

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 31.03.2016

CORAM

THE HONOURABLE MR.JUSTICE R.SUDHAKAR
AND
THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

C.M.A.No.661 of 2016
&
C.M.P.No.5440 of 2016

National Insurance Co. Ltd.,
Kumaran Shopping Complex,
Kumaran Road,
Tirupur.

... Appellant/3rd respondent

- Vs -

1. Aanandhanayaki
W/o.Subramanian
2. Minior Harivickram
S/o.Subramanian
3. Minior Haririthanya
D/o.Subramanian
Minor respondents 2 and 3 are
represented by the first respondent
Aanandhanayaki
4. Ponnusamy
S/o.Kumarasamy Gounder

All are residing at
No.12/V-2, P.K.P.Avenue,
K.N.S.Garden, 2nd Street,
Near Kaliappa Nagar,
Kangeyam Road, Tirupur.

... Respondents 1 to 4/Petitioners

5. Ramasamy
S/o.Chinnachamy,
Door No.51, Meenakshipuram,
Dharapuram.
6. Jothi Bus Transports,
3/90-G, Vadivel Nagar,
Coimbatore Road,
Muniyappan Kovil, Karur

... Respondents 5 & 6/
Respondents 1 and 2

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the Award and decree dated 07.04.2014 passed by the Motor Accidents Claims Tribunal Cum Sub-Ordinate Court, Tirupur, made in M.C.O.P.No.957 of 2011.

For Appellant : Mr.S.Vadivel

For Respondents 1 to 4 : Mr.MA.P.Thangavel

J U D G M E N T
(DELIVERED BY R.SUDHAKAR, J.)

Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondents and perused the materials placed before this Court.

2. The appellant/Insurance Company has filed the appeal challenging the Award dated 07.04.2014 passed by the Motor Accident Claims Tribunal Cum Sub-Ordinate Court, Tirupur, made in M.C.O.P.No.957 of 2011

3. It is a case of fatal accident. On 28.06.2011 at about 12 noon, when the deceased Subramaniyan was riding the two wheeler bearing Registration No.TN-42-0817 at the left extremity of the road, a bus bearing Registration No.TN-47-U-2100 came in a rash and negligent manner dashed the deceased, as a result the deceased sustained injuries and died due to the said injuries. Hence, the claimants, who are wife 37 years, minor son aged 16 years, minor daughter aged 11 years and father, aged 64 years respectively have filed claim petition claiming a sum of Rs.40,00,000/- as compensation. According to the claimants, on the date of accident, the deceased was aged about 40 years and he was doing real estate, agriculture and finance business and was earning a sum of Rs.30,000/- per month.

4. In support of the claim petition, the wife of the deceased was examined as P.W.1 and one Easwaramoorthi was examined as P.W.2 and Exs.P-1 to P-8 were marked, the details of which are as follows:-

Ex.P-1	28.06.2011	First Information Report
Ex.P-2	28.06.2011	Postmortem Certificate
Ex.P-3	05.07.2011	Death Certificate
Ex.P-4	-	Legal-heirship Certificate
Ex.P-5	-	PAN Card
Ex.P-6	-	Income Tax particulars relating to the year 2009-2010
Ex.P-7	30.04.2003	Certified copy of Sale Deed
Ex.P-8	-	Driving Licence

5. On the side of the respondents, one Ramaswamy was examined as R.W.1 and one Sureshkumar was examined as R.W.2 and Rough Sketch was marked as Ex.R1.

6. The Tribunal based on the oral evidence of witnesses, the F.I.R. and also taking into account the documentary evidence and further there being no satisfactory evidence adduced on behalf of the appellant/insurance company to refute the evidence as to the rash and negligent driving of the bus, came to the conclusion that the accident was caused due to the rash and negligent driving by the driver of the bus, and therefore, the liability was fixed on the appellant and consequently the appellant was directed to compensate the claimants.

7. Accordingly, the Tribunal has awarded compensation under the following heads:-

Loss of income	-	Rs.30,37,500/-
Loss of love and affection	-	Rs. 2,00,000/-
Loss of Estate	-	Rs. 1,00,000/-
Funeral expenses	-	Rs. 25,000/-
Total	-	Rs.33,62,500/-

8. In all, the Tribunal awarded a compensation of Rs.33,62,500/- with interest at the rate of 7.5% from the date of the petition. Aggrieved by the said award, the appellant-Insurance Company is before this Court by filing this appeal.

