



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.10.2016

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THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. (MD) No.1064 of 2016

&

C.M.P. (MD) No.9524 of 2016

The Branch Manager,
The United India Insurance Co. Ltd.,
84/28, 1st Floor, North Car Street,
Ambasamudram - 627 401. ... Appellant/2nd Respondent

Vs.

1.Velmari, W/o.Late Karuppiah
2.Minor Kavindra Boopathy, S/o.Late Karuppiah
3.Minor Kavipriya, D/o.Late Karuppiah
4.Pandian @ Pandi, F/o.Late Karuppiah ... Respondents/Petitioners
5.C.Palanivel ... Respondent/1st Respondent
(Respondents 2 and 3 are represented by
their mother and natural guardian, next
friend, the first respondent)

Prayer:- Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 23.02.2011 passed in M.C.O.P.No.119 of 2009 on the file of the Motor Accidents Claims Tribunal (Principal District Judge), Ramanathapuram.

For Appellant	... Mr.N.Muthukani
For R1 to R4	... Mr.Lakshmi Shankar
For R5	... Mr.J.Ashok
	for M/s.P.Jeyapaul Associates

JUDGMENT

(Judgment of the Court was made by V.M.VELUMANI, J.)

By consent, the Civil Miscellaneous Appeal is taken up for final disposal.

2. This Civil Miscellaneous Appeal has been filed against the judgment and decree dated 23.02.2011 passed in M.C.O.P.No.119 of 2009 on the file of the Motor Accidents Claims Tribunal (Principal District Judge), Ramanathapuram.



3. The facts in brief leading to the filing of this Civil Miscellaneous Appeal, are as follows:

(i) The appellant is the second respondent and the respondents 1 to 4 are the petitioners/claimants and the fifth respondent/owner of the auto is the first respondent in M.C.O.P.No.119 of 2009 on the file of the Court of Motor Accident Claims Tribunal (Principal District Judge), Ramanathapuram. The respondents 1 to 4 filed a claim petition in M.C.O.P.No.119 of 2009 claiming a sum of Rs.40,00,000/- as compensation.

(ii) According to the respondents 1 to 4/claimants, on 23.07.2009 about 06.00 p.m., one Karuppiyah, husband of the first respondent, father of the respondents 2 and 3 and son of the fourth respondent along with his friends viz., Ravi and Sakthivel were standing on the southern edge of Courtallam to Five Falls road in order to cross the road. At that time, the Auto bearing Registration No.TN-72-AA-0975 came from west to east in a rash and negligent manner and dashed against the said Karuppiyah. Due to that, the said Karuppiyah sustained multiple injuries. On the way to hospital, he died due to the injuries sustained in the accident.

(iii) According to the respondents 1 to 4, the accident took place only due to rash and negligent driving by the driver of the Auto. At the time of accident, the deceased was hale and healthy and he was aged about 42 years. He was working as B.T. Assistant in Panchayat Union Middle School at Panayadiyendhal Village and his gross salary was Rs.23,109/-. The deceased had bright chance of promotion and he would have been promoted to the post of C.E.O. and would have drawn higher salary, if he was not died in the accident.

(iv) The respondents 1 to 4 are the legal heirs of the deceased Karuppiyah and also the dependants on the deceased. Therefore, they filed a claim petition claiming a sum of Rs.1,18,99,384/- as compensation, but restricted their claim to Rs.40,00,000/-.

(v) The appellant filed counter statement denying various allegations and submitted that the accident has not taken place due to rash and negligent driving by the Auto driver. The deceased, who was standing on the southern side of the road, suddenly crossed the road without noticing the oncoming auto. Therefore, the accident occurred only due to negligence on the part of the deceased. The respondents 1 to 4 have to prove the income, salary and age of the deceased. The appellant has further stated in the counter statement that the owner of the auto, the Regional Transport Authority, Tirunelveli, issued a permit to the said auto with the condition to ply within the radius of 30



Kilometres from Tirunelveli. The accident took place at Courtallam, which is situated more than 30 Kilometres from Tirunelveli. Therefore, the appellant is not liable to pay any compensation for violation of permit condition by the fifth respondent.

