

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.03.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.No. 1001 of 2017
and CMP.No.4958 of 2017

The United India Insurance Company Ltd.,
No.48, Arcot Road,
Saligramam, Chennai - 600 093 ...Appellant/2nd Respondent

vs.

1. Tmt.P.L.Umamaheswari
2. Minor Kailash (1 month)
3. Tmt.Valliyammal
4. Azhagappan ...Respondents 1 to 4/Claimants
5. L.Suresh ...5th Respondent/1st Respondent
(2nd Respondent Minor represented by natural guardian & next
friend mother 1st respondent TMT.P.L.Umamaheshwari)

Civil Miscellaneous Appeal filed under Section 173 of Motor
Vehicles Act, 1988, against the Order and Decreetal Order in
MCOP No.827 of 2013 dated 03.09.2015 on the file of Motor
Accidents Claims Tribunal, [III Additional District Court],
Thiruvallur at Poonamallee.

For Appellant : Mr.A.Dhiraviyanathan

J U D G M E N T

[Order of the Court was made by M.GOVINDARAJ, J.]

Challenging the quantum of compensation awarded by MACT
[III Additional District Judge], Thiruvallur at Poonamallee in
MCOP No.827 of 2013 dated 03.09.2015, the insurance company has
preferred the above appeal. The claim petition has been made on
the death of one Palaniappan. Wife, minor son (1 month old) and
parents are the claimants. Accident has taken place on
13.08.2013 at around 7.30pm. While the deceased was riding his
two-wheeler bearing Regn.No.TN03-F-1723 in GNT Road, a Container
Lorry bearing Regn.No.TN30 AD 0330, driven in a rash and
negligent manner by its driver, hit the deceased in an attempt
to overtake another vehicle. The deceased fell under the wheels

of the lorry and died on the spot. The claimants have filed the above petition, claiming compensation of Rs.50 Lakhs.

2. The insurance company objected on the grounds that the vehicle was not involved in the accident and there is lot of discrepancy in identification of the vehicle.

3. The tribunal below considered the evidence on the issues as to whether the accident had taken place on the rash and negligent act of the driver of the 1st respondent vehicle, whether the 2nd respondent-insurance company is liable to pay compensation and on the quantum of compensation.

4. Four witnesses, P.Ws.1 to 4, were examined on the side of the claimants and eleven documents were marked as Exs.P1 to P11. On the respondent side, one witness (RW1) was examined and four documents were marked as Exs.R1 to R4.

5. PW2, who was the eyewitness had deposed before the tribunal, that while the offending vehicle was about to overtake another vehicle, had hit the deceased, who was going on the left side. Therefore, on the basis of the evidence of the eyewitness, the tribunal came to the conclusion that the accident has taken place due to the rash and negligent driving of the lorry driver bearing Regn.No.TN300 AD 0330.

6. In so far as the contradiction on the colour of the vehicle and the objection raised by the insurance company, the tribunal has relied on the report of the Traffic Police Inspector and the charge sheet filed before the Court. The evidence of Inspector of Police, clearly indicates that the container lorry bearing No.TN30-AD-0330 alone was involved in this accident. Moreover, it was held that the 2nd respondent has not proved that the offending vehicle was not involved in the accident and no such report was filed as well as the final report of the police was also not filed before the tribunal. Therefore, the contention that the vehicle was not involved in the accident as proposed by the insurance company was not proved and it was held that the accident has taken place only due to the rash and negligent driving of the driver of the container lorry. Since the lorry which was responsible for this accident was covered by insurance policy, it was held that the Insurance company is liable to pay compensation.

