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C.M.A.No.3480 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.04.2023

CORAM

THE HONOURABLE **MR.JUSTICE P.B.BALAJI**

**C.M.A.No.3480 of 2017**

1.Jagannathan (Died)

2.Sagunthala

3.Vimala

4.Selvapandiyan

5.Rengadurai

6.Dhamotharan

7.Parameswari

... Appellants

[Sole appellant (i.e. 1<sup>st</sup> appellant) died. The second to seventh appellants were brought on record as the legal heirs of the first appellant vide order dated 16.03.2023 in C.M.P.Nos.5717, 5720 & 5722 of 2023.]

Vs.

1.Sahul Hameed

2.National Insurance Company Limited,  
Rep. by its Branch Manager,  
Chennai.

... Respondents



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Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the fair and final order dated 16.12.2016 made in M.C.O.P.No.129 of 2009 on the file of Motor Accidents Claims Tribunal [Sub Court], Nagapattinam.

For Appellants : Mr.B.Jawahar

For R1 : No appearance

For R2 : Mrs.R.Sreevidhya

### **J U D G M E N T**

The present Civil Miscellaneous Appeal has been filed by the first appellant/claimant against the fair and final order dated 16.12.2016 passed by the Motor Accidents Claims Tribunal [Sub Court], Nagapattinam in M.C.O.P.No.129 of 2009.

2. During the pendency of this appeal, the first appellant/claimant died and therefore, the legal heirs of the deceased first appellant/claimant were impleaded as the second to seventh appellants *vide* order dated 16.03.2023 in C.M.P.Nos.5717, 5720 & 5722 of 2023.



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3. The brief facts leading to the present Civil Miscellaneous Appeal

are as follows:-

(i) The deceased first appellant/claimant filed M.C.O.P.No.129 of 2008 before the Motor Accidents Claims Tribunal [Sub Court], Nagapattinam seeking compensation of Rs.4,00,000/- (Rupees Four Lakhs only) for the injuries sustained by him as well as the damages to his property in the accident that occurred on 01.08.2005.

(ii) On 01.08.2005, at 04.30 a.m., when the first appellant/claimant was sleeping in his thatched house, the vehicle belonging to the first respondent, due to the rash and negligent driving of the driver, rammed into his house, causing injuries to the first appellant/claimant as well as damage to his property.

4. The second respondent Insurance Company has filed a counter affidavit denying its liability and also putting the appellant/claimant to strict proof for claiming compensation for injuries, loss of earning as well as damage to property. Though initially, the second respondent Insurance



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Company did not raise any question with regard to the ownership of the property which is the basis of the claim for compensation for damage to property, an additional counter came to be filed, in and by which, the appellant/claimant was called upon to prove the ownership of the property as the patta cannot be taken as a proof of his title.

5. Before the Tribunal, the appellant/claimant examined himself as P.W.1 and an Engineer was examined as P.W.2 to elicit the loss caused to the property. On the side of the respondents, no oral or documentary evidence was adduced. The Tribunal, after considering the oral and documentary evidence, fixed a sum of Rs.34,700/- [Rupees Thirty Four Thousand and Seven Hundred only] towards personal injuries alone. Insofar as damage to property, the Tribunal disallowed the claim of the appellant/claimant on the ground that the appellant/claimant did not produce any evidence to establish his ownership of the property, which is subject matter of the accident.

6. This Court, has by a separate order passed today, allowed C.M.P.No.22133 of 2017. The following documents filed by the



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appellant/claimant to establish the ownership of the property, have been marked:-

| Sl. No. | Name of the Documents              | Exs. |
|---------|------------------------------------|------|
| 1       | House Tax Receipt dated 01.02.1992 | P9   |
| 2       | House Tax Receipt dated 22.09.1994 | P10  |
| 3       | Mortgage Deed dated 29.05.1984     | P11  |

7. Exs.P9 to P11 clearly prove the ownership of the property which is subject matter of the accident. It is clear that the appellant/claimant owned the subject property and therefore, the ownership of the subject property is not in dispute.

