



C.M.A.Nos.430 & 431 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	28.03.2023
Pronounced On	28.04.2023

CORAM

THE HON'BLE MR.JUSTICE R.KALAIMATHI

C.M.A.Nos.430 and 431 of 2012

C.M.A.No.430 of 2012 (M.C.O.P.No.2164 of 2002):

1. K.V.Raju
2. Tamilarasi
3. Vijayalakshmi

... Appellants

Vs.

1. S.Chezlian
2. The Branch Manager,
The National Insurance Company Limited,
No.74-A, Paramathi Main Road,
Namakkal.
3. Dhanalakshmi

... Respondents

The 1st and 3rd Respondent herein are not necessary party,
Hence, the 1st and 3rd Respondent are given up in this appeal.



C.M.A.Nos.430 & 431 of 2012

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the Judgement and Decree dated 31.12.2009 in M.C.O.P.No.2164 of 2002 passed by the Motor Accident Claims Tribunal Principal District Judge, Namakkal.

For Appellants : Ms.Jeevith
for Mr.R.Nalliyappan

For Respondents :
For R1 & R3 : Givenup
For R2 : Mr.J.Chandran

C.M.A.No.431 of 2012 (M.C.O.P.No.344 of 2003):

K.V.Raju ... Appellant

Vs.

1. Laxmi
2. Thangarasu(Minor)
3. Deepa(Minor)
4. S.Chezlian
5. The Branch Manager,
The National Insurance Company Limited,
No.74-A, Paramathi Main Road,
Namakkal.

Respondents

The 4th respondent herein is not necessary party,
Hence, the 4th respondent is given up in this appeal.



C.M.A.Nos.430 & 431 of 2012

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the Judgement and Decree dated 31.12.2009 in M.C.O.P.No.344 of 2003 passed by the Motor Accident Claims Tribunal Principal District Judge, Namakkal.

For Appellant : Ms.Jeevith
for Mr.R.Nalliyappan

For Respondents :
For R5 : Mr.J.Chandran

COMMON JUDGMENT

By this common Judgement both the Civil Miscellaneous Appeals are being disposed.

2. These Civil Miscellaneous Appeals have been filed against the Common Judgement and Decree dated 31.12.2009 passed in M.C.O.P.No.2164 of 2002 & M.C.O.P.No.344 of 2003, passed by the learned Motor Vehicle Accident Claims Tribunal Principal District Judge, Namakkal.



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3. The impugned Common Judgement and Decree dated 31.12.2009 in M.C.O.P.No.2164 of 2002 & M.C.O.P.No.344 of 2003, is assailed by the father of the deceased Selvaraju namely K.V.Raju, who is arrayed as second petitioner in M.C.O.P.No.2164 of 2002 and third respondent in M.C.O.P.No.344 of 2003.

4. In respect of M.C.O.P.No.344 of 2003, the learned Tribunal upon hearing the arguments and after perusing the oral and documentary evidence let in the petitioners side has passed an award for an amount of Rs.6,37,000/- together with interest at 7.5% per annum from the date of pension till the date of deposit excluding for the periods from 15.09.2005 to 09.10.2009 and M.C.O.P.No.2164/2002 was dismissed.

5. As regards M.C.O.P.No.344 of 2003, the first and the second respondents are held jointly and severally liable to pay the compensation to the petitioners. Out of the above said amount of



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Rs.6,37,000/-, it was ordered that the first petitioner namely Laxmi is entitled to get Rs.3,37,000/- and the minor petitioners 2 & 3 namely Thangarasu and Deepa and the third respondent namely K.V.Raju are entitled to get Rs.1,00,000/- each with proportionate costs.

6. Aggrieved by the aforesaid Common Judgement and Decree dated 31.12.2009, the claimants No. 2 to 4 namely K.V.Raju, Tamilarasi and Vijayalakshmi in M.C.O.P.No.2164 of 2002 have preferred appeal vide C.M.A.No.430 of 2012 and the third respondent namely K.V.Raju in M.C.O.P.No.344 of 2003 have preferred appeal vide C.M.A.No.431 of 2012.

7. C.M.A.No.430 of 2012:

The learned counsel for the appellants would submit that the compensation amount awarded to the first appellant is very meagre and no amount was awarded to the appellants 2 & 3 as they were the dependants of the deceased.



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8. C.M.A.No.431 of 2012:

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The learned counsel for the sole appellant would submit that minor petitioners 2 & 3 namely Thangarasu and Deepa in M.C.O.P.No.344 of 2003, are not the children of the deceased Selvaraju. Hence, the Tribunal was incorrect in granting the amount of Rs.1,00,000/- each to the minor petitioners No.2 & 3, who are not the legal heirs of deceased Selvaraju.