9. Learned counsel appearing for the appellant submits that the accident had happened only due to the negligence on the part of the deceased, as the deceased had driven the vehicle on the wrong side of the road by talking on the mobile phone and the Tribunal has not considered the rough sketch marked as R.W.1 by the appellant, while fixing the negligence. He further submitted that charge sheet has not been filed against the driver of the bus. Relying on the evidence of R.W.2 and Ex.R.1- rough sketch, he submitted that as the deceased had left the lane earmarked and came to the center of the road, the accident had happened. Hence, the accident had occurred due to the negligence only on the part of the deceased.

10. Insofar as the quantum of compensation is concerned, he submitted that since the age of the deceased was 40 years and one month at the time of accident as per the Driving Licence, the multiplier adopted by the Tribunal at 15 is wrong and the correct multiplier should be 14 only and the future prospects should be granted at 30% instead of 50%. He also submitted that the Tribunal has awarded higher compensation and hence the same should be reduced.

11. Per contra, learned counsel appearing for the respondents/claimants submitted that after investigation charge sheet has been filed against the driver of the bus in STC No.854 of 2011 dated 21.10.2011 on the file of Judicial Magistrate, Palladam. Relying on a decision of the Supreme Court in the case of Jiju Kuruvila & Others V. Kunjujamma Mohan & Others reported in 2013 (4) TN MAC 44 (SC), learned counsel submitted that based on the rough sketch the negligence could not be fixed on the deceased. He further submitted that the Tribunal taking note of the evidence of independent eye witness P.W.2 and Ex.P.1 F.I.R, came to the conclusion that the accident had happened only due to the negligence on the part of the driver of the offending vehicle.

12. Insofar as the quantum of compensation is concerned, learned counsel submitted that the Tribunal has not awarded any amount towards loss of consortium and the amount granted towards loss of love and affection is also meagre. He also submitted that even though the income tax statement of the deceased has been marked, the Tribunal has taken only the business income of the deceased. Therefore, no interference is called for with the well considered finding of the Tribunal.

13. This Court has given its careful consideration to the above contentions advanced by either parties and also perused the materials available on record.

14. With regard to the contention of the learned counsel appearing for the appellant that based on rough sketch the accident had happened due to the negligence on the part of the deceased, it is seen that the Tribunal following the decision of this Court reported in 2012 (1) TNMAC 687 held that the rough sketch could not be taken to fix the negligence on a person. In the said decision, this Court held that no credence could be given to a report of the Investigating Officer, who is not a witness to the accident.

15. In the case of Jiju Kuruvila & Others V. Kunjujamma Mohan & Others reported in 2013 (4) TN MAC 44 (SC), the Supreme Court while dealing with the issue of contributory negligence, held that the mere position of the vehicles after accident as shown in the scene mahazar could not give a substantial proof as to the rash and negligent driving of a person. For better clarity, we extract the relevant portion of the decision of the Supreme Court as below:

"24. The mere position of the vehicles after accident, as shown in the Scene Mahazar, cannot give a substantial proof as to the rash and negligent driving on the part of one or the other. When two vehicles coming from opposite directions

collide, the position of the vehicles and its direction, etc. depends on number of factors like speed of vehicles, intensity of collision, reason for collision, place at which one vehicle hit the other, etc. From the scene of the accident, one may suggest or presume the manner in which the accident caused, but in absence of any direct or corroborative evidence, no conclusion can be drawn as to whether there was negligence on the part of the driver. In absence of such direct or corroborative evidence, the Court cannot give any specific finding about negligence on the part of any individual."

(emphasis supplied)

16. P.W.2, who is an independent eye witness to the accident deposed in his evidence that when the deceased was travelling on the left side of the road, the driver of the bus came in a rash and negligent manner without following the road rules, dashed against the deceased.

17. In Ex.P.1, FIR, it is stated that the accident had occurred due to the rash and negligent driving on the part of the driver of the bus and after investigation, the police submitted a charge sheet against the driver of the bus. Hence, taking into consideration the evidence of the eye witness and the decision of this Court, the Tribunal has correctly fixed the negligence on the part of the driver of the bus. On this issue, no material has been placed by the appellant to come to a different conclusion from that of the conclusion arrived at by the Tribunal. Accordingly, the same is confirmed.

18. Insofar as the quantum of compensation is concerned, the Tribunal, based on the income tax returns of the deceased fixed the monthly income of the deceased at Rs.15,000/-. As per the decision in the case of Sarla Verma & Others V. Delhi Transport Corporation & Another reported in CDJ 2009 SC 779, if the deceased is below 40 years, 50% future prospects should be granted. Since the deceased was 40 years old at the time of accident, the Tribunal had granted 50% future prospects. With regard to the adoption of multiplier, the completed age of the deceased should be taken into consideration. Here, the deceased has completed 40 years only. As per the decision in the case of Sarla Verma & Others V. Delhi Transport Corporation & Another reported in CDJ 2009 SC 779, multiplier 14 will apply only if the deceased completes 41 years. Hence, the adoption of multiplier at 15 by the Tribunal is correct. It is seen that the Tribunal has not awarded any sum towards loss of consortium, which is not fair. The Tribunal has awarded a sum of Rs.1.00 lakh towards loss of estate, which we feel is not justified.

