

IN THE HIGH COURT OF JUDICATURE OF MADRAS
DATED: 24.03.2017
CORAM:
THE HONOURABLE MR.JUSTICE NOOTY. RAMAMOHANA RAO
and
THE HONOURABLE MR.JUSTICE P. KALAIYARASAN

C.M.A. No.839 of 2014
and M.P. No.1 of 2014

Royal Sundaram Alliance Insurance Co. Ltd.,
Sundaram Towers, Whites Road, Chennai. ... Appellant/4th
Respondent

versus

1.Palaniammal

2.Minor N.Deepika

3.Minor N.Kokila

[Minors represented by their mother and
Next Friend Palaniammal,
1 to 3 are residing at 38,
Kumaran Nagar, Perundurai R.S.Road,
Perundurai Taluk, Erode District.] ... Respondents 1 to 4/
Petitioners

4.Lakshmi

5.K.Anbalagan

6.Chandrasekar

7.M/s.Square Transport,
No.14, Phagavathi Nagar, Seliyur,
Chennai. ... 5 to 7 Respondents/
1 to 3 Respondents
[Respondents 5 to 7 remained exparte]

Prayer: Civil Miscellaneous Appeal filed under Section 173 of
the Motor Vehicles Act, 1988 against the judgment and decree
dated 30.07.2012 made in M.C.O.P.No.605 of 2007 on the file of
the Motor Accident Claims Tribunal (First Additional District
Court), Erode.

For Appellant	: Mr.M.Krishnamoorthy
For Respondents 1 to 4	: Mr.S.Kaithamalai Kumaran
For Respondents 5 to 7	: Exparte

J U D G M E N T

[Judgment of the Court was made by NOOTY. RAMAMOHANA RAO, J.]

This appeal is preferred by the Insurance Company aggrieved, in principle about the fixation of quantum of compensation payable to the respondents / claimants pursuant to a fatal accident that took place on 20.02.2007 at about 19.30 hours.

2. The facts which unfolded before the Motor Claims Tribunal are that, on 20.02.2007, at about 07.30 p.m., one Mr.Nallathambi was riding a new Motor Vehicle proceeding towards south of Perundurai to Vellore road and near about Kongu Engineering College, Privu Village, the Truck bearing Registration No.TN-30-X-9369, which was proceeding ahead of the motorcyclist, suddenly halted its journey and due to the unexpected stoppage of the Truck, the motorcyclist rammed into the rear portion of the Truck. Consequently, Nallathambi sustained a grievous head injury. The Truck driver got down from the Truck and informed the Police immediately. The injured Nallathambi was taken to the nearby Government Hospital at Perundurai and after receiving the first aid, he was referred for better treatment to the Government Hospital at Erode and while receiving treatment, Nallathambi died the same night at the Government Hospital, Erode.

3. The deceased Nallathambi, at that point of time was working as a Telecom Mechanic at the Bharat Sanchar Nigam Limited [BSNL]. The first claimant / first respondent was the wife of the deceased, while claimants 2 and 3 / respondents 2 and 3 are his minor daughters. The fourth claimant / fourth respondent was the widowed mother of the deceased Nallathambi. All the claimants squarely depend upon the earnings of the deceased Nallathambi. The appellant / Insurance Company was the insurer of the Truck bearing Registration No.TN-30-X-9369.

4. On behalf of the claimants, 4 witnesses were examined and Exhibits P.1 to P.9 were got marked. On behalf of the respondents, the driver of the offending Truck was examined as R.W.1. and Exhibits R.1 and R.2, which are the certified copy of the Final Report submitted by the Police and certified copy of the Case Register Extract in R.S.No.19 of 2007 were got marked.

5. Learned counsel for the appellant Mr.M.Krishnamoorthy would urge the following contentions :

5.1. He would submit that notwithstanding the sympathies, which the appellant / Insurance Company has towards

the claimants, but, however, the Claims Tribunal has gravely erred in recognising the quantum of contribution made by the deceased motorcyclist for occasioning the accident. Expanding the contention, the learned counsel for the appellant would urge that the Truck was proceeding on a State Highway and it has already crossed the town limits of Perundurai. Therefore, the vehicular traffic, which follows a Truck are required to maintain adequate and safe distance from the Truck so that in case of any eventuality, if the Truck comes to a halt in quick time the traffic that is following it must also be in a position to stop their own momentum to avoid collision with the Truck proceeding ahead.

5.2. Learned counsel for the appellant would submit that the degree of care required to be expected by a motorcyclist while driving on a Highway is much more than when he was driving on an important road in a city where there will be greater density of vehicular traffic. According to the learned counsel, the accident has mainly occasioned due to lack of sense of anticipation coupled with inability to bring a motor vehicle to a quick halt. Learned counsel for the appellant would also contend that it is the Truck driver, who upon noticing the impact of the motorcyclist, got down from the Truck and immediately informed the Police about the accident and also made necessary arrangements for shifting the injured Nallathambi for securing medical attention.

