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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on :14.06.2017

Delivered on :29.06.2017

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

and

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

C.M.A. (MD)No. 1142 of 2016

and

CMP 1033 of 2016

and

Cross.Obj.11 of 2017

The United India Insurance Co.Ltd,
through its Branch Manager,
Micro Office, Robin Complex,
II Floor, Nagercoil Road,
Monday Market, Nagercoil,
Kanyakumari District.

... Appellant /3rd Respondent in CMA
NO.1142/2016 1st Respondent in Cross Objection
Vs.

1.Surya

2.Minor Deva

rep by his mother and
natural guardian, 1st respondent

3.Sankarapandian

4.Chellammal ...Respondents 1 to 4/Claimants in CMA
1142/2016 Cross Objectors 1 to 4 in Cross Objection

5.Nagarajan

6.Senthil Kumar ...Respondents 5 & 6/Respondents 1,2 in CMA
1142/2016/Respondents 2,3 in Cross Objection

(5th and 6th respondents are
exparte before the Tribunal)

... Respondents

PRAYER : Civil Miscellaneous Appeal is filed under Section 173 of
the Motor Vehicles Act, 1988, against judgment and Decree dated
31.03.2016 passed in MCOP.No. 143 of 2013 on the file of the Motor
Accidents Claims Tribunal (Chief Judicial Magistrate), Nagercoil.

For Appellant in CMA and for

1st Respondent in Cross Objection: Ms.K.R.Sivashankari for
Mr.V.R.Subramaniam

For respondents 1 to 4 in CMA

<https://hcservices.ecourts.gov.in/hcservices/> and for Cross Objectors

in Cross Objection :Mr.G.Aravinthan

: R5 & R6 exparte vide EB

**JUDGMENT**

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

The Civil Miscellaneous Appeal in C.M.A.(MD)No.1142 of 2016 has been filed by the respondent 2nd respondent Insurance Company against the judgment and Decree dated 31.03.2016 passed in MCOP.No. 143 of 2013 on the file of the Motor Accidents Claims Tribunal / Chief Judicial Magistrate Court, Nagercoil.

2.For the sake of convenience, the parties are referred to according to their litigative status before the Tribunal.

3.The case of the claimants before the Tribunal, as per the Claim petition is that on 10.02.2012 at about 9.30pm, when the deceased was riding his Hero Honda Super Splender motor cycle bearing registration No.TN 74 S 8775 along with his father in law as a pillion rider, near Amanakkanvilai to Anjugramam from South to North direction, the two wheeler bearing registration No. TN 76 C 9877 on four way lane came from West to East at a high speed and without raising horn and neglected the obstruction/barrier made thereon and dashed against the two wheeler of the deceased. Due to which, the deceased sustained multiple fatal injuries all over the body. Immediately, he was taken to Kanyakumari Medical College Hospital, Asaripallam, subsequently, when he was taken to Dr.Jeyasekaran Hospital, Nagercoil, died on the way.

4.At the time of accident the deceased was 29 years old. He was working as a welder at Vivekanandha Polytechnic College, Agasteeswaram and was earning Rs.4,200/- per month, besides that he was working as a part time welder in Sathya Lathe Works, Mathavapuram, Kanyakumari from evening 4.30 pm to 8.30 pm and thus was earning Rs.6,500/- per month, totally he was getting Rs.10,700/- per month, out of the said income alone he was maintaining his wife, new born baby and aged parents. Due to sudden demise of the deceased, the claimants have lost the income. A case was also registered against the 1st respondent/rider of the two wheeler. Since the accident had occurred due to rash and negligent riding of the rider of the two wheeler bearing registration No.TN 76 C 9877, which belongs to the 2nd respondent and insured with the 3rd respondent, the 2nd and 3rd respondents are liable to pay compensation to the claimants and they have claimed a sum of Rs.35,00,000/- as compensation.

5.The case of the 3rd respondent Insurance Company, before the Tribunal is that the age, occupation and income of the deceased are denied. It is false to state that the accident had occurred due to rash and negligent riding of the rider of the two wheeler. The deceased had ridden the two wheeler bearing registration No.74 S 8775 in a rash and negligent manner without care and entered on four lane by pass road which is evident from the rough sketch and dashed against the two wheeler bearing registration No. TN 76 C 9877, which

was ridden at a slow speed with observing traffic rules. Therefore, the accident had occurred only due to the negligence of the deceased. The deceased was not having any valid driving licence. The insurer of the Hero Honda motor cycle bearing registration No.TN 74 S 8775 is not added as a party and the petition is bad for non joinder of necessary party. For all the above reasons this respondent is not liable to pay any compensation to the claimants. The claim petition is liable to be dismissed.

