



C.M.A.(MD)No.74 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 13.07.2023

Pronounced on : 01.08.2023

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.M.A.(MD)No.74 of 2019

The Manager
National Insurance Co. Ltd.,
North Veli Street
Madurai.

... Appellant/
2nd Respondent

Vs.

1. Maheswari
2. Minor Ajai
3. Minor Yogesh

... Respondents/
Petitioners

*(Minor respondents 2 and 3 are represented by
their mother and guardian 1st respondent)*

4. A.Rajendiran

... Respondent/
1st Respondent

Prayer : This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, to set aside the fair and decretal order dated 03.10.2017 made in M.C.O.P.No.19 of 2016 on the file of Motor Accident Claims Tribunal (Additional District Judge), Paramakudi and allow this appeal.



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For Appellant : Mr.S.Srinivasa Raghavan

For R1 : Mr.J.Lawrence

For R4 : No appearance

JUDGMENT

The Civil Miscellaneous Appeal is directed against the award passed in M.C.O.P.No.19 of 2016 dated 03.10.2017 on the file of Motor Accident Claims Tribunal/Additional District Court, Paramakudi.

2. The appellant/insurer, who was directed to pay compensation of Rs.10,55,500/- (Rupees Ten Lakhs Fifty Five Thousand and Five Hundred only) with interest at 7.5% per annum to the respondents 1 to 3/claimants for the death of one Ramasamy, consequent to an accident occurred on 13.08.2013, challenged the liability mulcted on it and also the quantum of compensation awarded at, by the Tribunal.

3. Admittedly, the first respondent/first claimant is the wife and the respondents 2 and 3/claimants 2 and 3 are the sons of the deceased Ramasamy.



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4. The case of the respondents 1 to 3/claimants is that on 13.08.2013, when the deceased Ramasamy, after attending his mason work at Emaneswaram, was returning at about 06.00 p.m. in Paramakudi – Pandiyur road, after seeing his relative one Subbu in P.Valasai bus stop, he stopped his two wheeler and parked the same on the left side of the road and started chatting with the said Subbu and at that time, a bus bearing Registration No.TN-63-S-9966, which came from Paramakudi in a rash and negligent manner and without sounding horn, dashed against the said Ramasamy and his two wheeler and as a result of which, he sustained grievous injuries all over his body, that one Anbazhagan, who was travelling in the bus, got down and along with the said Subbu and other persons nearby had taken the said Ramasamy in 108 Ambulance to the Government Hospital, Paramakudi, but he succumbed to the injuries on the way to the hospital and that the accident was occurred only due to the rash and negligent driving of the bus driver.

5. The defence of the appellant/insurer is that the bus bearing Registration No.TN-63-S-9966 was stopped at Valasai bus stop for getting down the passengers and at that time, the deceased Ramasamy had driven



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a two wheeler bearing Registration No.TN-65-W-1923 in Paramakudi – Pandiyur road near Valasai bus stop, without driving licence and insurance, in a rash and negligent manner and dashed against the rear centre back side (lower portion of the bus) and that the deceased Ramasamy was solely responsible for the accident.

6. It is pertinent to note that the accident and the involvement of the bus bearing Registration No.TN-63-S-9966 and the two wheeler bearing Registration No.TN-65-W-1923 are not in dispute, but the only dispute is as to who was responsible for the accident.

7. The respondents 1 to 3/claimants, in order to prove the mode of accident, have examined the said Anbazhagan, who had travelled in the bus and got down after the accident, as P.W.2. In chief examination, he would say that he was returning from Paramakudi towards Akkiramesi in Thirumoorthy bus, that he was sitting in the front seat of the bus, that when the bus was proceeding towards P.Valasai bus stop, one Ramasamy belonging to his native place was sitting on his bike, which was parked on the left side of the road and that the bus driver, who had driven the same in



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a rash and negligent manner and without sounding horn, while getting down from thar road to mud portion of the road, has dashed against the said Ramasamy and his two wheeler and as a result of which, the said Ramasamy has sustained serious injuries all over his body. P.W.2-Anbazhagan would further say that he along with his relative visited Nainarkoil Police Station on 14.08.2013 and gave a complaint statement and after recording the same, the police has also taken his signatures in some unwritten white papers and that subsequently, he came to know that a case came to be registered in Crime No.100 of 2013 under Section 304(A) IPC. P.W.2-Anbazhagan would further say that he along with the first respondent/first claimant had visited Nainarkoil Police Station and after perusing the FIR, they came to know that the case was registered, as if, the deceased Ramasamy had dashed against the parking bus and invited the accident by himself and that their efforts to amend the FIR were of no avail.

