

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : **16.11.2017**

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM
and
THE HONOURABLE MR.JUSTICE P.KALAIYARASAN

C.M.A.No.1643 of 2017
and **C.M.P.No.8708 of 2017**

General Manager
The New India Assurance Company Ltd.,
No.1, Officers Line,
Vellore. Appellant / 2nd Respondent

Vs.

1. Rajammal
2. Kathirvel
3. Murugan
4. Anand
5. Amutha ... Respondents 1 to 5 / Petitioners
6. J.Raja ... Respondent No.6 / 1st Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Award and Decree, dated 23.11.2016 made in M.C.O.P.No.916 of 2013 on the file of the Motor Accident Claims Tribunal (Special Sub-Court), Tiruvannamalai.

For Appellant : Mr.S.Manohar

For Respondents : Mr.B.Jawahar for R1 to R5
Mr.P.Vasanth for R6

JUDGMENT

(Judgement of the Court was delivered by
P.KALAIYARASAN, J)

This Civil Miscellaneous Appeal is directed against the
award passed by the Motor Accident Claims Tribunal,

Tiruvannamalai dated 23.11.2016 in M.C.O.P.No.916 of 2013 by the insurance company who is arrayed as second respondent in the claim petition.

2. On 03.07.2000 at about 5 p.m, the driver of the mini bus bearing Regn No. TN 59 N 0812 belonging to the first respondent and insured with the second respondent, drove the bus from south to north in a rash and negligent manner and hit against the deceased Annamalai who was standing on western side of the road in the bus stop. The deceased sustained grievous injuries on the left foot. He was treated as inpatient in Madras Medical College Hospital from 03.07.2000 to 24.08.2000 where he underwent surgery thereby amputated his left leg upto the ankle. Against the medical advice, he came home and he died on 26.11.2000. Due to the ignorance of the claimants, postmortem was not done. The deceased was doing mazon work and earned Rs.10,000/- p.m. The claimants are his wife and adult children and they were depending on the income of the deceased. The claimants claim Rs.20,00,000/- as compensation.

3. The appellant / second respondent in its counter contends that the offending vehicle bearing Reg. No. TN 59 N 0812

was not insured with the second respondent insurance company at the time of the alleged accident. The claimants have to prove their allegations as to rashness and negligence, cause of death and income of the deceased including dependency. The FIR was also lodged 20 days after the alleged occurrence. The claimants have not given any valid reason for the inordinate delay in registering the complaint. The driver of the mini bus had also no effective and valid driving license. Therefore, the insurance company is not liable to pay any compensation.

4. On the side of the petitioners, three witnesses were examined and 7 Exhibits marked. Insurance company on its side examined two witnesses and marked 3 Exhibits. The Motor Accident Claims Tribunal after analysing the evidence, awarded compensation of Rs.11,53,728/- to the claimants. Aggrieved by the same, the Insurance company has preferred this Civil Miscellaneous Appeal.

5. The learned counsel appearing for the appellant contends that the claim petition itself was filed after about 10 years from the date of accident; that the offending vehicle was not insured with the insurance company and the cause of death has not been established on the side of the petitioners.

6. The learned counsel appearing for the respondents 1 to 5 per contra contends that delay in filing the claim petition cannot be a ground and the Tribunal has rightly awarded compensation on the basis of the acceptable evidence as to the coverage of insurance with the appellant / insurance company at the time of accident and cause of death of the deceased.