6.Before the Tribunal,on the side of the claimants, P.W.1 to P.W.4. were examined and Exs.P.1 to P.17 were marked and on the side of the respondents, R.W.1 and R.W.5 were examined and Ex.R.1 to R10 were marked.

7.After considering all the facts and circumstances of the case and oral and documentary evidence let in by the parties, the Tribunal has held that the accident had occurred only due to the rash and negligent riding of the first respondent and the first and second respondents are liable to pay a compensation of Rs.21,66,000/- to claimants and directed the respondents to pay the same and recover from the first and second respondents.

Sl. No.	Head	Award (Rs)
1	Loss of income	18,36,000/-
2	Loss of consortium	1,00,000/-
3	Loss of love and affection	2,00,000/-
4	Transportation	5,000/-
5	Funeral Expenses	25,000/-
	Total	21,66,000/-

8.Aggravated by the impugned award passed by the Tribunal, the respondent State Transport Corporation has filed the present Civil Miscellaneous Appeal, stating that the Tribunal has wrongly fixed the liability on the driver of the respondent bus and the award passed by the Tribunal is highly excessive.

9.Considering the facts and circumstances of the case, documents placed before the Tribunal and award passed by the Tribunal, the following points arise for consideration:-

(i) Whether the accident had occurred due to rash and negligent riding of 1st respondent /rider of two wheeler bearing registration No. TN 76 C 9877?

(ii) Whether the accident occurred due to rash and negligent riding of the rider of the two wheeler bearing Registration No. TN 74 S 8775?

(iii) Whether the award passed by the Tribunal is just and reasonable?

(iv) To what relief the parties are entitled to ?

<https://hcservices.ecourts.gov.in/hcservices/>

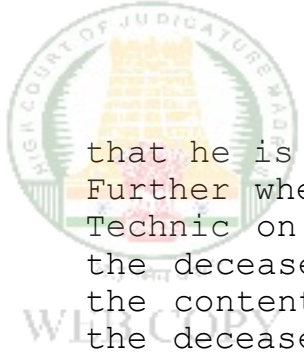
10. Point Nos.i and ii



As far as the negligence aspect is concerned, according to the appellant, the Tribunal has not considered negligent aspects in a proper manner and fixed liability only on the rider / first respondent. The counsel for the appellant would further submit that the accident had occurred, not due to rash and negligent riding of the 1st respondent whereas the accident had occurred only due to rash and negligent riding of the deceased who was the rider of the Motor cycle bearing registration No. TN 74 S 8775. On perusal of the Motor Vehicle's inspector report Ex.P.4 would show that the vehicle belongs to the first respondent got damaged in the said accident and the damages are clutch handle, left side front rear indicator broken, left side foot rest, gear shifting lever safe guard bend and rear side at rear seat end broken. Whereas the vehicle belongs to the deceased got damaged in the said accident and the damages are H/C seillied front wheel mud guard, front both indicators broken, right side petrol tank bent, right side first foot rest, left side safe guard bend backworthy, left side first foot rest, left side battery cover broken. It is also stated that the rider of offending vehicle was not having valid licence. Perusal of the Ex.P.2 Rough Sketch, which clearly prove that when the deceased entered into the four lane road, he hit against motor cycle ridden by the first respondent and caused the accident. If he observed the traffic rules when he crossed the road and made sure that no vehicle was coming on four lane, the accident could not have occurred. It is also the further case of the appellant is that the deceased was not wearing helmet at the time of accident. The Tribunal only based on the FIR and charge sheet, fixed the liability only on the first respondent. Perusal of the rough Sketch would also show that the accident had taken place only when the first respondent came from West to East on the four lane, the deceased came from the cross road and dashed on the right side of the first respondent.

11.Considering the facts and circumstance, this Court is convinced the contentions raised by the learned counsel appearing for the appellant and the Tribunal wrongly fixed the liability only on the first respondent. Therefore, this Court is of the view that the deceased is also equally responsible for the accident and he has also contributed 50 % of negligence to the accident. The point nos. i and ii are answered accordingly.

12.As far the quantum of the compensation is concerned, the learned counsel for the appellant would submit that quantum of the award fixed by the Tribunal is highly excessive. According to the learned counsel for the claimants the deceased had completed 10th standard and was working as a Welder at Vivekanandha Polytechnic College and was earning Rs.4,200/- per month as consolidated pay and he was also earning Rs.6,500/- per month as part time welder in Sathya Lathe Works. To support the same he relied on Ex.P.12 and P.13. Perusal of the evidence of P.W.2 would show that he is the owner of the Sathya Lathe Works and the deceased was working under him as a part time worker and he paid Rs. 250/- per day as salary to the deceased. However, P.W.2 has not produced any document to show



that he is having any lathe works in the name of Sathya Lathe Works. Further when the deceased was working as welder at Vivekananda Poly Technic on consolidated pay, the P.W.2 has not stated at what time the deceased was working under him as part time worker. Therefore, the contention raised by the learned counsel for the claimant that the deceased was working as part time welder and earning Rs. 250/- per day is not acceptable. Considering his educational qualifications, this Court fixes a sum of Rs.6,000/- per month as notional income of the deceased. Perusal of the Ex.P.10, the date of birth of the deceased is 10.05.1982 and the date of accident is 10.02.2012, hence, he has completed 29 years at the time of accident. considering the age of the deceased multiplier 17 should be adopted and therefore, the loss of income of the deceased would be Rs.6000 X 17X12 =12,24,000/-

