



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :11.09.2017

CORAM

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A (MD) No.332 of 2017

- 1.Saminathan
- 2.Sujatha
- 3.Minor Vijayalakshmi
- 4.Minor Suguna
- 5.Minor Karuppiah
- 6.Minor Sasikala

(Minors 3 to 6 appellants are represented by their
father and natural guardian 1st Appellant)

... Appellants/Petitioners

Vs.

1. R.Selvaraj

2. The Branch Manager,
The New India Assurance Company Limited,
Trichy.

... Respondents/ Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to allow this appeal holding the respondents are jointly and severally liable to pay compensation and also award of enhanced compensation of Rs.3,64,000/- over and above Rs.4,36,000/- awarded by the Tribunal in M.C.O.P.No.294 of 2009 dated 28.01.2010 on the file of MACT/Chief Judicial Magistrate, Pudukottai.

For Appellant : Mr.P.Senthil Kumar

For R-1 : No appearance

For R-2 : Mr.J.S.Murali

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellant to hold the respondents are jointly and severally liable to pay compensation and also to award compensation of Rs.3,64,000/- over and above Rs.4,36,000/- awarded by the Tribunal in M.C.O.P.No.294 of 2009 dated 28.01.2010 on the file of MACT/Chief Judicial Magistrate, Pudukottai.



2. It is a case of fatal accident, which took place on 04.12.2007 at about 10.10 a.m., at Iluppoor to Pudukottai Annavasal Pirivu road, near Kavinadu Kanmai.

3. It is the case of the claimants before the Tribunal that on the date of accident, when the deceased by name Muniammal was travelling as a passenger in the bus bearing Registration No.TN 55 N 6999, from Iluppoor to Pudukottai, the driver of the bus drove the vehicle in a high speed without control, in a rash and negligent manner and dashed against a tree, which was standing on the southern side of the road and as a result, the bus capsized in a Kanmoi and as a result, the said Muniammal sustained grievous injuries and thereafter, succumbed to the injuries.

4. The claimants filed an application in M.C.O.P.No.294 of 2009, on the file of the Motor Accident Claims Tribunal/Chief Judicial Magistrate, Pudukottai, seeking compensation.

5. Before the Tribunal, the claimant examined thirty eight witnesses as P.W.1 to P.W.38 and marked seventy eight documents as Ex.P.1 and Ex.P.78. On the side of the respondents, five witnesses were examined as R.W.1 to R.W.5 and four documents were marked as Ex.R1 to R8.

6. The Tribunal, after considering the pleadings, oral and documentary evidences and the arguments advanced on either side and also appreciating the evidences on record, held that the accident occurred only due to the rash and negligent driving of the driver of the bus belonging to the first respondent and insured with the second respondent/Insurance Company and since, the driver of the bus did not possess the valid driving licence at the time of accident, directed the first respondent/owner of the vehicle to pay compensation of Rs.4,36,000/- to the claimants.

7. Against which, the appellants/claimants have filed this present appeal challenging the liability as well as quantum.

8. In respect of liability, the learned counsel appearing for the appellants submitted that since the Insurance policy is admitted, the Tribunal ought to have ordered pay and recovery.

9. In support of his submissions, the learned counsel for the appellant relied on the judgment in **National Insurance Company v. Samiyathal & Others** reported in **2004(1) TN MAC(DB) 455**, wherein in similar circumstances, the Honourable Division Bench of this Court has held as follows:



"6..... In the present case, we have already referred to the specific stand taken by the Insurance Company in their counter statement, the evidence of R.W.1, their officer, Exs.R-1 to R-5 and the conduct of the driver and the owner in not responding to the request of the Insurance Company for production of valid licence to driver a lorry. Accordingly, as observed by the Supreme Court in 2001 ACJ 843 (cited supra), we hold that the Insurance Company is liable to pay compensation to the claimants-respondents 1 to 4 herein and on account of violation/namely, the lorry being driven without a valid licence, the appellant/Insurance Company is entitled to recover from the insured..."

10. Per contra, the learned counsel for the second respondent/Insurance Company submitted that after considering the evidence on record, the Tribunal held that the possession of valid driving licence was not proved and therefore, the Insurance Company is not liable to pay compensation and the owner of the vehicle alone is liable to pay the compensation and therefore, there is no infirmity in the said finding.

11. In respect of quantum, the learned counsel appearing for the appellants/claimants submitted that at the time of the accident, the deceased was aged about 36 years and was doing milk vending business and was earning a sum of Rs.7,000/-, but based on the contention of the Insurance Company that the deceased was a house wife, the Tribunal fixed only a sum of Rs.3000/- as monthly income and calculated the loss of income and the compensation awarded under the other heads are also on lower side and therefore, the same is to be enhanced.

12. Per contra, the learned counsel appearing for the second respondent/Insurance Company submitted that after considering the evidence on record, the Tribunal awarded a just and reasonable compensation and therefore, the same does not warrant interference.