8. But in cross-examination, P.W.2-Anbazhagan would say that complaint was lodged by Subbu, that he preferred a complaint at 08.00 a.m. on 14.08.2013, that the police had taken complaint statement at



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the occurrence place and that the said Subbu alone has lodged the complaint. But subsequently, he would admit that he had subscribed his signatures in FIR under Ex.P.1 and the relevant portion is extracted hereunder:-

□ம.தசா.ஆ.1 முதல் தகவல் அறிக்கையில் நான்
கையெழுத்து போட்டுள்ளேன் என்றால் சரிதான். முதல்
தகவல் அறிக்கையில் கண்ட சங்கதிகள் படிக்க கேட்டு
கையெழுத்து போட்டேன் என்றால் சரிதான்.□

9. It is evident from Ex.P.1-FIR that on the basis of the complaint given by P.W.2-Anbazhagan at about 06.00 p.m. on 14.08.2013, a case came to be registered in Crime No.100 of 2013 under Section 304(A) IPC, wherein, it has been specifically stated that the deceased Ramasamy had dashed his two wheeler against the parking bus and caused the accident and that subsequently, he succumbed to the injuries. It is pertinent to note that P.W.2-Anbazhagan has subscribed his signatures in Ex.P.1-FIR. Considering the above, the contention of the respondents 1 to 3/claimants that the police had taken signatures of P.W.2-Anbazhagan in blank white papers and the same were utilized for fabricating the complaint, is proved to be false.



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10. Though the respondents 1 to 3/claimants and P.W.2-Anbazhagan have alleged that complaint was sent to the Superintendent of Police, they have not elaborated anything further. P.W.2-Anbazhagan would admit that they have not filed any case before the Court for the alleged fabrication of the complaint by the police. It is not the case of the respondents 1 to 3/claimants that they have preferred any complaint before the police higher officials, subsequent to the sending of the complaint to the Superintendent of Police nor filed any complaint before the jurisdictional Court.

11. It is not in dispute that the jurisdictional police, on the basis of the FIR registered, has proceeded with investigation and filed a final report as 'charge abated' by holding that the deceased Ramasamy was responsible for the accident. P.W.2-Anbazhagan in his evidence would admit that RCS notice in R.C.05/2013 was served on him. It is not the case of P.W.2-Anbazhagan or the respondents 1 to 3/claimants that they have filed any protest petition or raised objections before the jurisdictional Court with regard to the final report filed under Ex.R.5.



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12. P.W.2-Anbazhagan in his cross-examination would say that he was sitting on the left side back portion of the bus. As already pointed out, in chief examination, he has stated that he was sitting in the front side of the bus, but in cross-examination in the back portion of the bus. Admittedly, P.W.2 is a relative of the deceased Ramasamy and the respondents 1 to 3/claimants.

13. The appellant/insurer, in order to prove their defence that the deceased Ramasamy alone was responsible for the accident and the bus driver is not at fault, has examined the bus driver Mariappan as R.W.2 and the staff attached to the Regional Transport Office, Paramakudi, Pazhaniappan as R.W.1. The bus driver R.W.2-Mariappan in his chief examination would say that he stopped the bus at P.Valasai bus stop and after dropping the passengers, he attempted to take the bus and at that time, they heard sound on the back side of the bus and they came to know that one Ramasamy had driven a two wheeler in a rash and negligent manner and dashed against the back side of the bus and as a result of which, he fell down and sustained injuries. In cross-examination also, R.W.2-Mariappan would reiterate the same version and nothing was



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elicited by the respondents 1 to 3/claimants' side in their favour. R.W.2-Mariappan in cross-examination would also reiterate that the deceased Ramasamy, by dashing his two wheeler against the bus, had caused the accident and he was not at fault.