13.In the case of, **Rajesh and Others Vs. Rajbir Singh and others**, reported in, **2013 ACJ 1403 (SC)**, the Hon'ble Apex 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%. In the case on hand, on the date of accident, the deceased had completed 29 years of age, hence, 50% of monthly income is taken for future prospects. Accordingly, future prospects works out to Rs.3000 X 17 X 12 = Rs.6,12,000/-

14.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, since there are 4 dependants on the deceased 1/4 of the income has to be deducted towards personal expenses of the deceased. So, the loss of income is Rs.9,18,000/- [Rs. 12,24,000 - 1/4] and future prospects would be Rs.4,59,000/- [Rs. 6,12,000 -1/4].

15.The Tribunal has awarded Rs.1,00,000/- towards loss of consortium and Rs.2,00,000/- towards loss of love and affection and considering the dependants of on the deceased, the same just and reason. The Tribunal has awarded Rs.25,000/- towards funeral expenses and the same is just and reasonable. The Tribunal has not awarded any amount towards towards loss of estate, however, this Court awards Rs.5000/-. The Tribunal has awarded Rs.5,000/- towards Transportation and this Court awards Rs.10,000/- towards the same. The rate of interest awarded by the Tribunal at 7.5% per annum remains unaltered. Since, the deceased has also contributed his negligence to the accident to an extent of 50%, he is entitled only 50% of the compensation amount.

16.The compensation claimed by the claimant, the compensation

awarded by the Tribunal and the compensation modified by this Court are as follows

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		18,36,000	9,18,000	4,59,000
Loss of future prospects		--	4,59,000	2,29,500
Transportation		5,000	10,000	5,000
Loss of love and affection		2,00,000	2,00,000	1,00,000
Loss of consortium		1,00,000	1,00,000	50,000
Funeral expenses		25,000	25,000	12,500
Loss of Estate		--	5,000	2,500
Total	35,00,000	21,66,000	17,17,000	8,58,500

17. In the result,

(i) the Civil Miscellaneous Appeal 1142 of 2016 is partly allowed and Cross.Obj. 11 of 2017 is dismissed and the order dated 31.03.2016 passed in MCOP.No. 143 of 2013 on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate, Nagercoil is modified as shown above. No costs. Consequently, connected miscellaneous petition is closed.

(ii) The appellant is directed to pay the compensation amount, as modified by this Court along with proportionate interest and costs from the date of petition till the date of realisation, less the amount already deposited, if any, to the credit of MCOP.No. 143 of 2013 on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate, Nagercoil, within a period of six weeks from the date of receipt of a copy of this judgment and the appellant is further directed to recover the same from the 5th and 6th respondents as held by the Tribunal. The first claimant, being the wife of deceased as well as the dependant of the deceased is entitled to Rs.4,25,000/- and the second claimant is the minor son is entitled to Rs.2,50,000/- and the third claimant is father is entitled to Rs.1,25,000/- and the fourth claimant mother of the deceased is entitled to Rs.58,500/-. The claimants 1, 3 and 4 are permitted to withdraw the entire amount that would be deposited by the appellant, less the amount already withdrawn, if any, with proportionate interest and costs, through RTGS by filing necessary Application before the Tribunal. The Tribunal is directed to deposit the share of the minor child, in a Fixed Deposit in any one of the Nationalized Banks, renewable periodically until he attains majority. The first respondent/first claimant is permitted to withdraw the interest amount once in six months, if she wants, for



maintaining the minor child. The appellant is permitted to withdraw the excess amount, if any.

Sd/-
Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar

To

1.The Motor Accidents Claims Tribunal,
Chief Judicial Magistrate, Nagercoil.

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

+2cc to Mr.G.ARAVINTHAN Advocate in SR. No.62918,62919

+1cc to Mr.V.R.SUBRAMANIAN Advocate in SR. No.62633

ARUL/DSK

JS/GT/SAR.2/1.8.2017/7P-6C

Pre-delivery common Judgment made in

C.M.A. (MD) No. 1142 of 2010
and

CMP 1033 of 2016

and

Cross.Obj.11 of 2017

29.06.2017