7. In this case there is a delay of about 10 years in filing the claim petition. But the delay cannot be a ground either to mitigate or reject the claim and the case of the petitioners is to be considered only on merits. The accident occurred on 03.07.2000 at about 5 p.m. Due to the accident the left foot of the victim was crushed below the ankle and he was taken to Government Hospital, Tiruvannamalai and then referred to Madras Medical College Hospital for treatment. Since he was under treatment in the Government Medical College Hospital in Chennai, the deceased or his wife who accompanied him at the time of accident or his relatives did not lodge any complaint with the police immediately. The statement was recorded in the hospital by the police belatedly and FIR was registered on 12.08.2000. It is also pertinent to note that the victim suffering from crush injury on his left foot and his family members were concentrating in giving treatment to him and

his left foot up to the ankle was also amputated on 07.08.2000. On the basis of the statement recorded from the victim, FIR, Ex.P.1 was registered in Tiruvannamalai Police Station. In the FIR, the victim has clearly stated that when he was standing in the bus stop along with his wife, the mini bus coming from the south was driven by its driver rashly and negligently and hit against him and at that time his wards were in Bangalore and his wife who was with him took him to the Government Hospital, Tiruvannamalai, from where he was sent to Madras Medical College Hospital, Chennai. It is a Medico-legal case and therefore it is the duty of the Doctors to send information to the police for recording statement from the victim. In the Discharge summary it has been mentioned that the victim sustained injuries in road accident due to hit by a mini bus.

8. The victim's wife examined as P.W.1 has also categorically deposed that when his husband and herself were standing in the bus stop, mini bus bearing Regn. No. TN 59 N 0812 came from the south side and hit against his husband and he sustained crush injury on his left foot. She further says that only due to the rash and negligent driving of the mini bus driver, the accident has occurred. Her evidence could not be shattered in any way during cross-examination. Therefore, the Tribunal has rightly

held that accident occurred only due to the rash and negligent driving of the mini bus driver, bearing Regn. No. TN 59 N 0812.

9. The appellant insurance company contends that the offending vehicle was not insured with the appellant Insurance company at the time of accident. The copy of certificate of insurance of the offending vehicle bearing Regn. No. TN 59 N 0812 for the period from 18.09.2000 to 17.09.2001 is marked as Ex.P.7. On the side of the insurance company, copy of the insurance policy of the offending vehicle for the above said period is marked as Ex.R.1. In Ex.R.1 insurance policy for the period from 18.09.2000 to 17.09.2001, 'No claim Bonus' of 20% has been given and the same has been specifically noted in the policy. The Administrative Officer of the appellant insurance company examined as R.W.1 has said in his cross-examination that had the vehicle owner not made any claim in one year no claim bonus will be given in the subsequent year for the same vehicle when policy is taken. On the side of the insurance company, motor vehicle inspector who inspected the offending vehicle has been examined as R.W.2. He explained in his evidence for giving two insurance particulars in his report, Ex.P.2. In Ex.P.2, it has been mentioned in Col. No.10, "the date of expiry of insurance certificate and name of address of the company"

(1) 15.09.2000, The New India Assurance Company Ltd., Tiruvannamalai and (2) 17.09.2001, The New India Assurance Company Ltd., Tiruvannamalai. The motor vehicle inspector, R.W.1 in his chief examination says that he mentioned two insurance particulars (1) to denote the existence of the policy at the time of accident and (2) to denote the existence of the policy at the time of inspection of the vehicle. During cross-examination made on the side of the claimants / petitioners, he clearly says that on the date of accident, the insurance with the appellant company for the offending vehicle was in force. From the above evidence of R.W.1 and R.W.2 coupled with Ex.R1 and Ex.R.2, this Court has no hesitation to hold that the offending vehicle was insured with the appellant insurance company at the time of accident, i.e., on 03.07.2000 and therefore, the appellant / insurance company is liable to pay the compensation.

10. The Orthopaedic Senior Civil Surgeon attached to Rajiv Gandhi Medical College Hospital, Chennai and working in Secretariat examined as P.W.2 issued Disability Certificate, Ex.P.6, dated 17.09.2000 for the victim. The Discharge Summary is marked as Ex.P.4. It is seen from the discharge summary that immediately after the accident, he was treated in Rajiv Gandhi Medical College

Hospital and his left foot up to ankle was amputated. After treatment for about 49 days, the victim left the hospital against the medical advice. The Death Certificate is marked as Ex.P.3 and it is found that the victim died on 06.11.2000. After leaving the Rajiv Gandhi Medical College Hospital against medical advice for his native place Tiruvannamalai, he died within 78 days. Postmortem was not conducted to ascertain the cause of death.