5.3. Learned counsel for the appellant would hence contend that P.W.3, the Sup-Inspector of Police, who investigated the matter has filed his Final Report, which is marked as Ex.R.1 before the Criminal Court and the Final Report of investigation has clearly brought out that the accident occasioned because of fault attributable to the motorcyclist. In fact that was the reason why the motorcyclist was shown as an accused in the criminal case. That was the reason why Ex.R.2 an extract from the Register maintained by the Criminal Court has been filed. Thus, the learned counsel would contend that the accident should have been declared by the Tribunal as had occurred all due to contribution by the motorcyclist. The Truck driver was also examined as R.W.1, but, however, nothing worthy has been extracted in his cross examination, to discredit the version that the accident was caused due to the fault of the motorcyclist.

6. Per contra, the learned counsel for the respondents 1 to 4 / claimants would urge that the accident had taken place at around 7.30 in the evening hours. At that time though the accident had occurred outside the limits of Perundurai town but still there is bound to be a very heavy traffic. Considering the fact that there are very important villages situate on either side of the road and the place of occurrence is also nearer to

Perundurai town and more importantly, a prominent college of Engineering is very proximate to the accident site. Therefore, there is bound to be dense vehicular traffic and may not be feasible for the road users to maintain long distance between every two succeeding motor vehicles. It is, therefore, a case where the Truck which was proceeding ahead of the motorcyclist, which was brought to a grinding halt, which should be held as squarely responsible for causing the accident.

7. We take note of the fact that these says there is increased density of motor vehicles on roads even in small towns and semi urban areas. Also the motor vehicular traffic on important and arterial roads is very heavy and thick. The result is that whatever available road space is there, that is sought to be utilized for motoring the vehicles.

8. It may be true that on Highways, the vehicular traffic may not be as dense as the city traffic which moves bumper to bumper and there will be more number of lean hours of traffic and only during peak hours perhaps there can be heavier traffic flow on Highways. Keeping this fact in mind, we may not be unreasonable to hold the view that at 7.30 in the evening one can expect good quantum of the vehicular traffic on important roads, which connects several villages that are lined up on either side. In such circumstances, it may not be wholly appropriate for one to say that the accident in question has occurred all due to negligence of the motorcyclist. The fact that the Truck driver has noticed a ditch of sizeable depth on the road side and therefore, tried to avoid going anyway near the ditch and consequently applied brake suddenly to his vehicle that may be a justifiable factor for the sudden stoppage of the Truck, but, however when a heavy vehicle which was moving ahead at a considerable speed till then, the vehicular traffic that follows such a heavy vehicle would assume that the Truck will not come to a halt suddenly as the driver of the Truck ahead is bound to have a fairly clearer picture of the road condition. The traffic density ahead of the Truck and the possible necessity to bring the vehicle itself to a stop, can be guessed better by the Truck driver than those that follow him. Consequently, one would assume that Truck Driver will be slowing down the momentum of the vehicle which in turn conveys a message to the traffic following right behind the Truck also to get slowed down. The evidence on record is certainly inadequate for one to arrive at a firm conclusion that the Truck driver has followed any such safe course of driving methods before he applied sudden brakes to his vehicle.

9. R.W.1 the Truck driver has clearly deposed as follows;

“எனக்கு எதிரே லாரி வர நான் நோனென் இடது பறமாக ஒதுங்கிச் சென்றபோது எனது லாரிக்குப் பின்னால் டமார் என்று சத்தம் கேட்க நான் லாரியை நிறுந்தி விட்டு என்னதவன்று பார்க்கும் போது பஜாஜ் பிளாட்டினா இரண்டு சக்கர பது வாகனத்தை N.நல்லதம்பி என்பவர் வடக்குருந்து தெற்காக வேகமாக ஓட்டு வந்து எனது லாரியின் பின்புற வலது பக்கத்தில் மோதி விட்டார் ; .”

10. The above statement, when roughly translated by my learned brother, as I cannot read or write Tamil, conveys that because of a Truck which was coming in the opposite direction at that time and since there was a ditch on the left hand side of the road, the Truck driver has to apply for brakes. This was an unanticipated act by the Truck driver either. But unfortunately, the motorcyclist, who was following the Truck right behind could not bring his own vehicle to such a stop immediately. Consequently, he went and rammed into the rear portion of the Truck resulting in sustaining a serious head injury. In such a given situation, it is only fair to accept that the deceased has also contributed in some measure to the accident. If the deceased was travelling on a motorcycle and if he is following right behind a Truck, it is reasonable for us to infer that he may not be travelling beyond a speed of 40 /50 kilometers per hour. Because of too short a distance in between his own vehicle and the rear portion of the Truck, he could not bring his motor vehicle to a stop avoiding any collision and that was the reason why he had rammed into the rear portion of the Truck.