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(vi) Based on the pleadings, the Tribunal framed necessary points for consideration.

(vii) Before the Tribunal, on behalf of the respondents 1 to 4/claimants, the first respondent herself examined as P.W.1 and one Sakthiveli, eyewitness was examined as P.W.2 and one Usharani was examined as P.W.3 and 13 documents were marked as Exs.P.1 to P.13. On behalf of the appellant, one Palani and Arumugam were examined as R.Ws.1 and 2 and three documents were marked as Exs.R.1 to R.3.

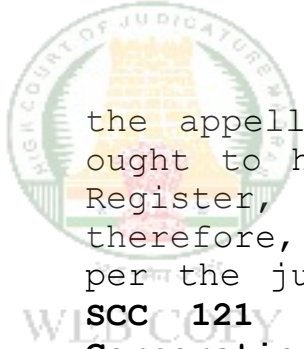
(viii) The Tribunal considering the pleadings, oral and documentary evidence, came to the conclusion that the accident took place only due to the rash and negligent driving by the driver of the auto and considering Section 149(2) of the Motor Vehicles Act and the judgment of the Jammu and Kashmir High Court reported in **2010 ACJ 1526 [Tashi Rigzin Vs. Stanzin Jigmed and others]** held that the appellant is also liable to pay compensation and awarded a sum of Rs.32,55,080/- as compensation with interest at the rate of 7.5% p.a., from the date of institution of claim petition till realization and directed the appellant and the fifth respondent to pay the said amount jointly and severally.

(ix) The compensation awarded by the Tribunal reads as follows:

Sl.No	Heads	Amount
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1	Loss of Income	32,32,080
2	Loss of love and affection	10,000
3	Loss of consortium to the first respondent	10,000
4	Funeral expenses	3,000
	Total	32,55,080

4. Aggrieved by the said award, the appellant Insurance Company has come out with the present appeal.

5. The learned counsel for the appellant has contended that the owner of the auto/fifth respondent violated the permit condition and therefore, the appellant is not liable to pay compensation. The appellant by examining R.W.1 and R.W.2 and by marking Exs.R.1 to R.3, proved this fact. The learned counsel for



the appellant further contended that in any event, the Tribunal ought to have ordered pay and recovery. As per Ex.P.12 Service Register, the date of birth of the deceased is 30.04.1968 and therefore, the deceased was 42 years at the time of accident. As per the judgment of the Hon'ble Apex Court reported in **2009 (6) SCC 121 [Sarla Verma (Smt.) and Others Vs. Delhi Transport Corporation and Another]**, the correct multiplier is 14 and the Tribunal erred in applying multiplier of 15.

6. The learned counsel for the respondents 1 to 4 submitted that the Tribunal considered the provisions of the Motor Vehicles Act and well settled judicial pronouncements in proper perspective and held that the appellant is not exempted from it's liability to pay compensation for violation of permit conditions by the owner of the auto/fifth respondent and prayed for dismissal of the civil miscellaneous appeal.

7. We have carefully perused all the materials available on record and considered the arguments advanced by the learned counsel appearing for the parties.

8. The points for consideration in this civil miscellaneous appeal are,

(i) Whether the appellant is liable to pay compensation or exempted from liability for violation of permit condition by the fifth respondent?

(ii) Whether the appellant is entitled to an order of pay and recovery?

(iii) Whether the Tribunal applied correct multiplier in arriving at compensation payable by the appellant and the fifth respondent?

Point Nos.(i) and (ii):-

9. The main contention of the learned counsel for the appellant is that the appellant is not liable to pay any compensation due to the fact that the fifth respondent has violated the permit condition. The Regional Transport Authority, Tirunelveli, has issued a permit to the fifth respondent's auto with the condition to ply within the radius of 30 Kilometres from Tirunelveli. While so, the auto was plying at Courtallam, which is situated more than 30 Kilometres away from Tirunelveli. The said contention has no force and is untenable in view of the various judgments of the Hon'ble Apex Court as well as this Court. Even if there is any violation of permit condition, it is well settled that the insurer is liable to pay compensation to the claimants and is entitled to recover the same from the owner of the vehicle. In view of well settled law, the order of the Tribunal holding that the appellant is liable to pay compensation is correct. In the circumstances, the appellant is entitled to an order of pay and recovery.