11. Even in the absence of postmortem certificate if there is acceptable evidence to show that the death has occurred only due to injuries sustained by the victim in the accident then the same can be accepted. It is also to be noted that in a summary proceedings of this nature, elaborative evidence is not required strictly as per Evidence Act.

12. In the case on hand, the victim was examined by the Orthopaedic Senior Civil Surgeon just 1 1/2 months before his death and issued Disability Certificate, Ex.P.6. The Doctor examined as P.W.2 has deposed that after verifying the discharge summary and other records he found that left foot up to ankle was amputated to save his life due to Septicaemia. He assessed the permanent disability at 80% to the victim. Considering the disability, the

evidence of the Doctor about Septicaemia and discharge summary, Ex.P.4, this Court accepts the contention of the learned counsel appearing for the respondents / claimants that the victim died due to injuries sustained by him in the accident.

13. Even as per the FIR registered on the basis of the statement given by the victim, his wards were not with him and they were in Bangalore and he along with his wife was living in Tiruvannamalai. The first claimant is the wife of the victim and other claimants are their wards. All the wards are adult members aged varying from 30 to 40 years. The deceased was doing mason work. In the absence of proof for income, the Tribunal has taken notional income as Rs.6,500/- for the deceased.

14. The Constitutional Bench of the Hon'ble Supreme Court in **National Insurance Company Ltd., v. Pranay Sethi and Ors.**, by Judgment, dated 31.10.2017 in SLP (Civil) No.25590 of 2014 etc., batch, set right the controversy over **Sarla Verma's case (2009) 6 SCC 121** and held as follows :

"61...

...

(iv) In case 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. The established income means the income minus the tax component.

...

(vii) The age of the deceased should be the basis for applying the multiplier.

(viii) Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/- respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years."

15. In the FIR as well as the discharge summary, the age of the deceased is mentioned as 50 years. In the claim petition filed in the year 2012, the age of the wife and first son is mentioned as 55 and 40 years respectively. Considering the age of the first son born to the deceased and the first claimant, this Court is of the view that the age of the deceased would be 50+ at the time of accident. Hence, as per the above Judgment, 10% is to be added to the

established income towards future prospects. Therefore Rs.6,500 + 650 = Rs.7,150/-. The wards of the victim were not residing with the victim and they were away in Bangalore. He was living with his wife in Tiruvannamalai. Towards his personal expenses 50% is to be deducted and therefore the contribution of the deceased to his family would be at Rs.3,575/- (Rs.7150-3575 = Rs.3,575/-). Following the **Sarala Verma's case, (2009) 6 SCC 121**, multiplier of 11 is to be taken. Therefore, the loss of income to the family is arrived at Rs.4,71,900/- (Rs.3575 x 12 x 11 = Rs.4,71,900).

16. As per the latest dictum of the Constitutional Bench (cited supra), compensation towards loss of estate, loss of consortium and funeral expenses is fixed at Rs.15,000/-, Rs.40,000/- and Rs.15,000/- respectively. The Tribunal has awarded Rs.40,000/- towards loss of love and affection for the claimants 2 to 5 and the same is confirmed. Therefore, the claimants / respondents are entitled to get compensation under various heads as follows :

For the loss of income	: Rs. 4,71,900.00
For loss of estate	: Rs. 15,000.00
For loss of consortium	: Rs. 40,000.00
For funeral expenses	: Rs. 15,000.00
For loss of love and affection:	Rs. 40,000.00
Total	Rs. 5,81,900.00

Hence, the claimants / respondents are entitled to get compensation Rs.5,81,900/- (Rupees Five Lakhs Eighty One Thousand Nine Hundred only) with interest at 7.5% from the date of petition till the date of realisation. The first respondent / first claimant is entitled to a sum of Rs.2,81,900/- with proportionate interest and proportionate cost and Respondents 2 to 5 are entitled to a sum of Rs.75,000/- each with proportionate interest and proportionate cost out of the said award amount.

