



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on :19.04.2017

Pronounced on :05.06.2017

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CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

AND

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

C.M.A. (MD) No.1105 of 2014

The Branch Manager,
The New India Assurance Company Limited,
43-A/2, Jooman Centre,
Promenade Road
Cantonment,
Trichy-1.

... Appellant/2nd Respondent

Vs.

1.Nalirabanu
2.Minor Abdul Rahman
3.Minor Ameera Banu
4.Minor Jameera Banu
5.Jareena Begam

(Minors 2,3 and 4 are represented through their mother and natural guardian, Nalirabanu, the 1st respondent herein)

... Respondents 1 to 5 /Petitioners 1 to 5

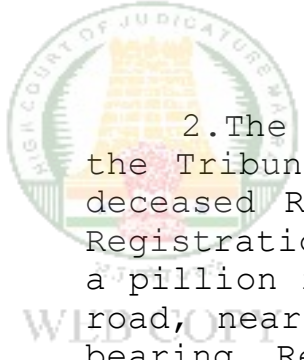
Prayer: Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and award made in M.C.O.P.No.709 of 2013, dated 05.02.2014, on the file of the Motor Accidents Claims Tribunal, Special District Court, Tiruchirappalli.

For Appellant	: Mr.D.Sivaraman
For Respondents - 1 & 5	: Mrs.T.Kokilavani for Mr.C.Padmaraj
Respondent - 6	: No Appearance

JUDGMENT

(Judgment of the Court was delivered by **P.VELMURUGAN, J.**)

This Civil Miscellaneous Appeal is filed by the Appellant Insurance Company against the judgment and award made in M.C.O.P.No.709 of 2013, dated 05.02.2014, on the file of the Motor Accidents Claims Tribunal, Special District Court,



2.The case of the claimants, as per the claim petition, before the Tribunal, is that on 10.07.2007 at about, 7.15 p.m, when the deceased Rahamadulla was riding his K.Bajaj two wheeler, bearing Registration No.TN 22 2303, along with his friend Raja Mohammed as a pillion rider, on the extreme left side on Trichy - Madurai Main road, near Soriampatti Arch towards North, a tractor with trailer bearing Registration No.TN 45 AE 5637 belongs to the first respondent, came from opposite direction, driven by its driver in a rash and negligent manner and dashed against the two wheeler and thereby caused accident. Due to the accident, the deceased and his friend were thrown away from the two wheeler and the deceased sustained multiple grievous injuries all over his body and immediately, they were taken to Manapparai Government Hospital and was given first aid treatment and the deceased died on the way to the Government Hospital, Trichy. The deceased was aged about 39 years at the time of the accident. He was working in Malasiya as Chief Cook and was earning 3500 Malasiyan Ringgits equivalent to INR.39,772/-. Due to the demise of the deceased, the claimants have lost the income. The first and second claimants are wife and minor son respectively, third and fourth claimants are his minor daughters and the fifth claimant is his mother. A case was registered against the driver of the Tractor and since the accident had occurred due to the rash and negligent driving of the driver of the Tractor, which is insured with the second respondent Insurance company, the first and second respondents are jointly and severally liable to pay compensation. Therefore, the claimants under various head have claimed a sum of Rs. 50,00,000/- as compensation.

3.The case of the Appellant Insurance company/second respondent, as per the counter, filed before the Tribunal is that on 10.07.2007, when the driver of the Tractor bearing Registration No. TN 45 AE 5637, was driving his vehicle with all cause and care, on Trichy - Madurai main road, from South to North, near Soriyampatti, the deceased along with one pillion rider, was riding the two wheeler, bearing Registration No.TN 22 - 2303, from the opposite direction i.e North to South, in a rash and negligent manner, without knowing of riding a two wheeler. The deceased instead of keeping left on the road, ridden his two wheeler on the right side of the road and on noticing the same the driver of the tractor raised horn, turned his vehicle to the extreme left side of the road and applied brake to avoid accident, but the deceased, due to his rash and negligent riding of his two wheeler dashed against the Tractor. The deceased did not posses any valid license at the time of the accident. Therefore, the accident had occurred only on the sole negligent act on the part of the deceased. The driver of the tractor is in no way responsible for the accident. Therefore, the Insurance Company is not liable to pay compensation. The income and avocation of the deceased have to be provided by the claimants. The compensation awarded by the Tribunal is highly excessive and liable to be dismissed.