11. In this given fact situation, while we see the merit in the contention canvassed by the learned counsel for the appellant, we cannot assess the contribution of the deceased to the accident anything beyond 15 percent. In that respect, we are not willing to subscribe to the contention of the learned counsel for the appellant that the contribution of the motorcyclist should be treated 1/3rd. To the extent of the contribution of the deceased to the accident, one can reasonably assess it as 15 percent, particularly, in the absence of relevant evidence to the contra.

12. But, at the same time, we cannot attach much significance to the deposition of P.W.3, the Sub-Inspector of Police, who carried out investigation into the crime. Without having the advantage of noticing as to how much traffic was present at the time of accident on the road, P.W.3 not being an eyewitness, could not have arrived at a safe conclusion that the motorcyclist alone is responsible for causing the accident. His assessment of factors, post event, cannot be relied upon. We, therefore, have hesitation to place reliance upon his deposition

nor can be rely on Ex.R.1 and Ex.R.2. They merely reflect the formality of getting the criminal case registered against the deceased and the same being brought to a quick end. Beyond that no significance need be attached in that regard.

13. Though the learned counsel appearing for the claimants has placed reliance upon the deposition of P.W.2, who was stated to be an eye-witness to the accident, we are not willing to attach much significance on his deposition for twofold reasons :

(i) He has not made any attempt to inform the police as soon as the accident had taken place.

(ii) Nor did he make any attempt to come to the rescue of the injured person by making any effort to contact the Ambulance Van and shift him to the nearest hospital for securing medical attention. His very presence at the accident site may or may not have occurred but, in the absence of contemporaneous record evidencing his presence at that time we cannot place much reliance on the deposition of P.W.2 either.

14. From Ex.P.9, the Pay Certificate of the deceased for the month of January, 2007, it is clear that the deceased was getting a basic pay of Rs.13,320/-. Since the first claimant was getting a family pension of Rs.3,035/, that component was deducted for the purpose of assessing the compensation payable and accordingly, the Tribunal has worked out the annual income of the deceased at Rs.1,23,420/- per year and after adding a sum of Rs.6,580/- towards future prospects per annum, the annual income has been worked out at Rs.1,30,000/-.

15. In this regard, learned counsel appearing for the claimants would submit that as an employee of BSNL, the deceased has a right to continue in service till he retires on superannuation at the age of 60 years and hence, towards future prospects, a minimum of 20 percent should have been provided. Though there is some merit in this contention, but going by the factual reality that BSNL itself is struggling to compete and stay ahead in the market with the private players, we can only expect an increase not beyond 10 percent of the present annual income. Hence, the component of future prospects had to be taken as Rs.13,000/- per annum.

16. The learned counsel appearing for the claimants is also right in pointing out that towards Loss of Consortium, a meagre amount of Rs.10,000/- was awarded to the wife. It will be reasonable, by taking the age of the first claimant into account, that there should be an amount of Rs.50,000/- which is liable to be awarded towards Loss of Consortium. Towards Loss of

Love and Affection of claimants 2 to 4, a sum of Rs.40,000/- is awarded. So far as the two minor children of the deceased are concerned, no amount towards Loss of Guidance to them has been provided for. We are of the view that the component towards Loss of Love and Affection has to be increased to a sum of Rs.50,000/- for the claimants 2 & 3 and the fourth claimant / mother of the deceased is also entitled to be compensated by a minimum of Rs.10,000/- for having lost her son and so far as the minor children / claimants 2 & 3 are concerned, is entitled to be compensated in a sum of Rs.25,000/- each towards Loss of Guidance.

17. Thus, the award of the Tribunal is confirmed, subject to the modification that the total compensation amount payable towards loss of earnings, due to the death of Nallathambi in the motor accident, his contribution should be taken as 15 percent and hence, proportionately 15 percent of the said amount shall be reduced, while at the same time, the future prospects have to be increased as ordered by us. To the extent of the other components awarded / increased by us, the Award of the Tribunal stands modified. Let a decree be drawn accordingly.

18. The Civil Miscellaneous Appeal stands allowed partially. The amount deposited by the Insurance Company may be permitted to be withdrawn by the claimants in the same proportion together with interest. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy// सत्यमेव जयते
Sub Assistant Registrar

sri

To

The Motor Accident Claims Tribunal
(First Additional District Court), Erode.

+1 cc to Mr.M.Krishnamoorthy Advocate sr 18994
+1 cc to Mr.A.K.Kumarasamy Advocate sr 18845

C.M.A. No.839 of 2014

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