



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.03.2017

CORAM:

THE HONOURABLE MS.JUSTICE **V.M.VELUMANI**

WEB COPY

C.M.A(MD) No.1491 of 2016
and
C.M.P(MD) No.12504 of 2016

The Branch Manager,
Oriental Insurance Company Ltd.,
Nagercoil Branch,
The Divisional Office,
D.D.J. Centre 1st Floor,
Vadasery Bus stand Opposite,
Nagercoil,
Kanyakumari District.

... Appellant/Respondent No.6

vs.

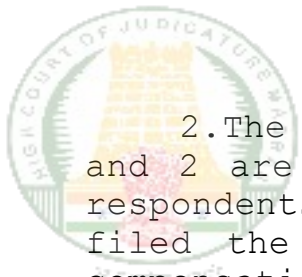
1.Thiru.Seshaiyah	...Respondent No.1/Petitioner No.1
2.Sahaya Mary	...Respondent No.2/Petitioner No.2
3.Immanuvel	...Respondent No.3/Respondent No.1
4.Rajendraprasad	...Respondent No.4/Respondent No.2
5.Branch Manager, New India Assurance Company Limited, Nagercoil branch, Anna Stadium opposite, Nagercoil and village, Agasteeswaram taluk, Kanyakumari District.	...Respondent No.5/Respondent No.3
6.Mohamed Hanifa	...Respondent No.6/Respondent No.4
7.Pushpam	...Respondent No.7/Respondent No.5
(6 th & 7 th Respondents given up)	

Prayer: This Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the order of the Motor Accident Claims Tribunal-cum- Chief Judicial Magistrate, Nagercoil made in M.C.O.P. No.33/2014, dated 04.09.2015.

For Appellants :Mr.C. Jawahar Ravindran

JUDGMENT

The present Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company against the award, dated 04.09.2015, made in M.C.O.P.No.33 of 2014, passed by the Motor Accident Claims Tribunal-cum-Chief Judicial Magistrate, Nagercoil.



2.The appellant is the 6th respondent and the respondents 1 and 2 are the claimants. The respondents 3 to 7 herein are the respondents 1 to 5 in the claim petition. The respondents 1 & 2 filed the claim petition, claiming a sum of Rs.25,00,000/- as compensation for the death of their son, Aruputha Nayagam, in the accident that took place on 02.07.2013.

3.Facts of the case:-

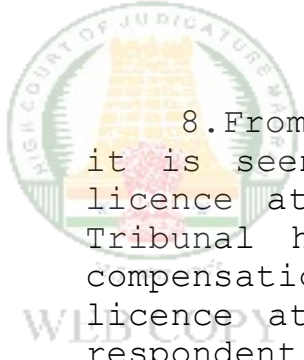
According to the respondents 1 and 2, when the deceased was travelling in a motor-cycle, (Bajaj Pulsar) bearing Registration No.TN-74 AA 7902, the third respondent herein drove the Mini Bus bearing Registration No.TN-74-K-6323 in a rash and negligent manner and dashed against the motorcycle driven by the deceased. Due to that, the deceased fell down. At that time, another Mini bus bearing Registration No.TN-74- E-5490 driven by 6th respondent herein/R4 ran over head of the the deceased and due to the injuries, the deceased died on the spot. An FIR was registered against the respondents 3 & 6/ respondents 1 & 4 in Cr.No.78/2013 under Sections 279 and 304 (A)I.P.C. The accident occurred only due to rash and negligent driving by the Respondents 3 & 6 /respondents 1 & 4. The deceased was working in Fishing Motor Boat. He was earning Rs.25,000/- per month. At the time of his death, the age of deceased was 21 years. The respondents 1 & 2 are the parents of the deceased and they are the dependants of the deceased. Therefore, they filed the claim petition claiming a sum of Rs.25,00,000/- as compensation.

4.The 5th respondent is the insurer of the Mini Bus bearing Registration No.TN 74 K 6323 and the appellant is the insurer of second Mini Bus bearing Registration No.TN-75-E-5490. Both the appellant and the 5th respondent Insurance Company filed their respective counter statements and blamed the driver of other Mini Bus. The other Insurance Company alleged that the third respondent was not having a driving licence at the time of accident.

5.Before the Tribunal, the respondents 1 & 2 examined three witnesses and the first respondent examined himself as P.W.1 and one eye witness Thiru.Paul Jegadeesh was examined as P.W.2 and one Britto was examined as P.W.3 and marked 8 documents as Ex.P1 to Ex.P8. On behalf of the 5th respondent, two witnesses were examined as R.W.1 and R.W.2 and marked four documents as Exs.R1 to R4 and Court documents as Exs.C1 & C2 were marked. The appellant did not let in any oral and documentary evidence.