4. Before the Tribunal, on the side of the claimants, P.W.1 to P.W.3 were examined and Exs.P.1 to P.13 were marked. On the side of the respondents, R.W.1 to R.W.5 were examined and Exs.R1 to R.6 and Ex.X.1 were marked.

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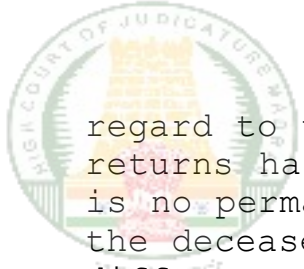
5. After considering all the facts and circumstances of the case and oral and documentary evidence let in by the parties, the Tribunal awarded a sum of Rs.37,79,362/- as compensation with interest at 7.5% per annum from the date of petition and details of the same are as under:-

HEAD	AMOUNT AWRDED BY THE TRIBUNAL (Rs)
Loss of income	36,19,362.30/-
Loss of love and affection	1,00,000/-
Transportation and Funeral expenses	10,000/-
Loss of consortium	50,000/-
Total	37,79,362.30
Claims is restricted to	37,79,362/-

6. Aggrieved by the award passed by Tribunal, the second respondent Insurance company has preferred the present Civil Miscellaneous Appeal.

7. Heard both sides and considered the rival submissions made by both the counsel.

8. The learned counsel for the appellant would submit that the accident had not occurred due to rash and negligent driving of the driver of the Tractor. The tractor is a heavy vehicle along with trailer, and it can only be driven at moderate speed. Though, the complaint was given against the driver of the Tractor, FIR registered and Charge sheet was laid, but, he was acquitted from the offence by the Criminal Court, the Tribunal has fixed the liability against the driver of the tractor. The Tribunal had failed to take into consideration of the fact that when the tractor was going on main road and these persons came and dashed the back side of the tractor, which shows that the accident occurred due to rash and negligent riding of the deceased. The main defence that accident occurred due to negligence of the deceased himself who had suddenly come on the road and dashed on the rear side of the Tractor. Even otherwise, the deceased has also contributed his part of negligence to the accident. The Tribunal has solely relied on the evidence of P.W.2 who is an interested witness and held that since the criminal case ended in an acquittal, it can not be said the accident had not occurred due to rash and negligent driving of the driver of the Tractor. The Tribunal has not even considered the Ex.R.3, Motor Vehicle Inspector's Report. The claimants have not produced any proof with



regard to the employment and income of the deceased and income tax returns has not been produced. Further he would submit that there is no permanency of employment and no permanent monthly salary for the deceased and hence, the monthly salary in Malasiya is entirely different when comparing to the economic situation in India. Therefore, the monthly income can not be taken as it is, as mentioned in the claim petition. Therefore, the compensation awarded by the Tribunal is highly excessive and the same does not reflect any just and reason and therefore, the same is liable to be dismissed.

9. Per contra, the learned counsel for the respondents/claimants would submit that at the time of accident, the deceased was aged about 39 years and he was working in Malasiya as Chief Cook and was earning 3500 Malasiyan Ringgits equivalent to INR.39,772/-. The deceased was the only breadwinner of the family and there are five dependants. Since the accident had occurred due to the rash and negligent driving of the driver of the Tractor, the Tribunal has correctly fixed the liability only on the first respondent alone and found that the first respondent is responsible for paying compensation to the claimants and hence, the award is liable to be confirmed.

10. Heard both sides. This Court carefully perused the claim application filed by the claimants, counter affidavit filed by the second respondent, the evidence let in by both claimants and insurance company also the documents produced by the claimants and insurance company.

11. Points for consideration arise that:-

- i) Whether the accident had occurred due to rash and negligent driving of the driver of the Tractor bearing Registration No. TN 45 AE 5637?
- ii) Whether the accident had occurred due to rash and negligent riding of the two wheeler bearing Registration No. TN 47 F0911 by the deceased?
- iii) Whether the deceased has contributed his negligence to the accident?
- iv) Whether the award passed by the Tribunal is just and reasonable?