7. In so far as the quantum of compensation is concerned, the deceased was drawing salary of Rs.29,250/-, as shown in Ex.P9. After deducting the professional tax and provident fund etc, he has drawn a net salary of Rs.27,623/- as per Ex.P9. The tribunal has further deducted the medical allowances, Leave Travel Allowances and finally arrived at the income of Rs.26,250/- per month. After deducting 1/3 for personal and

living expenses, the net salary was taken as Rs.17,500/- for the calculation of loss of contribution to the family. The deceased was aged about 31 years and therefore, multiplier '17' was applied. Accordingly, a sum of Rs.35,70,000/- was decided as loss of contribution to the family.

8. Apart from the above, for mental agony, a sum of Rs.1,00,000/- was awarded. Rs.15,000/- towards funeral expenses, Rs.1,00,000/- towards consortium to the wife, Rs.1,00,000/- towards loss of love and affection to minor son and Rs.1,00,000/- towards loss of love and affection to parents/claimants 3 and 4, were awarded. The tribunal has awarded a total compensation of Rs.39,85,000/-, alongwith interest at that rate of 7.5% per annum from the date of filing the petition till the date of deposit and costs.

9. Income tax has not been deducted on the loss of earning arrived at by the tribunal. Further, the tribunal while computing the loss of earning has not applied the future prospects. The age of the deceased at the time of accident was 31 years. As per the judgment of Sarla Verma and others Vs. Delhi Transport Corporation and another, reported in 2009 (2) TNMAC 1 (SC), 50% shall be added to the income as future prospects. If Rs.26,000/- is taken as monthly income, as decided by the tribunal, Rs.13,000/- should have been applied towards future prospects. That will make the monthly income as Rs.39,000/- and the annual income at Rs.4,68,000/- as against Rs.2,10,000/- fixed by the tribunal below. Income tax on the annual income now arrived would be as follows:

Annual income [2013-14] : Rs.4,68,000/-

Income tax Upto Rs.2,00,000/- : Nil

from Rs.2,00,001 to Rs.5,00,000/- (10%) : Rs.26,800/-

Edn Cess & Surcharge (3%) : Rs. 804/-

Total Income Tax : Rs.27,604/- [rounded off Rs.27600/-]

Even after deduction of income tax, the monthly income would be arrived at Rs.4,40,400/-.

10. Total number of Dependants is four and the tribunal ought to have deduced 1/4 instead of 1/3 towards personal and living expenses of the deceased, as per the decision of the Hon'ble Supreme Court in Sarla Verma's case [cited supra]. Therefore, after applying '17' multiplier and 1/4 deduction towards personal and living expenses, the total compensation would be Rs.56,15,100/-. Therefore, on a simple reworking, the compensation awarded under the head loss of contribution to the family, appears to be less. Therefore, the overall quantum of compensation awarded is less than what should have been awarded. There is no reason to interfere with the award passed by the

tribunal below. Accordingly, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently the connected Miscellaneous Petition is closed.

11. Consequent to the dismissal of the appeal, the appellant-Insurance company is directed to deposit the entire award amount with interest at the rate of 7.5% per annum, from the date of claim till deposit, less the statutory deposit, to the credit of MCOP No.827 of 2013 on the file of Motor Accidents Claims Tribunal, [III Additional District Court], Thiruvallur at Poonamallee, within a period of four weeks from the date receipt of a copy of this order.

12. On such deposit being made, except minor/respondent No.2, other respondents/claimants are permitted to withdraw their share, as apportioned by the tribunal, by making necessary applications. The share apportioned to the minor/respondent No.2, shall be in the bank deposit till he attains majority. The interest accruing on the share of the minor shall be paid to the 1st respondent/mother of the minor once in three months, till he attains majority. On attainment of majority, he shall file necessary applications for withdrawal.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

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To

1.[III Additional District Court],
The Motor Accident Claims Tribunal,
Thiruvallur at Poonamallee.

2.The Section Officer,
V.R.Section, High Court,
Madras.

+1cc to Mr.A.Dhiraviyanathan, Advocate Sr. 17793

C.M.A.No. 1001 of 2017
and CMP.No.4958 of 2017

SV(CO)
VR(07/06/2017)