6.The Tribunal framed necessary points for consideration.

7.The Tribunal, considering the pleadings, oral and documentary evidence, especially the evidence of eye witness and Ex.P1-FIR, <https://hse.ces.edn.in/hse/cas> the accident occurred only due to the rash and negligent driving by both drivers i.e., respondents 3 & 6 and awarded a sum of Rs.17,47,000/- as compensation to the respondents 1 & 2.



8. From the evidence let in by Insurance Company/5th respondent it is seen that the third respondent did not have any driving licence at the time of accident. Considering the evidence, the Tribunal held that the fifth respondent is not liable to pay compensation and as third respondent was not having driving licence at the time of accident, the Tribunal directed the 5th respondent Insurance Company to pay 50% of the award amount at first instance and later recover the same from the respondents 3 & 4. The Tribunal also held that the appellant and the respondents 6 & 7 are jointly and severally liable to pay the remaining 50% of the amount awarded as compensation.

9. The Tribunal considering the nature of work done by the deceased, fixed a sum of Rs.15,000/- as monthly income and deducted 50% towards personal expenses as deceased being a bachelor. The Tribunal applied the multiplier 18 as per **Sarla Verma v. Delhi Transport Corporation**, reported in **2009(2) TN MAC 1 (SC)** and awarded the compensation of Rs.16,20,000/- for loss of income. The Tribunal also awarded a compensation on the other heads.

10. Against the said award, the fifth respondent/Insurance Company has filed the present Civil Miscellaneous Appeal.

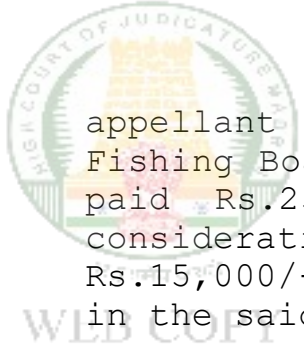
11. The learned Counsel for the appellant submitted that the Tribunal erred in holding that the driver of both the Mini Buses are responsible for the accident. On the other hand the accident occurred only due to the rash and negligent driving of the third respondent, who dashed against the motorcycle driven by the deceased. The Tribunal failed to consider that the deceased died when the Mini bus driven by third respondent dashed against the motorcycle. The Tribunal erred in fixing the monthly income of the deceased at Rs.15,000/- when the respondents 1 & 2 failed to substantiate their case that deceased was earning Rs.25,000/- per month and submitted that amount awarded by the Tribunal is excessive.

12. I have heard the learned counsel appearing for the appellant and perused all the materials available on record.

13. The respondents 1 & 2 filed the claim petition claiming a sum of Rs.25,00,000/- as compensation. The respondents 1 & 2 examined one eye witness as P.W.3 and proved that the accident occurred only due to the rash and negligent driving by respondents 3 & 6. There is no contra evidence let in by the appellant and did not let in any evidence to disprove the contention of the respondents 1 & 2. Therefore, the said finding of the Tribunal is confirmed.

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

14. As far as monthly income of the deceased is concerned, the



appellant did not dispute that the deceased was working in Motor Fishing Boat. The owner of the Fishing Boat gave evidence that he paid Rs.25,000/- to the deceased. The Tribunal taking into consideration the nature of the work done by the deceased fixed Rs.15,000/- as monthly income of the deceased. There is no error in the said determination of the Tribunal.

15.It is well settled that in the given circumstances, the age of the deceased can be taken into consideration for applying the multiplier instead of taking into consideration the age of the parents. The Tribunal has applied the correct multiplier by relying on the judgment reported in **Sarla Verma v. Delhi Transport Corporation**, reported in **2009(2) TN MAC 1 (SC)** and the compensation awarded by the Tribunal is a just compensation. The amounts awarded under the other heads are also just and reasonable.

16.Considering the material on record and reasoning given by the Tribunal, the award of the Tribunal is confirmed and this Civil Miscellaneous Appeal is dismissed as devoid of merit. No costs. Consequently, connected miscellaneous petition is dismissed.

Sd/-

Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar

To

1.The Motor Accident Claims Tribunal-cum-
Chief Judicial Magistrate, Nagercoil.

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

+1cc to M/s. C.JAWAHAR RAVINDRAN Advocate in SR. No.13650
AM/MRN
JS/KP/SAR.2/10.04.2017/4P-4C

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