

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.04.2016

CORAM:

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

C.M.A.No.1060 of 2016  
and  
C.M.P.7996 of 2016

The Branch Manager,  
M/S. ICICI Lombard General,  
Insurance Company Limited,  
First Floor, Chottabhai Centre,  
No.140, Nungambakkam High Road,  
Chennai - 600 034. ... Appellant/Respondent

Vs.

1.K.Parvathi

2.Pavithira (Minor)

3.Capton Raj (Minor)

(Minors R-2 and R-3 are rep. by  
mother and next friend K.Parvathi/R-1)

4.Kolanthai ...Respondents 1 to 4/  
Petitioners 1 to 4

5.The Managing Director,  
Tamil Nadu State Transport Corporation (Salem) Ltd.,  
No.12, Ramakrishna Road,  
Salem - 7. ...Respondent No.5/Respondent  
No.1

6.The Manager,  
Namakkal Transport Carriers (P) Ltd.,  
No.39, Old No.18, Linghi Chetty Street,  
First Floor, Chennai - 600 001.  
(R-6 set ex parte in Lower Court) ... Respondent No.6/  
Respondent No.2

Civil Miscellaneous Appeal filed under Section 173 of the  
Motor Vehicles Act, 1988 against the judgment and decree  
dated 04.04.2013 made in M.C.O.P No.564 of 2011, on the file  
of the Motor Accident Claims Tribunal, Principal District  
Judge, Krishnagiri.

For Appellant : Mrs.R.Sreevidhya

For Respondent : Mr.D.Venkatachalam for R5

### J U D G M E N T

The Insurance Company has come up with this appeal challenging the liability and quantum of compensation awarded by the Tribunal.

2. On 23.08.2009, while the Trailer Lorry bearing registration No. HR 47 A 6610, insured with the appellant Insurance Company, belonging to the 6<sup>th</sup> respondent, was plying from Salem to Hosur, on Krishnagiri Hosur National Highways, near Sundagiri M.M. Petrol Bunk, suddenly, one Transport Corporation bus came in a rash and negligent manner and dashed behind the trailer Lorry, with full speed. Due to the impact, one Kamaraj, conductor of the Transport Corporation bus and a few passengers sustained fatal injuries and died on the spot and some of them sustained grievous injuries. The Claim Petition has been filed by the wife, minor children and father of the deceased Kamaraj, before the Tribunal seeking a sum of Rs.30,00,000/- as compensation. After analyzing the available oral and documentary evidences, the Tribunal awarded a sum of Rs.11,99,442/- as compensation, under the following heads:

| Sl. No | Heads                                  | Amount          |
|--------|----------------------------------------|-----------------|
| 1      | Loss of Income                         | Rs. 8,99,648.00 |
| 2      | Loss of Consortium to wife             | Rs. 10,000.00   |
| 3      | Loss of love and affection to children | Rs. 10,000.00   |
| 4      | Funeral Expenses                       | Rs. 10,000.00   |
| 5      | Loss of future income                  | Rs. 2,69,894.00 |
|        | Total                                  | Rs.11,99,442.00 |

3. Learned counsel appearing for the appellant/Insurance Company, mainly contended that the Tribunal has failed to take note of the averments stated in the counter affidavit. The accident has occurred only due to the rash and negligent driving of the Transport Corporation bus driver, against whom an FIR has also been registered by the Shoologiri Police. Hence, the Tribunal ought to have fixed the entire negligence on the driver of the Transport Corporation bus. He further contended that the driver of the Transport Corporation bus was not examined. Aggrieved with the quantum of compensation and the 50% liability, this appeal has been filed.

4. As per the depositions of the witnesses, the evidences and documents produced before the Tribunal, it has been found that the drivers of both the bus and the trailer, are responsible for the accident and hence the Tribunal fixed 50% liability on the respondent Transport Corporation bus and 50% liability on the appellant Insurance Company. Considering the age of the deceased, young age of his wife, minor children and his father and his services as a Conductor in the Transport Corporation, the Tribunal has granted a reasonable compensation.

5. This Court considered the submissions made by the learned counsel for the appellant and perused the materials available on record. Since the respondents will not be prejudiced with the result of this Appeal, the main case itself is disposed of at the stage of admission itself, without serving notice to them.

6. Perusal of the records clearly show that after investigation, the Tribunal has come to the conclusion that the negligence is on the part of the driver of the Transport Corporation bus and the driver of the trailer. It is found from the records that the driver of the trailer has not followed the traffic rules properly, however, the driver of the Transport Corporation bus has also driven the bus in a hectic speed, due to which he was unable to stop the bus to avoid the accident. Further, the Tribunal has rightly followed the principles laid down by the Apex Court and this Court, in various judgments and has granted compensation under the headings 'Loss of Salary' and 'Loss of future income'. This Court is not inclined to interfere with the compensation granted under the other heads, which are fair and correct. At this juncture, this Court would like to point out that the deceased is an employee of the Transport Corporation, which caused the accident and died while he was on duty.

7. In view of the above, this Court is of the considered opinion that there is no necessity to interfere with the order passed by the Tribunal. Accordingly, the Civil Miscellaneous Appeal is dismissed confirming the quantum of compensation and the rate of interest at 7.5% per annum awarded by the Tribunal. The appellant Insurance Company and the respondent Transport Corporation, are directed to deposit the entire award amount together with accrued interest, less the amount already deposited, to the credit of M.C.O.P.No.564 of 2011 on the file of the Motor Accidents Claims Tribunal, Principal District Judge, Krishnagiri, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the Tribunal shall pay the apportioned share of compensation to the major claimants in the form of a crossed Account Payee Cheque, favouring only the claimants and

it should not be issued in favour of any other person/Company. It is needless to mention that the proportionate share of the minor respondents/claimants shall be deposited in any one of the Nationalised Banks initially under reinvestment scheme for a period of three years, renewable thereafter periodically and the interest accrued thereon shall be withdrawn by their natural guardian, once in three months, till the minors attain majority. In the case of minor claimants, the proportionate share of the award amount shall be paid to them in the form of a crossed Account Payee Cheque, once they attain majority. No costs. Consequently, the C.M.P. is closed.

Sd/-  
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Principal District Judge  
Motor Accidents Claims Tribunal,  
Krishnagiri.
- 2.The Section Officer,  
V.R.Section,  
High Court, Madras 104.

Copy To

- 1.The Branch Manager,  
M/S.ICICI Lombard General,  
Insurance Company Limited,  
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RSK (CO)  
CA(09/08/2016)