



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 28.02.2017

CORAM:

THE HONOURABLE MR. JUSTICE N. KIRUBAKARAN

C.M.A. (MD) No.1310 of 2012
and
M.P. (MD) No.1 of 2012
and
C.M.P. (MD) No.803 of 2017
and
C.M.A. (MD) No.686 of 2015

The Branch Manager
United India Insurance Company
Limited, Kovilpatti.

... Appellant / 2nd Respondent
in C.M.A. (MD) No.1310 of 2012
2nd Respondent / 2nd Respondent
in C.M.A. (MD) No.686 of 2015

-vs-

1. Shanmugathai
2. Vallarasan
3. Gunasekaran
4. Minor. Sakunthala Devi
5. Chinnathai
(R2 & R3 declared as major and
guardianship discharged vide
court order, dated 15.07.2016
made in M.P. (MD) No.1 of 2015
& R4 rep. by her mother and next
guardian R1)

... Respondents 1 to 5 / Petitioners
in C.M.A. (MD) No.1310 of 2012
& Appellants / Petitioners in
C.M.A. (MD) No.686 of 2015

6. Karuppasamy
(Ex parte in Lower Court)

... 6th Respondent / 1st Respondent
in C.M.A. (MD) No.1310 of 2012
1st Respondent / 1st Respondent
in C.M.A. (MD) No.686 of 2015

PRAYER (in C.M.A. (MD) No.1310 of 2012): Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree in M.C.O.P.No.495 of 2003, dated 27.10.2004, on the file of the Motor Accident Claims Tribunal, First Additional District Judge, Tirunelveli.

PRAYER (in C.M.A. (MD) No.686 of 2015): Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to enhance the award amount in M.C.O.P.No.495 of 2003, dated 27.10.2004, on the file of the Motor Accident Claims Tribunal, First Additional District Judge, Tirunelveli.



For Appellant :Mr.J.S.Murali

For Respondents :No appearance for R1, R4 & R5
Mr.T.Selvakumaran for R2 & R3
Mr.S.Kadarkarai for R6

C.M.A.(MD) No.686 of 2015:

For Appellants :Mr.T.Selvakumaran

For Respondents :No appearance for R1
Mr.V.J.Kumaravel for R2

C O M M O N J U D G M E N T

Since both the civil miscellaneous appeals arise out of the very same Judgment of the Tribunal, they are taken up together for disposal by this common Judgment.

2. These two civil miscellaneous appeals have been preferred by the Insurance Company as well as the claimants against the award passed by the Tribunal with regard to the death of one Murugan, aged about 35 years, working as a Milk Vendor alleged to be earning a sum of Rs.4,000/- (Rupees four thousand only) per month, in the accident occurred on 20.12.2002, when he was riding his two-wheeler, which was hit behind by a Mini Van belonging to the 6th respondent in C.M.A.(MD) No.1310 of 2012 and 1st respondent in C.M.A.(MD) No.686 of 2015 and insured with the appellant in C.M.A.(MD) No.1310 of 2012 and 2nd respondent - Insurance Company in C.M.A.(MD) No.686 of 2015.

3. On contest, the Tribunal found that the accident occurred because of the rash and negligent driving of the driver of Mini Van and awarded a sum of Rs.2,16,000/- (Rupees two lakhs and sixteen thousand only) as compensation. Being not satisfied and aggrieved by the quantum of compensation awarded by the Tribunal, the claimants and the Insurance Company respectively are before this Court.

4. Heard the learned counsel appearing for the Insurance Company and the learned counsel appearing for the claimants.

5. On perusal, it is seen that originally F.I.R., was registered for the offence under Section 307 I.P.C., and subsequently, the same was altered to one under Section 302 I.P.C., and after investigation, the criminal case was committed to the Court of Sessions and the Sessions Court, by a Judgment, dated 30.04.2004, in S.C.No.155 of 2003, marked as Ex.A8, holding that it was not a murder, convicted the driver of the Mini Van for the offence under Section 304A I.P.C., and acquitted him from the charges levelled under Section 302 I.P.C.

6. The learned counsel appearing for the Insurance Company would submit that even though the F.I.R., was initially registered for the offence under Section 307 I.P.C., subsequently, the same was altered to one under Section 302 I.P.C., and therefore, the Criminal



Court's Judgment is not binding upon the Tribunal and the Tribunal, based on the evidence available on record, ought to have given its own findings. Therefore, the learned counsel seeks set aside of the Award passed by the Tribunal.