14. It is pertinent to note that motor vehicle inspection report for the bus as well as for the two wheeler came to be exhibited through R.W.1-Pazhaniappan staff attached to the Regional Transport Office, Paramakudi as Ex.R.1 and Ex.R.2 respectively. In Ex.R.1-motor vehicle inspection report for the two wheeler, it has been stated that 'front headlight, indicator and visor broken' and that registration certificate, driving licence of the rider and insurance certificate were not produced. In Ex.R.2-motor vehicle inspection report for the bus, it has been specifically stated that 'rear centre body panel (lower portion) dented in'. Considering the above, it is clearly evident that there were damages on the front side to the two wheeler and back side to the bus. Admittedly, motor vehicle inspection report does not say that there were damages or any dents on the front side of the bus.

15. The appellant/insurer has also summoned and examined the Inspector of Police attached to Nainarkoil Police Station as R.W.3-



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Jayachitra and she would reiterate the mode of accident as stated in the final report under Ex.R.5. It is pertinent to note that during cross-examination of R.W.3-Jayachitra, a suggestion was made by the respondents 1 to 3/claimants' side that since the bus was suddenly stopped without putting any red light or indicator, the deceased Ramasamy had dashed his two wheeler against the back portion of the bus and the above suggestions are extracted hereunder:-

□முன்னால் சென்ற பேருந்து சிவப்பு விளக்கு போடாமல் தீடினென்று பிரேக் போட்டு நிறுத்தியதால் இறந்து போனவர் பஸ்சின் பின்னால் இடித்து அதனால் விபத்து ஏற்பட்டது என்றால் சரியல்ல. சரியான எச்சரிக்கை செய்யாமல் பேருந்தை நிறுத்தியதால் விபத்து ஏற்பட்டது என்று சொன்னால் சரியல்ல.□

16. Considering the above, the respondents 1 to 3/claimants have taken a U-turn and completely changed the mode of accident, which in turn, is in tune with the defence of the appellant/insurer. It is not the specific case of the appellant/insurer that bus was stopped with necessary indicators on the back side of the bus so as to caution the vehicles coming behind.



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17. Considering the above, this Court is of the clear view that not only the bus driver, the deceased Ramasamy himself has contributed by his negligence in the accident. On considering the entire facts and circumstances of the case, this Court is also of the view that the decree of contributory negligence can be fixed at 50% on the part of the deceased Ramasamy and is fixed accordingly.

18. Now turning to the quantum of compensation, no doubt, the appellant/insurer has not specifically disputed the quantum of compensation. But a cursory perusal of the tabular column computing compensation would show that no income was added towards future prospects and the amounts awarded under the heads of consortium, loss of love and affection and funeral expenses are not in accordance with the legal position settled by the Hon'ble Supreme Court.

19. The learned trial Judge has arrived at Rs.6,500/- as monthly income of the deceased Ramasamy. Our Hon'ble Supreme Court, in ***National Insurance Company Limited Vs. Pranay Sethi and others***



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reported in **2017 ACJ 2700**, has concluded that if the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant, where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. In the case on hand, the learned trial Judge, taking note of the post mortem certificate and death certificate, has fixed the age of the deceased Ramasamy as 40 and the same is not disputed by the appellant/ insurer. Applying the above decision of the Hon'ble Apex Court, 25% of the income is to be added towards future prospects and it comes to Rs.8,125/- (Rs.6,500/- + Rs.1,625/- (25% of the income)).

20. The learned trial Judge has deducted one-fourth (1/4th) of the income towards personal and living expenses of the deceased Ramasamy. But the Hon'ble Supreme Court in **Smt. Sarla Verma and others vs. Delhi Transport Corporation and another** reported in **AIR 2009 SC 3104** has held that deduction towards personal and living expenses of the deceased, should be one-third (1/3rd) where the number of dependent family



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members is 2 to 3, one-fourth (1/4th) where the number of dependant family members is 4 to 6, and one-fifth (1/5th) where the number of dependant family members exceed six. In the case on hand, since the number of the dependant family members is 3, one-third (1/3rd) has to be deducted for the personal and living expenses of the deceased Ramasamy (Rs.8,125/- - Rs.2,708/- = Rs.5,417/-). The Tribunal has rightly applied the multiplier 15. Considering the above, the compensation towards loss of dependency would be Rs.9,75,060/- (Rs.5,417/- x 15 x 12).