12. Point Nos. 1, 2 and 3

In order to prove the manner of the accident, P.W.2 was examined on the side of the claimants and P.W.2 deposed that, he was the pillion rider of the two wheeler which involved in the accident. The accident had occurred due to rash and negligent driving of the driver of the Tractor. In order to prove the case of the appellant/second respondent, the appellant Insurance company had examined the driver of the Tractor as R.W.3. Further, Ex.R.3, MVI Report, would prove the evidence of R.W.3. Perusal of Motor Vehicle Inspector's reports Exs.R3 and R.4 would show the damages of the vehicles involved in the accident. From the oral and documentary evidence, produced before the Tribunal, this Court

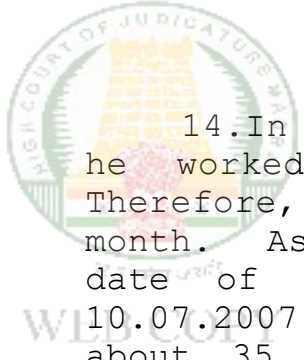


has come to the conclusion that both the drivers of the vehicles had equally contributed their negligence to the accident. Though the case in C.C. 5 of 2008 against the driver of the Tractor was ended in an acquittal, the Tribunal has solely relied on the evidence of R.W.3, held, that R.W.3 is the interested witness, the acquittal cannot be taken into consideration. Even though, the driver of the tractor is an interested witness, the document marked as Ex.R.3 and R.4 are substantiated the evidence of R.W.3. Therefore, this Court cannot ignore the evidence of R.W.3. It is a settled principle that the Tribunal has to decide on its own independent conclusion with the materials placed before it and it need not rely on the judgment of the Criminal Court in either way. Therefore, this Court feels, that both the deceased and the first respondents had equally contributed their negligence to the accident and the points are answered accordingly.

Point No.4

13.As far as the quantum of the compensation is concerned, in order to prove the employment and income of the deceased, Exs.P.4 to P.6 were marked. Ex.P.4 is stated to be the salary certificate, Ex.P.5, is the passport. On Perusal of the records would show that except Salary Certificate and Passport, no other documents such as relating to educational qualifications, technical qualifications, appointment order and terms and conditions of employment, Period of employment, income tax returns, etc., had been produced. The only available document to prove the income of the deceased is Ex.P.4, Salary certificate, which shows that the income of the deceased was 3500 Malasiyan Ringgits, equivalent to INR. 39.772/- . Ex.P.4 has not been proved as the manner known to law. The please of the claimant is that as per the Ex.P.4 Salary certificate, the deceased was earning 3,500 Malasiyan Ringgits equivalent to INR 39,772/- per month from Restoran New Arafat, however was not substantiated by any cogent proof. Mere production of certificate Ex.P.4 was found to be insufficient proof about such employment or earning. This Court finds the conclusion reached by the Tribunal in this regard is not appropriate. Therefore, we cannot fix the monthly income as per Ex.P.4. In this regard, it is worthwhile to refer the decision of Division Bench of Kerala High Court, in the case of **Vahisa and others Vs. C.I Lincy and others**, reported in **2017 ACJ P.669**. The relevant portion of the judgment is extracted below;-

" 9.In the decision of Valsamma v. Binu Jose, 2014 ACJ 997 (Kerala), this court has held that income of a person in a foreign country which is not a permanent employment cannot be taken into consideration for the purpose of assessing compensation under the head of loss of dependency and the income will have to be assessed in the context of Indian standards which such person if he is employed in India will be getting. Considering the circumstances, the amount of Rs. 6,000/- fixed by the Tribunal as his monthly income can not be said low and it is reasonable as well."



14. In this case, considering the facts and circumstances, had he worked in India, he could get Rs.15,000/- per month. Therefore, this Court fixes notional income at Rs.15,000/- per month. As per Ex.P.3, Driving License and Ex.P.6, passport, his date of birth is 15.06.1972 and the date of accident is 10.07.2007. So, on the date of accident, the deceased was aged about 35 years and accordingly the multiplier 16 has to be adopted. Therefore, the loss of income would be Rs.15,000X16X12 =Rs.28,80,000/-.

15. Further, in the case of, **Rajesh and Others Vs. Rajbir Singh and others**, reported in, **2013 ACJ 1403 (SC)**, the Hon'ble Supreme Court has held that even in a case where persons are not having any permanent income, future prospects will have to be taken into consideration and in the age group upto 40, future prospects has to be taken as 50% and the age between 40 and 50, future prospects has to be taken as 30%. However, in this case, the age of the deceased is fixed as 35. Therefore, the claimants are entitled to 50% of future prospects of the income. Accordingly, the future prospects would be Rs.7,500X16X12 =Rs.14,40,000/-.