7. On the other hand, the learned counsel appearing for the claimants would submit that the Tribunal, based on evidence of P.Ws.2 and 3 - eye-witnesses and filing of F.I.R., against the driver of the Mini Van, rightly concluded that the accident occurred because of the rash and negligent driving of the driver of Mini Van. Before the Tribunal, the witnesses including P.W.1, who is none other than the wife of the deceased, deposed evidence that it is not a murder, but it is only an accident. Therefore, based on the evidence available on record, the Tribunal rightly found that the accident occurred because of the rash and negligent driving of the driver of Mini Van and it is only an accident and not a murder. Further, the Tribunal also relied upon Ex.A8 - Criminal Court's Judgment, wherein the driver of the Mini Van was acquitted from the charges levelled against him under Section 302 I.P.C., and convicted for the offence under Section 304A I.P.C., even though he was charged only under Section 302 I.P.C. Further, there is no contradiction between the findings given by the Criminal Court and the Tribunal. At this juncture, it is pertinent to note that even assuming that there is any contradiction between the findings given by the Criminal Court and the Tribunal, that will not bind upon the Tribunal and the Tribunal on its own findings came to the conclusion that the accident occurred because of the rash and negligent driving of the driver of Mini Van and it is an accident and not a murder. Therefore, the findings, in this regard, cannot be set aside.

8. When this Court attempted to consider the case for enhancement of compensation, the learned counsel for the Insurance Company raised an objection stating that when a just compensation has been awarded and the same is under challenge on the ground of liability, quantum of compensation cannot be gone into. This Court is of the considered view that the objection of the learned counsel for the Insurance Company is liable to be rejected in view of the categorical findings given by the Honourable Supreme Court in **Nagappa v. Gurudayal Singh and others** reported in **2004 (2) TNMAC 398 (SC) : 2003 (2) SCC 274**.

9. What is required for determining compensation is that it must be "fair" irrespective of the factum that who filed the appeal and there is no other limitation or restriction on its power for awarding a just compensation. The provisions of the Motor Vehicles Act are benevolent in nature and they are aimed at to console, comfort and compensate the victim or his / her family members. Therefore, the provisions of the Motor Vehicles Act have to be liberally construed and even in the absence of any plea by the claimant/s, in this regard, this Court has got power and jurisdiction to enhance the compensation invoking Order XLI Rule 33 and Section 151 C.P.C. It may not be an out of place that this



Court in several cases has dismissed the appeals filed by either the Insurance Companies or Transport Corporations and enhanced the compensation even at the time of admission without notice to the claimant/s.

10. The Tribunal, in the absence of any proof with regard to monthly income of the deceased, determined the monthly income at Rs.1,500/- (Rupees one thousand and five hundred only) and after deducting 1/3rd amount towards his personal expenses, arrived at the monthly contribution of the deceased at Rs.1,000/- (Rupees one thousand only) per month.

11. The Honourable Supreme Court in **New India Assurance Company Limited v. Smt. Kalpana and others** reported in **2007 (1) TN MAC 1 (SC)**, determined the monthly income of a Driver, who died in the accident occurred on 07.06.1999, at Rs.4,500/- (Rupees four thousand and five hundred only) in the absence of any material evidence to prove the income and after deducting 1/3rd amount towards his personal expenses, arrived at the monthly contribution of the deceased at Rs.3,000/- (Rupees three thousand only) per month.

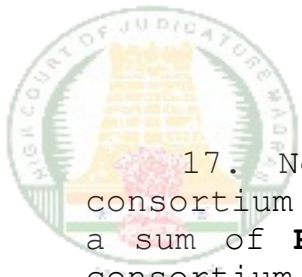
12. In this case, the accident occurred on 20.12.2002 and therefore, this Court is inclined to follow the determination of monthly income at Rs.4,500/- (Rupees four thousand and five hundred only) as per the above cited Judgment of the Honourable Supreme Court.

13. Since the size of the family is more than 3, 1/4th amount has to be deducted towards personal expenses of the deceased. Accordingly, after deducting 1/4th amount towards personal expenses of the deceased as per the judgment of the Honourable Supreme Court in **Sarla Verma v. Delhi Transport Corporation** reported in **2009 (2) TN MAC 1 (SC)**, the monthly contribution of the deceased would be Rs.3,375/- (Rupees three thousand three hundred and seventy five only) [Rs.4,500/- - Rs.1,125/-].

14. The age of the deceased, as per Ex.A4 - Postmortem Certificate, was 35 and the appropriate multiplier, as per the decision in **Sarla Verma** (cited supra), is "16" and accordingly, the loss of income would be **Rs.6,48,000/-** (Rupees six lakhs and forty eight thousand only) [Rs.3,375/- X 12 X 16].