17. In the result, the Civil Miscellaneous Appeal is partly allowed without costs. The award passed in M.C.O.P.No.916 of 2013 by the Motor Accident Claims Tribunal (Special Sub-Court), Tiruvannamalai is modified as follows :

The respondents / petitioners are entitled to get compensation of Rs.5,81,900/- with interest at 7.5% from the date of petition till the date of realisation. The appellant is directed to deposit the remaining award amount along with accrued interest within a period of four weeks from the date of receipt of a copy of this order. The respondents / petitioners are entitled to get quantum of amount as set out in penultimate paragraph.

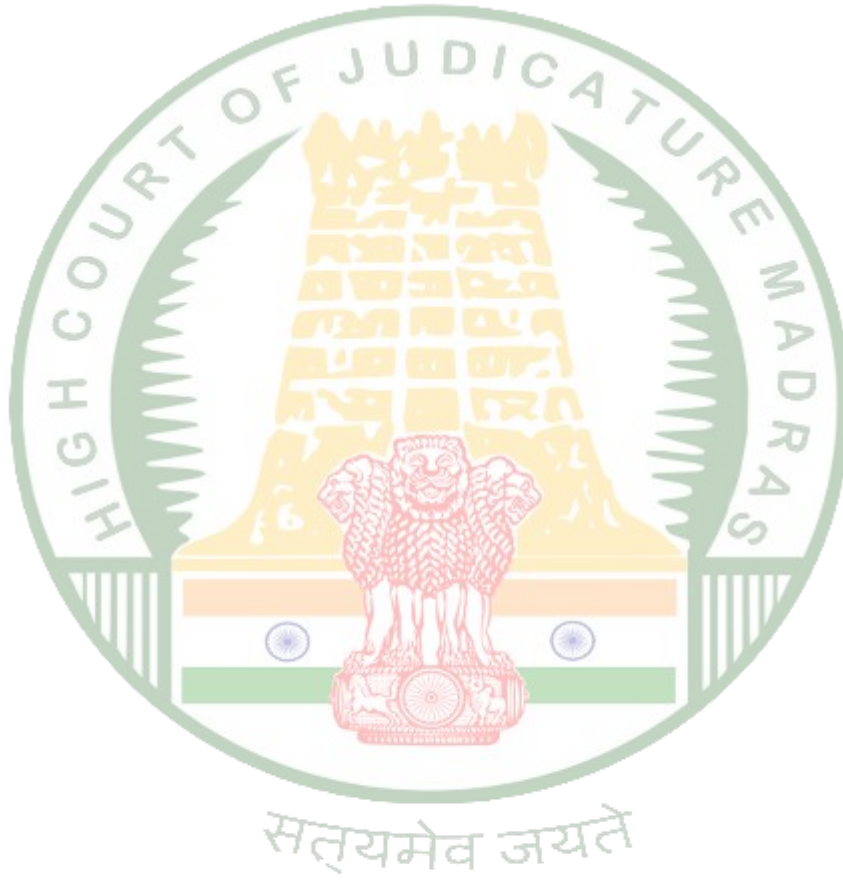
Consequently, connected miscellaneous petition is closed.

tsvn

(A.S., J.) (P.K., J.)
16.11.2017

To

The Motor Accident Claims Tribunal /
Special Sub-Court,
Tiruvannamalai.



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**A.SELVAM, J.
AND
P.KALAIYARASAN, J.**

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**Pre-Delivery Judgment in
C.M.A.No.1643 of 2017**

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