Point No.(iii)

10. The deceased was aged 42 years at the time of accident. The Tribunal has applied multiplier '15' to arrive at compensation. As per the judgment of the Hon'ble Apex Court reported in **2009 (6) SCC 121 [Sarla Verma (Smt.) and Others Vs. Delhi Transport Corporation and Another]**, the correct multiplier is only 14. The Tribunal fixed the monthly income of the deceased at Rs.26,933/- which is based on evidence and therefore, the same is confirmed and after deducting $1/3^{\text{rd}}$ i.e., Rs.8,978/- [Rs.26,933 / 3] towards his personal expenses and by applying the multiplier 14, the respondents 1 to 4 are entitled to Rs.30,16,440/- [Rs.26,933 - 8978 (1/3) = Rs.17,955 x 12 x 14] towards loss of income. In all other aspects, the award of the Tribunal is confirmed.

11. This Court on reappraisal of the materials in the form of oral and documentary evidence, is inclined to award the following amounts as compensation.

Sl. No.	Heads	Amount awarded by the Tribunal	Amount Awarded by this Court	Award confirmed/ reduced/ granted/ modified
1	Loss of Income	32,32,080	30,16,440	Reduced by Rs.2,15,640/-
2	Loss of love and affection	10,000	10,000	Confirmed
3	Loss of consortium to the first respondent	10,000	10,000	Confirmed
4	Funeral expenses	3,000	3,000	Confirmed
	Total	32,55,080	30,39,440	Reduced by Rs.2,15,640/-

12. In the result, the Civil Miscellaneous Appeal is partly allowed and the award and decree insofar as compensation is reduced to Rs.30,39,440/- with interest at 7.5% p.a. from the date of petition till the date of realisation. The appellant/Insurance Company is granted six weeks time to deposit the compensation amount, less the amount already deposited if any and recover the said amount from the owner of the vehicle/fifth respondent herein, as held in the judgment of the Hon'ble Apex Court in **Oriental Insurance Co.Ltd. Vs. Shri Nanjappan and others**, reported in **I (2004) ACC 524 (SC)**. However, mode of recovery shall be made as follows:

"For the purpose of recovering the compensation amount from the insured, the insurer shall not be required to file a suit. It may initiate a proceeding before the



concerned Executing Court as if the dispute between the insurer and the insured was the subject matter of determination before the Tribunal and as if the issue is decided against the owner and in favour of the insurer. A notice shall be issued to the insured to furnish security for the entire amount. The offending vehicle shall be attached as a part of the security. If necessity arises, the Executing Court shall take assistance of the concerned Regional Transport Authority. The Executing Court shall pass appropriate orders in accordance with law as to the manner in which the insured/owner of the vehicle shall make payment to the insurer. In case there is any default it shall be open to the Executing Court to direct realisation by disposal of the securities to be furnished or from any other property of the insured".

13. On such deposit, the respondents 1 and 4/major claimants are permitted to withdraw their share in the ratio as apportioned by the Tribunal, less the amount already withdrawn if any. The Tribunal shall deposit the shares of the respondents 2 and 3, who are minor claimants, in a Fixed Deposit in Indian Bank, Madurai Bench of Madras High Court, Madurai, to the credit of C.M.A.(MD)No.1064/2016, which shall be renewed periodically till they attain majority. The first respondent - mother of the minors is permitted to withdraw interest on the shares of her minor children, viz., the respondents 2 and 3, once in three months from the bank directly. No costs. Consequently, connected C.M.P.(MD) No.9524 of 2016 is closed.

Sd/-

Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar

To

1. The Court of Motor Accidents Claims Tribunal,
(Principal District Judge), Ramanathapuram.
2. The Section Officer,
V.R. Section, Madurai Bench of Madras High Court, Madurai.

+1 cc to M/S.G.PRABHU RAJADURAI, Advocate SR.No.59328

+1 cc to M/S.M.LAKSHMI SHANKAR, Advocate SR.No.58238

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