8. However, coming to the compensation for damages to property, evidence of P.W.2 Engineer was available. He has been cross examined by the second respondent Insurance Company in the course of trial. The Tribunal as already indicated above, disallowed the claim for compensation for damages to the property only on the ground that the appellant/claimant did not establish his ownership over the subject property.



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9. Heard the learned counsel for the appellant/claimant as well as the learned counsel for the second respondent Insurance Company and perused the oral and documentary evidence.

10. Ex.P5 Series contains the photographs showing the extent of damages caused to the property. The photographs have been filed along with a Compact Disc. The evidence of P.W.2 with regard to the damage caused to the property and movables of the appellant/claimant supports the claim for damages to the property. This Court however finds that the property of the appellant/claimant was a thatched roof structure and the accident occurred way back in the year 2005. The estimate taken by P.W.2 is on the higher side. This Court considering the actual damage to the property, finds that probable expenses that may have been incurred by the appellant/claimant to repair the house and restore to the original condition would be more than Rs.1,50,000/- [Rupees One Lakh and Fifty Thousand only]. Therefore, this Court fixes the compensation for loss on account of damages to the property to Rs.1,50,000/- [Rupees One Lakh and Fifty Thousand only].



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11. Insofar as the claim towards loss on account of injuries, the appellant/claimant is stated to have been doing agricultural work and earning a sum of Rs.5,000/- [Rupees Five Thousand only] per month. He was admitted in the hospital for 20 days and treated as an inpatient. There is no doubt that the injuries sustained by the appellant/claimant were not grave. However, the pain and suffering underwent by the appellant/claimant was not only because of the injuries caused to him, but also because of the damage to his property which is to be factored to calculate the loss on account of pain and suffering and mental agony.

12. The Tribunal has awarded only a sum of Rs.34,700/- [Rupees Thirty Four Thousand and Seven Hundred only] towards injuries. This Court feels that a compensation of Rs.50,000/- [Rupees Fifty Thousand only] totally for the injuries sustained by the appellant/claimant would be just and equitable. Accordingly, the amount of Rs.34,700/- [Rupees Thirty Four Thousand and Seven Hundred only] awarded by the Tribunal towards Part-I of the Claims, i.e. injuries sustained by the appellant/claimant, is enhanced to Rs.50,000/- [Rupees Fifty Thousand only].



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13. Insofar as the Part-II of the Claims, i.e. compensation for damages to property, as indicated above, a sum of Rs.1,50,000/- [Rupees One Lakh and Fifty Thousand only] is fixed. In all, Rs.2,00,000/- [Rupees Two Lakhs only] (i.e. Rs.50,000/- + Rs.1,50,000/-) is fixed and the award of the Tribunal is modified accordingly.

14. It is brought to the notice of this Court that the second respondent Insurance Company has deposited the entire award amount. Therefore, the second respondent Insurance Company is directed to deposit the modified/enhanced amount together with interest at 7.5% per annum from the date of the claim petition till the date of deposit, within a period of six weeks from the date of receipt of a copy of this Judgment.

15. It is also seen that the sole appellant/claimant died during the pendency of this appeal and his legal heirs were brought on record as second to seventh appellants. Considering the age of the deceased first appellant's wife, i.e. the second appellant, this Court feels that it is proper and just to award the entire compensation to the second appellant who is



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the wife of the deceased first appellant/claimant. The second appellant is therefore entitled to file appropriate application before the Tribunal for withdrawing the modified/enhanced amount together with accrued interest.

16. This Civil Miscellaneous Appeal is partly allowed accordingly.

No cost.

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(2/2)

Internet : Yes/No  
Index: Yes/ No  
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To

- 1.Motor Accidents Claims Tribunal [Sub Court],  
Nagapattinam.
- 2.The Section Officer,  
V.R. Section,  
Madras High Court.



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**P.B.BALAJI, J.**

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