21. The Tribunal has awarded Rs.50,000/- for consortium and Rs.1,00,000/- for loss of love and affection. Our Hon'ble Supreme Court in ***Pranay Sethi's case*** has permitted to award Rs.40,000/- towards spousal consortium. But, subsequently, the Hon'ble Supreme Court in ***Magma General Insurance Company Ltd, Vs. Nanu Ram alias Chuhru Ram and others*** reported in (2018) 18 SCC 130, has held that the right to consortium would include the company, care, help, comfort, love and affection, guidance, solace, etc., which is a loss to his family. The Hon'ble Supreme Court interpreted consortium to be a compendious term, which encompasses (i) spousal consortium, to be awarded to the surviving



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spouse, (ii) parental consortium to be awarded to the children upon the premature death of their parents and (iii) filial consortium to be awarded to the parents for the loss of their children. Recently, the Hon'ble Apex Court in *The New India Assurance Company Ltd. Vs. Smt.Somwati and others*, has reiterated the above position and further held that the amount to be awarded for loss of consortium will be as per the amount fixed in *Pranay Sethi's* case. But, at the same time, they have specifically observed that no amount should be awarded under the separate head of loss of love and affection.

22. The respondents 1 to 3/claimants being the wife and minor children of the deceased Ramasamy, the first respondent/first claimant is entitled to get Rs.40,000/- towards loss of spousal consortium and the respondents 2 and 3/claimants 2 and 3 are entitled to get Rs.40,000/- each towards loss of parental consortium. As per the legal dictum laid down by the Hon'ble Supreme Court in *Sarla Verma's* case, the respondents 1 to 3/claimants are entitled to get Rs.15,000/- for funeral expenses and Rs.15,000/- for loss of estate under the conventional heads. The Tribunal has also awarded Rs.3,000/- towards damage to cloth and articles, all totalling Rs.11,28,060/- and the compensation awarded by the Tribunal is



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S. No.	Description	Amount awarded by Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed or enhanced or granted or reduced
1.	Loss of dependency	8,77,500	9,75,060	Enhanced
2.	Funeral expenses	25,000	15,000	Reduced
3.	Consortium	50,000	40,000 x 3 = 1,20,000	Enhanced
4.	Loss of love and affection	1,00,000	0	Nil
5.	Loss of estate	0	15,000	Granted
6.	Damage to cloth and articles	3,000	3,000	Confirmed
	Total	10,55,500	11,28,060	Enhanced by Rs.72,560/-

23. Hence, this Court concludes that the respondents 1 to 3/ claimants are entitled to get 50% of the compensation amount i.e., Rs.5,64,030/- with interest at 7.5% per annum from the appellant/insurer. The appellant/insurer is liable to pay Rs.5,64,030/- with interest at 7.5% per annum from the date of petition till the date of realization excluding the default period, if any. Considering the other facts and circumstances of the case, this Court further decides that the parties are to be directed to



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bear their own costs.

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24. In the result, this Civil Miscellaneous Appeal is partly allowed and the appellant/insurer is directed to pay compensation of **Rs.5,64,030/- (Rupees Five Lakhs Sixty Four Thousand and Thirty only)** with interest at 7.5% per annum from the date of petition till the date of realization excluding the default period to the credit of M.C.O.P.No.19 of 2016 on the file of Motor Accident Claims Tribunal/Additional District Court, Paramakudi, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this judgment and on such deposit, out of the compensation amount, the first respondent/first claimant is entitled to get **Rs.2,64,030/- (Rupees Two Lakhs Sixty Four Thousand and Thirty only)** and the respondents 2 and 3/claimants 2 and 3 are entitled to get **Rs.1,50,000/- (One Lakh and Fifty Thousand only)** each. Accordingly, the first respondent/first claimant and the second respondent/second claimant, who has attained majority, are permitted to withdraw their shares along with accrued interest and the share of the minor third respondent/third claimant shall be deposited in any one of the Nationalised Banks till he attain majority. The first respondent/first claimant, who is the mother of the minor third



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respondent/third claimant is permitted to withdraw the interest of minor once in three months directly from the Bank. Parties are directed to bear their own costs.

01.08.2023

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
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To:

1. The Motor Accident Claims Tribunal/Additional District Court,
Paramakudi.
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

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Pre-Delivery Order made in
C.M.A.(MD)No.74 of 2019

Dated : 01.08.2023