



C.M.A(MD)No.1669 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **22.07.2024**

CORAM

THE HON'BLE MRS.JUSTICE S.SRIMATHY

C.M.A(MD)No.1669 of 2013
and
Cross.Obj(MD)No.22 of 2024
and
C.M.P.(MD)No.3311 of 2018

C.M.A(MD)No.1669 of 2013:

The Oriental Insurance Company Limited,
A.A. Complex,
First Floor,
No.159, Kumaran Road,
Thirppur.

... Appellant / Respondent No.2

Vs.

- | | |
|-----------------------|--|
| 1.Nalla Ponnu | ... 1 st Respondent / Petitioner No.1 |
| 2.Minor Santhiya | ... 2 nd Respondent / Petitioner No.2 |
| 3.Minor Sathiyabrabhu | ... 3 rd Respondent / Petitioner No.3 |
| 4.S.Satheeshkumar | ... 4 th Respondent / Respondent No.1 |
| 5.K.Virumandi | ... 5 th Respondent / Respondent No.3 |



C.M.A(MD)No.1669 of 2013

6.The Manager,
United India Insurance Company Limited,
Branch Office,
Chottalakshmi Complex,
Thirunagar,
Madurai.

... 6th Respondent / Respondent No.4

7.Kalimuthu

... 7th Respondent / Respondent No.5

8.K.Muthupillai

... 8th Respondent / Respondent No.6

(Respondent Nos.5 & 6 given up)

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act 1988, against the judgment and decree passed in M.C.O.P.No.25 of 2011, dated 15.09.2012 on the file of the Motor Accident Claims Tribunal cum Additional District and Sessions Court, Periakulam.

For Appellant : Mr.C.Jawahar Ravindran

For R-1 to R-3 : Mr.K.Ravi

For R-7 & R-8 : Mr.V.Thirumal

For R-4, R-5 & R-6 : No Appearance

Cross.Obj(MD)No.22 of 2024:

1.Kalimuthu

2.K.Muthupillai

...Cross Appellants / Respondent Nos.7 & 8

Vs.



C.M.A(MD)No.1669 of 2013

1.The Oriental Insurance Company Limited,
A.A. Complex,
First Floor,
No.159, Kumaran Road,
Thirppur.

... 1st Respondent / Appellant

2.Nalla Ponnu

3.Minor Santhiya

4.Minor Sathiyabrabhu

5.S.Satheeshkumar

6.K.Virumandi

7.The Manager,
United India Insurance Company Limited,
Branch Office,
Chottalakshmi Complex,
Thirunagar,
Madurai.

... Respondent Nos.2 to 7 /
Respondent Nos.1 to 6

PRAYER: Cross Objection is filed under Order 41 Rule 22 of Civil Procedure Code to prefer this Cross Appeal before this Court in C.M.A.(MD).No.1669 of 2013 filed against the judgment and decree in M.C.O.P.No.25 of 2011 on the file of the Motor Accident Claims Tribunal cum Additional District and Sessions Court, Periyakulam, dated 15.09.2012 and the appeal notice was served on the Cross Appellant on 11.11.2013.

For Cross Objectors : Mr.V.Thirumal

For Cross Respondent No.1 : Mr.C.Jawahar Ravindran

For Cross Respondent
Nos.2 to 4 : Mr.K.Ravi



C.M.A(MD)No.1669 of 2013

JUDGEMENT

WEB COPY

The present Civil Miscellaneous Appeal is preferred by the Insurance Company against the judgment and decree passed in M.C.O.P.No.25 of 2011, dated 15.09.2012, on the file of the Motor Accident Claims Tribunal cum Additional District and Sessions Court, Periakulam.

2. It is a case of fatal. The victim was travelling in a Splendor Bike. At the time of accident, in the alleged bike, totally three persons had travelled. The offending vehicle TVS 50 was coming from the opposite direction and hit the bike and it is head on collision.

3. The contention of the Insurance Company is that when the accident happened due to head on collision, then the negligence ought to have been fixed on both the vehicles. The said contention was opposed by the claimants stating that already the Tribunal has rendered a finding, wherein, it is stated that there is no negligence on the part of the TVS-50 vehicle.

4. On perusal of the Order, the Tribunal had stated that there is no contra evidence and hence the Tribunal has come to the conclusion that there is no



negligence on the part of the TVS-50 vehicle. The Tribunal has failed to consider the fact, if it is head on collision, then negligence ought to be fixed on both the vehicles. Further it is seen that the accident report states that both the vehicles were damaged on the front side. Therefore, it can be safely concluded that, there is a negligence on both the Drivers of the vehicles. The Splendor Bike was insured with the Oriental Insurance Company Limited.