13. Heard the submissions made on either side and perused the materials available on record.

14. In respect of liability to pay compensation, even though Insurance Policy was admitted, since the possession of valid driving licence was not proved, the Tribunal directed the owner of the vehicle to pay compensation. This Court is of the view that since the Insurance Policy was admitted, the Tribunal ought to have directed the second respondent/Insurance Company to pay compensation at the first instance and then recover the same from the owner of the vehicle, namely the first respondent herein. It



is well settled law that the claimant should not suffer even after obtaining an order for compensation. The provisions relating to the award of compensation are benevolent provisions in favour of claimants. The Hon'ble Apex Court in various Judgments have formulated the policy of "pay and recovery". In the present case, there is no reason to deviate from the principle of "pay and recovery".

15. In respect of quantum, it is a pathetic case where a house wife lost her life and the loss cannot be compensated by way of money. However, this Court considering the submission made by the learned counsel for the appellants that the deceased was doing milk vending business and also considering the loss caused to the family members and also by applying the ratio laid down in **Sri Ramachandrappa vs. the Manager, Royal Sundaram Alliance Insurance Company Ltd.**, reported in **2011(2) TNMAC 190 SC**, even though there is no definite income, this Court fixes a sum of Rs.4500/- as notional monthly income of the deceased and after deducting 1/4th amount towards personal expenses, the monthly loss of income would be Rs.3375/-. Since the age of the deceased was found to be 36 years, the appropriate multiplier to be applied as per the **Smt.Sarla Verma .vs. Delhi Transport Corporation reported in 2009(2) TN MAC 1(SC)** case, is '15' and therefore, the compensation for loss of income would be Rs.6,07,500/- (Rs.3375 X 12 X 15).

16. Further, the sum of Rs.2000/- (Rupees Two Thousand only) awarded by the Tribunal towards funeral expenses, is on the lower side and therefore, the same is enhanced to a sum of Rs.25,000/- (Rupees Twenty Five Thousand only).

16. Further, the sum of Rs.10000/- (Rupees Ten Thousand only) awarded by the Tribunal towards loss of consortium to the first claimant, is on the lower side and therefore, the same is enhanced to a sum of Rs.50,000/- (Rupees Fifty Thousand only).

17. Further, the sum of Rs.10000/- (Rupees Ten Thousand only) each awarded by the Tribunal towards loss of love and affection to the claimants 2 to 5, is on the lower side and therefore, the same is enhanced to a sum of Rs.1,00,000/- (Rupees One Lakh only).

18. Further, the Tribunal has not awarded any amount towards transportation and therefore, this Court awards a sum of Rs.20,000/- (Rupees Twenty Thousand Only) towards transportation and the compensation awarded under the other heads are confirmed.

19. In view of the settled position of law, this Court modifies the award of the Tribunal by enhancing the compensation, as under:-

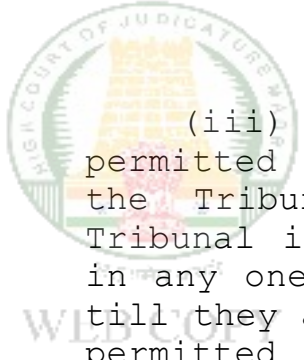


S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	For loss of income	3,84,000	6,07,500	enhanced
2.	For consortium (for 1 st claimant)	10,000	50,000	enhanced
3.	For loss of love and affection (for claimants 2 to 5)	40,000 (10,000 each)	1,00,000 (25,000 each)	enhanced
4.	For Transportation		20,000	awarded
5.	For funeral expenses	2,000	25,000	enhanced
	Total	Rs.4,36,000	Rs.8,02,500 rounded off to Rs.8,00,000	By enhancing a sum of Rs.3,64,000/-

20. In the result,

(i) This Civil Miscellaneous Appeal is partly allowed, enhancing the award of the Tribunal from **Rs.4,36,000/- (Rupees Four Lakhs and Thirty Six Thousand Only)** to a sum of **Rs.8,00,000/- (Rupees Eight Lakhs only)** along with interest at the rate of 7.5% per annum from the date of petition till date of realisation and proportionate costs;

(ii) The second respondent/Insurance Company is directed to deposit the entire award amount of **Rs.8,00,000/- (Rupees Eight Lakhs Only)**, with interest at the rate of 7.5% per annum, from the date of petition, till realization, at the first instance and then, recover the same from the owner of the vehicle/first respondent. The second respondent shall deposit the award amount to the credit of M.C.O.P., on the file of the claims Tribunal within a period of eight weeks from the date of receipt of a copy of this order and in the later stage, the second respondent/Insurance Company is entitled to recover the same from the owner of the vehicle/first respondent, by way of Execution Petition, without actually filing a suit as held by Hon'ble Apex Court in the judgment reported in **2004(2)CTC 464 (Oriental Insurance Co., Ltd., vs. Shri Nanjappan and others)**.



(iii) On such deposit being made, the major claimants are permitted to withdraw their respective shares as apportioned by the Tribunal, with proportionate interests and costs. The Tribunal is directed to deposit the share of the minor claimants in any one of the Nationalised Banks, in a Fixed Deposit scheme, till they attain majority. The guardian of the minor claimants, is permitted to withdraw the accrued interest once in three months directly from the bank, only for the welfare of minors.

Sd/-

Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar

To:

1. The Chief Judicial Magistrate,
Motor Accident Claims Tribunal,
Pudukottai,
2. The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.J.S.Murali, Advocate Sr.No.78150

PM

VB/GT/SAR3/19/12/2017/6P/4C

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