19. Accordingly, the award of the Tribunal stands modified as follows:

	Compensation awarded by the Tribunal	Compensation modified by this Court
Loss of income	Rs.30,37,500/-	Rs.30,37,500/-
Loss of consortium	--	Rs. 1,00,000/-
Loss of love and affection to two minors	--	Rs. 1,50,000/- (Rs.75,000/- each)
Loss of love and affection	Rs. 2,00,000/-	Rs. 50,000/- (to father)
Loss of Estate	Rs. 1,00,000/-	--
Funeral expenses	Rs. 25,000/-	Rs. 25,000/-
Total	Rs.33,62,500/-	Rs.33,62,500/-

20. Accordingly, this Civil Miscellaneous Appeal stands disposed of as follows:

(i) The award of the Tribunal stands modified as above.

(ii) The rate of interest at 7.5% per annum granted by the Tribunal stands confirmed.

(iii) Learned counsel appearing for the appellants seeks time to deposit the award amount. The appellant is granted eight weeks time to deposit the entire award amount with interest and costs, less the amount if any paid.

(iv) On such deposit being made, the major claimants are permitted to withdraw their respective share as apportioned by the Tribunal. The share in respect of the minors shall be invested in any one of the Nationalised Bank initially for a period of three years and to be renewable thereafter periodically till the minors attain majority.

(v) However, there will be no order as to costs.

(vi) Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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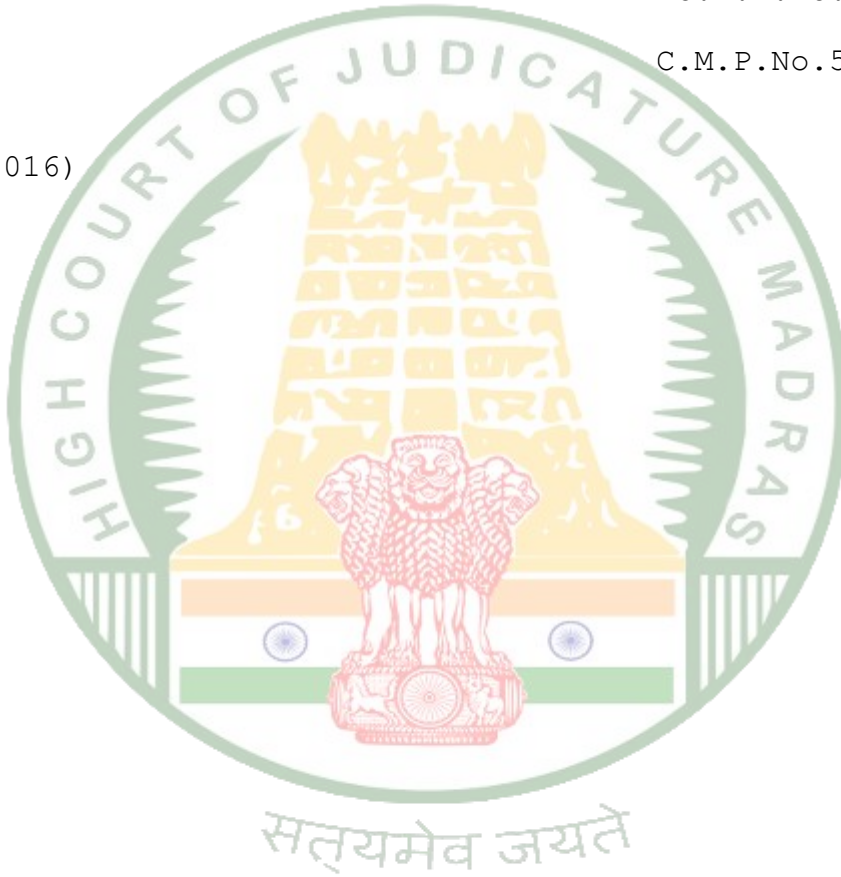
The Sub-Ordinate Court,
Motor Accidents Claims Tribunal,
Tirupur.

+1cc to Mr.S.Vadivel, Advocate, S.R.No.20204

+1cc to Mr.MA.P.Thangavel, Advocate, S.R.No.20454

C.M.A.No.661 of 2016
&
C.M.P.No.5440 of 2016

GJ(CO)
CA(22/04/2016)



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