5. Therefore, this Court is inclined to fix liability on both the bike as well as the TVS-50 vehicle. Hence, both the Insurance Companies are liable to pay the compensation granted by the Tribunal, equally.

6. The next contention of the Insurance Company is that, three persons had travelled in the Splendor Bike. The Insurance Company is liable to pay compensation for the person, who was riding the bike as well as to one pillion rider. Therefore, the second pillion rider is not eligible for compensation. It is settled law that the Insurance Company is liable to pay compensation for the driver and the pillion rider. In such circumstances, two persons are eligible for getting compensation, but not the third person. In the present case only one claim petition is filed and the Insurance Company has not substantiated that three claim



petitions was filed. The Insurance Company / appellant ought to have proved that the other persons who was travelling at the time of accident has received any compensation. The Insurance Company has failed to do so. Therefore, the said plea is not acceptable at the appellate stage. Hence, the same is rejected.

7. The parents of the deceased has preferred Cross Objection for enhancement of compensation. The Tribunal has taken Rs.3,000/- as notional income. The contention of the parents is that the deceased was doing milk vendor business, therefore the salary ought to be fixed as Rs.7,000/-. But the claimants have not produced an iota of evidence to prove the income of the deceased. As per the dictum laid down by the Hon'ble Supreme Court in the case of ***Syed Sadiq and Others Vs. Divisional Manager, United India Insurance Company Limited*** reported in **2014 (1) TN MAC 459 (SC)**, the Hon'ble Supreme Court has fixed the notional income as Rs.6,500/- for the accident happened in the year 2008. Therefore, this Court is inclined to enhance the notional income from Rs.3,000/- to Rs.6,500/-.

8. The Tribunal has fixed Rs.15,000/- each for loss of consortium for the wife of the deceased and children and has not granted any consortium for the



C.M.A(MD)No.1669 of 2013

parents. This Court is fixing the loss of consortium for wife, two children and parents Rs.40,000/- each, totally Rs.2,00,000/-. The compensation under other heads are hereby confirmed.

Rs.6,500/- = Rs.1,300 = Rs.7,800 – Monthly income including 20% future prospectus.

Rs.7,800 / 4 = Rs.5,850/- Deducting 1/4 for Personal expenses

Rs.5,850 x 12 x 17 (Multiplier) = Rs.11,93,400/- (Loss of income)

9. Accordingly, the claimants are entitled for compensation as follows:

S. No.	Description	Amount awarded by		Award confirmed / enhanced / granted
		Tribunal	this Court	
1.	For Loss of Income	Rs.4,59,000/-	Rs.11,93,400/-	enhanced
2.	For Loss of Parental Consortium (Rs.40,000/- each)	-	Rs. 80,000/-	granted
3.	For Loss of Consortium towards wife	Rs. 15,000/-	Rs. 40,000/-	enhanced
4.	For Loss of Consortium towards both the children	Rs. 15,000/- (each)	Rs. 40,000/- (each)	enhanced
5.	For Funeral Expenses	Rs. 5,000/-	Rs. 5,000/-	confirmed
Total		Rs. 5,09,000/-	Rs. 13,98,400/-	

with interest at 7.5% p.a., as awarded by the Tribunal, from the date of claim petition till the date of realization.



C.M.A(MD)No.1669 of 2013

10. Accordingly, the Civil Miscellaneous Appeal and Cross Objection are disposed of. The award amount of Rs.5,09,000/- granted in M.C.O.P.No.25 of 2011 by the learned Motor Accident Claims Tribunal cum Additional District and Sessions Court, Periyakulam, is enhanced to Rs.13,98,400/-. Both the Insurance Companies are directed to deposit the entire award amount with 7.5% interest along with Costs, within a period of four weeks from the date of receipt of a copy of the Order, less the amount, if already deposited. On such deposit being made, the 1st, 7th and 8th claimants are entitled to withdraw their shares, as apportioned by the Tribunal and the shares of minor claimants 2 & 3 to be deposited in anyone of the Nationalized Bank, till they attain majority. The 1st claimant is permitted to withdraw the interest on the deposited amount of the minor claimants 2 & 3 within a period of three months in once. Since this Court is enhancing the compensation, the claimants are liable to pay the balance Court fee. No costs. Consequently, connected miscellaneous petition is closed.

22.07.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
TSG



C.M.A(MD)No.1669 of 2013

To

- 1.The Motor Accident Claims Tribunal cum
Additional District and Sessions Court, Periyakulam.
- 2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



C.M.A(MD)No.1669 of 2013

S.SRIMATHY, J.

TSG

C.M.A(MD)No.1669 of 2013
and
Cross.Obj(MD)No.22 of 2024
and
C.M.P.(MD)No.3311 of 2018

22.07.2024