15. A sum of Rs.10,000/- (Rupees ten thousand only) was awarded by the Tribunal towards loss of love and affection and the same is very meagre and hence, the same is enhanced to **Rs.45,000/-** (Rupees forty five thousand only) [Rs.15,000/- each to the respondents 2 to 4 - children of the deceased].

16. A sum of Rs.2,000/- (Rupees two thousand only) was awarded by the Tribunal towards funeral expenses and the same is very meagre and hence, the same is enhanced to **Rs.10,000/-** (Rupees ten thousand only) towards funeral expenses along with transportation expenses.



17. No amount was awarded by the Tribunal towards loss of consortium to the widow of the deceased and hence, this Court awards a sum of **Rs.50,000/-** (Rupees fifty thousand only) towards loss of consortium.

18. No amount was awarded by the Tribunal towards loss of estate and hence, this Court awards a sum of Rs.7,000/- (Rupees seven thousand only) towards loss of estate.

19. The rate of interest awarded by the Tribunal at 9% per annum is on the higher side and therefore, the same is reduced to 7.5% per annum.

20. Accordingly, the claimants are entitled to a sum of **Rs.7,60,000/-** (Rupees seven lakhs and sixty thousand only) along with interest at the rate of 7.5% per annum from the date of petition till date of realization and proportionate costs.

21. In the result,

- (i) The civil miscellaneous appeal in C.M.A.(MD) No.1310 of 2012 filed by the Insurance Company is dismissed;
- (ii) The civil miscellaneous appeal in C.M.A.(MD) No.686 of 2015 filed by the claimants is allowed enhancing the award amount from Rs.2,16,000/- (Rupees two lakhs and sixteen thousand only) to Rs.7,60,000/- (Rupees seven lakhs and sixty thousand only) along with interest at the rate of **7.5%** per annum from the date of petition till date of realisation and proportionate costs;
- (iii) The first claimant / wife of the deceased is entitled to a sum of **Rs.1,97,000/-** (Rupees one lakh and ninety seven thousand only), the claimants 2 and 3 / 1st and 2nd children of the deceased are entitled to a sum of **Rs.1,59,000/-** (Rupees one lakh and fifty nine thousand only) each, 4th claimant / 3rd daughter is entitled to a sum of **Rs.1,75,000/-** (Rupees one lakh and seventy five thousand only) and the fifth claimant / mother of the deceased is entitled to a sum of **Rs.70,000/-** (Rupees seventy thousand only);
- (iv) The claimants are directed to submit their Personal Savings Bank Account Numbers along with the copies of their passbooks to the Tribunal **forthwith**;
- (v) The Insurance Company is directed to deposit the entire award amount along with accrued interest and costs, less the amount deposited, if any, to the credit of M.C.O.P.No.495 of 2003, on the file of the Motor Accident Claims Tribunal - cum - I Additional District Court, Tirunelveli, within a period of six weeks from the date of receipt of a copy of this judgment;



- (vi) Since the claimants have filed C.M.A.(MD) No.686 of 2015 with a delay of 3347 days, they are not entitled to interest for the said delay period;
- (vii) On such deposit, the Tribunal is directed to transfer the respective share amount of the claimants 1, 2, 3 and 5 directly to their Personal Savings Bank Account Numbers, as per the apportionment made by this Court, through RTGS/NEFT system, after getting their Account Details, within a period of **two weeks thereafter**;
- (viii) Insofar as the minor fourth claimant's share is concerned, the Tribunal shall deposit her share in an interest bearing Fixed Deposit in any one of the nationalised banks under the renewable scheme, till she attains majority and the first claimant / mother of the minor claimant is permitted to withdraw the accrued interest once in three months for the welfare of the minor claimant;
- (ix) The appellants in C.M.A.(MD) No.686 of 2015 / claimants are directed to pay the additional Court Fees, if any, within a period of **two weeks** from the date of receipt of a copy of this judgment; and
- (x) In the facts and circumstances of the case, there shall be no order as to costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar

To:

The I Additional District Judge,
Motor Accident Claims Tribunal,
Tirunelveli.

+1cc to Mr.J.S.Murali, Advocate, SR.11513

+1cc to Mr.S.Kadarkarai, Advocate, SR.11486

+1cc to Mr.T.Selvakumaran, Advocate, SR.11872

+ 1 CC TO Mr.J.S.Murali, ADVOCATE IN SR No. 11514

C.M.A.(MD) No.1310 of 2012
and

M.P.(MD) No.1 of 2012
and

C.M.P.(MD) No.803 of 2017
and

C.M.A.(MD) No.686 of 2015

28.02.2017