 2011 and 3607 of 2014
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1.M/s.As vini Fisheries Ltd
No.136 & 139, Old Mahabalipuram Road
Karapakkam, Chennai – 96
2.National Insurance Co.Ltd
Motor Third Party Cell,
No.66, Greams Road, Thousand Lights
Chennai – 600 006

3.S.Selvam

4.The New India India Insurance Co.Ltd
Motor Third Party Cell, No.46, Moore Street
Regina Mansion, Chennai – 600 001

.. Respondents

Prayer in C.M.A.Nos.197 of 2011: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree of the Motor Accidents Claims Tribunal (II Court of Small Causes) Madras made in M.C.O.P.Nos.5620 of 2003 dated 20.08.2010.

Prayer in C.M.A.Nos.1502 of 2011: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree of the Motor Accidents Claims Tribunal (IV Court of Small Causes) Madras made in M.C.O.P.Nos.5501 of 2003 dated 23.12.2010.

Prayer in C.M.A.Nos.3607 of 2014: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree of the Motor Accidents Claims Tribunal (II Court of Small Causes) Madras made in M.C.O.P.Nos.5500 of 2003 dated 28.04.2014.

Prayer in C.M.A.No.3740 of 2010: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree of the Motor Accidents Claims Tribunal (II Court of Small Causes) Madras made in M.C.O.P.No.5620 of 2003 dated 20.08.2010.



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C.M.A.Nos.197 & 1502 of 2011 and 3607 of 2014:

For Appellant : Mr.R.Sivakumar
For Respondents : Mr.N.M.Muthurajan for R1
Mr.M.Krishnamoorthy for R2

C.M.A.No.3740 of 2010:

For Appellants : Mr.N.M.Muthurajan
For Respondents : Mr.M.Krishnamoorthy for R2
Mr.R.Sivakumar for R4

COMMON JUDGMENT

C.M.A.No.3740 of 2010

The Civil Miscellaneous Appeal has been filed against the Judgment and Decree of the Judgment and Decree of the Motor Accidents Claims Tribunal (II Court of Small Causes) Madras made in M.C.O.P.No.5620 of 2003 dated 20.08.2010.

2.The manner of the accident, factum of the accident, rash and negligence on the part of the driver of the offending vehicle are not in dispute

3. On 13.07.2003, the deceased T.Baskar was driving the third respondent's Auto near Karapakkam Bridge, the first respondent's lorry collided with the Auto and as a result, T.Baskar died on spot. Hence, the claim petition.



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4. The appellants are the claimants seeking to challenge the award passed by the Tribunal on the ground of quantum. The first respondent is the owner of the Lorry, the second respondent is the insurer of the lorry, the third respondent is the Owner of the Auto and the fourth respondent is the Insurer of the Auto. For the sake of convenience, the parties are referred to as per their ranking before the trial Court.

5. During the trial before the Tribunal, the first appellant was examined herself as PW1. Ex.P1 to P7 were marked. Ex.P1 is the FIR Copy, Ex.P3 is the Post mortem report, Ex.P4 is the legal heirship certificate. The Tribunal on consideration of both oral and documentary evidences came to conclusion that the accident has taken place due to the rash and negligent driving of the driver of the offending vehicle/first respondent's vehicle, accordingly, fixed the liability on both the Insurers, i.e., first and third respondents and granted the compensation as tabulated below:

<i>Calculation</i>	<i>Rs.</i>
Loss of Pecuniary benefits and dependency of the deceased	Rs.3,60,000/-
Loss of love and affection	Rs.30,000/-
Funeral expenses	Rs.5,000/-



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<i>Calculation</i>	<i>Rs.</i>
Total compensation is hereby fixed at	Rs.3,95,000/-

6.Heard Mr.N.M.Muthurajan, learned counsel for the appellants and Mr.M.Krishnamoorthy, learned counsel for the second respondent; Mr.R.Sivakumar, learned counsel for the fourth respondent and perused the materials placed on record.

7. Considering the facts and also taking note of the plea raised by the learned counsel for the appellants, this Court is of the considered view that the income should be fixed as Rs.5000 and future prospects is fixed at 40% on the income of the deceased [(i.e., $5000+2000(40\%)=7000$)] and the same is to be deducted by $1/2$ [(i.e., $7000 - 1/2(3500) = 3500$)], similarly, multiplier is also fixed at 17, which on calculating would come to [(i.e., $Rs.3500 \times 12 \times 17 = Rs.7,14,000$)], similarly, loss of affection is also fixed at Rs.20,000/- each to the appellants (i.e., $Rs.20,000 \times 2 = Rs.40,000/-$). It is seen from the Award that the loss of estate of the deceased is not granted to the claim petitioners/claim appellants, hence, this Court is inclined to grant Rs.5000/- as loss of estate. Accordingly, the award amount is modified as



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below:

<i>Calculation</i>	<i>Rs.</i>
Loss of Pecuniary benefits and dependency of the deceased	Rs.7,14,000/-
Loss of love and affection	Rs.40,000/-
Funeral expenses	Rs.5,000/-
Loss of estate of the deceased	Rs.5,000/-
Total compensation is hereby fixed at	Rs.7,64,000/-

8. In fine,

(i) this Civil Miscellaneous Appeal stands partly allowed to the extent indicated above. Accordingly, the compensation awarded is enhanced from Rs.3,95,000/- to Rs.7,64,000/-. The rate of interest awarded by the Tribunal remains in tact. No Costs.

(ii) the second respondent and fourth respondent are jointly directed to deposit the enhanced award amount before the Tribunal, within a period of six weeks from the date of receipt of a copy of this order, less the amount, if any already deposited and the fourth respondent shall recover his 50% share from the Owner of the Auto/third respondent.

(iii) On such deposit being made, the claimants are permitted to withdraw



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their share in the award amount with proportionate accrued interest and costs, as per the ratio of apportionment made by the Tribunal, less the award amount, if any, already withdrawn, by filing necessary application before the Tribunal.

(iv) the appellants are directed to pay the court fee, if any, for the enhanced compensation amount and the Registry is directed to draft the decree only after the receipt of Court fee.

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Since, the appeal filed by the appellants/claim petitioners in C.M.A.No.3740 of 2010 is partly allowed by this Court, this Court is of the view that the appeal made by the Insurance Company challenging the same award in CMA.No.197 of 2011 is liable to be dismissed as infructuous, as nothing survives for further adjudication.

2. As appeal in C.M.A.No.197 of 2011 is dismissed as infructuous, the



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connected appeals in C.M.A.Nos.1502 of 2011 and 3607 of 2014 also stand dismissed. Since, the appeals made by the Insurance Company in C.M.A.Nos.1502 of 2011 and 3607 of 2014 are dismissed, the Award of the Tribunal stands confirmed. No costs. Consequently, connected miscellaneous petitions are closed, if any.

26.06.2023

Index: Yes/No

Internet: Yes/No

Speaking Order/Non-Speaking Order

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To

1. The Presiding Officer,
Motor Accidents Claims Tribunal
(II Court of Small Causes)
Madras

2. The Presiding Officer,
Motor Accidents Claims Tribunal
(IV Court of Small Causes)
Madras

A.A.NAKKIRAN, J.



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