9. In both the appeals, the learned counsel appearing for the Insurance Company vehemently argued that the learned Tribunal after taking into consideration both sides of the arguments and after perusing the oral and documentary evidences on record has passed an award amount of Rs.6,37,000/- and further would submit that as it is a reasonable one, it need not be interfered with.

10. Usually the appeal will be preferred for the purpose of enhancement of the compensation but in this case only the apportionment details is challenged by the appellants.



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11. Before the learned Tribunal, the appellant K.V.Raju has been examined as P.W.1 and the first claimant namely Laxmi has been examined as P.W.2 in M.C.O.P.No.344 of 2003 and Ex.P.1 and Ex.P.2 have been marked. On the side of Insurance Company neither any oral evidence for let in nor any document was marked.

12. On a careful perusal of the evidence of P.W.2 namely Laxmi, it is discernible that her first husband name is Gundangi @ Nallusamy and the second and third minor children were born to her through her first husband namely Gundangi @ Nallusamy. Therefore, it was made clear before the Tribunal itself that the minor claimants/petitioner Nos.2 & 3 in M.C.O.P.No.344 of 2003 namely Thangarasu and Deepa are not the legal heirs of the deceased Selvaraju. Obviously, for the above said reasons they are not entitled for any compensation for the death of the deceased Selvaraju.



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13. Upon the death of Selvaraju, the then Tahsildar of Namakkal had issued a Legalheirship Certificate dated 21.10.2002 which is marked as Ex.P.6., wherein the name of the father of the deceased Selvaraju namely K.V.Raju alone is shown as the only legal heir of the deceased Selvaraj.

14. The learned counsel for the appellants in both the appeals would vehemently argue that no compensation was granted for the sisters of the deceased and granting compensation of Rs.1,00,000/- each to the minors namely the second and third claimants in M.C.O.P.No.344 of 2003 are incorrect. It is already concluded that the above said petitioners/claimants No.2 & 3 in M.C.O.P.No.344 of 2003, namely Thangarasu and Deepa are not entitled for any compensation as they are the children born to the first claimant namely laxmi through her first husband Gundangi @ Nallusamy.



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15. The third respondent namely K.V.Raju in M.C.O.P.No.344 of 2003 is granted Rs.2,00,000/- in addition to the amount already awarded to him in the said M.C.O.P.

16. This Court finds that the order passed by the learned Tribunal in M.C.O.P.No.2164 of 2022 (C.M.A.No.430 of 2002) is well reasoned and requires no interference and therefore, it is liable to be dismissed.

17. In so far as the compensation awarded by the learned Tribunal in M.C.O.P.No.344 of 2003 (C.M.A.No.431 of 2012) is concerned, it is reworked and tabulated as follows:-



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C.M.A.No.431 of 2012 (M.C.O.P.No.344 of 2003):-

Petitioner/ Respondent in M.C.O.P.No. 344 of 2003	Amount awarded by the Tribunal in M.C.O.P.No.344 of 2003	Amount awarded by this court	Amount confirmed or enhanced or reduced or granted or set aside
1 st Petitioner/ Lakshmi	Rs.3,37,000/-	Rs.3,37,000/-	Confirmed
2 nd Petitioner/ Thangarasu	Rs.1,00,000/-	-	Set aside
3 rd Petitioner / Deepa	Rs.1,00,000/-	-	Set aside
3 rd Respondent/ K.V.Raju	Rs.1,00,000/-	Rs.3,00,000/-	Enhanced
Total	Rs.6,37,000/-	Rs.6,37,000/-	

17. In the result,

- i. **C.M.A.No.430 of 2002** is dismissed.
No cost.
- ii. **C.M.A.No.431 of 2002** is partly allowed.
The fifth respondent / Insurance Company is directed to deposit the award amount ie., **Rs.6,37,000/-** (less the amount already deposited if any) together with interest at



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the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of M.C.O.P.No.344 of 2003 on the file of the Motor Accidents Claims Tribunal (Principal District Judge) Namakkal, within a period of eight weeks from the date of receipt of a copy of this Judgment.

- iii. On such deposit being made, the first respondent/ first petitioner is entitled to receive Rs.3,37,000/- and the appellant/third defendant is entitled to receive Rs.3,00,000/-. The first respondent and the appellant are permitted to withdraw their share along with interest and cost, less any amount already withdrawn, by filing appropriate applications before the Tribunal. No costs.

28.04.2023

Index : Yes/No

Neutral Citation : Yes/No

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R.KALAIMATHI, J.

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To:

The Motor Accident Claims Tribunal,
(Principal District Judge) Namakkal

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28.04.2023