16.(i). In view of the law laid down by the Hon'ble Apex Court, in the case of, **Sarla Verma (Smt) and Others Vs. Delhi Transport Corporation and Another**, reported in, **2009 (6) SCC 121** and upheld by a Larger Bench of the Hon'ble Apex Court, in the case of **Reshma Kumari and others Vs. Madan Mohan and others**, reported in, **2013 ACJ 1253 (SC) : 2013(1) TN MAC 481 (SC)**, in the case on hand, there are five dependants, 1/4 of the income has to be deducted towards personal expenses of the deceased. So the loss of income would be Rs.21,60,000/- (Rs.28,80,000 - Rs.7,20,000) and the future prospects would be Rs.10,80,000/- (Rs.14,40,000 - Rs.3,60,000). As already held, the Insurance Company is liable to pay only 50% of the compensation to the claimants, the same would come to Rs.10,80,000/-. (50 % of 21,60,000) and future prospects would be Rs.5,40,000/- (50 % of 10,80,000).

(ii) As far the other heads of compensation are concerned, the Tribunal awarded Rs.50,000/- towards loss of consortium and the same is enhanced to Rs.1,00,000/-, the Tribunal awarded Rs.1,00,000/- towards loss of love and affection and the same is enhanced to Rs.2,50,000/-, the Tribunal awarded Rs.10,000/- towards transport and funeral expenses and the same is modified and awarded as Rs. 25,000/- towards funeral expense and Rs.10,000/- towards transportation. The tribunal has not awarded any compensation towards loss of estate and Rs.5,000/- is awarded towards the same.

17. Since, it is already held that the accident had occurred due to negligence on the part of both the deceased and driver of the Tractor, each having been held liable for contributory negligence to the extent of 50 per cent, the compensation is calculated thus:-



HEAD	AMOUNT CLAIMED BY CLAIMANT (Rs.)	AMOUNT AWRDED BY TRIBUNAL (Rs)	AMOUNT AWARDED BY THIS COURT (Rs.)	DUE TO CONTRIBUTORY NEGLIGENCE REDUCED TO 50% (Rs)
Loss of income		36,19,362.30	21,60,000	10,80,000
Loss of future prospects			10,80,000	5,40,000
Transportation			10,000	5,000
Loss of love and affection		1,00,000	2,50,000	1,25,000
Transportation and Funeral expenses		10,000	-	-
Loss of consortium		50,000	1,00,000	50,000
Funeral expenses			25,000	12,500
Loss of Estate			5,000	2,500
Total				
Claims is restricted to	50,00,000	37,79,362.30	36,30,000	18,15,000
		37,79,362		

18. *In the result,*

(i) This Civil Miscellaneous Appeal in C.M.A.(MD)No.1105 of 2014 is partly allowed and the award passed by the claims Tribunal is modified as shown above.

(ii) In the facts and circumstances of the case, there shall be no order as to costs.

(iii) The Appellant/second respondent is directed to deposit the compensation with interest at 7.5% per annum from the date of petition, less the amount already deposited, if any, along with proportionate interest and cost to the credit of the claim petition, within a period of six weeks from the date of receipt of a copy of this order. The claimants are entitled to the modified compensation, in which the 1st claimant being the wife of deceased as well as the first class heir is entitled to Rs.7,00,000/-, claimants 2 to 4 minor children are entitled to each Rs.3,00,000/- and the 5th claimant mother of the deceased is entitled to Rs.2,15,000/-. Since the accident occurred in the year of 2007, the claimants are permitted to withdraw the entire amount that would be deposited by the appellant. The major claimants are permitted to withdraw their share with award amount less the amount already withdrawn if any, with proportionate interest and cost, through RTGS by filing necessary Application before the Tribunal and The Tribunal is directed to deposit the shares of the minor children in a Fixed Deposit in any one of the Nationalized Banks, renewable periodically until they attain majority. The first respondent/first claimant is permitted to withdraw the



interest amount once in six months, if she wants, for maintaining the minor children. The appellant is permitted to withdraw the excess amount, if any.

Sd/-

Assistant Registrar(CS-II)

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Sub Assistant Registrar(C.S.)

To

1.The Motor Accidents Claims Tribunal,
Special District Court,
Tiruchirappalli.

2.The Record Keeper,
V.R. Section, Madurai Bench of
Madras High Court, Madurai.

+1cc to M/S.D.SIVARAMAN, Advocate SR.No.58397

Arul/dsk

MAS/KP/SAR2:10.07.2017:8P-4C

Judgment made
in
C.M.A. (MD) No.1105 of 2014
05.06.2017