

**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.19 of 2015**  
**and**  
**C.M.P. (MD) No.8322 of 2016**

The Divisional Manager,  
United India Insurance Co.Ltd,  
7-A, Salai Road,  
Tiruchirappalli.

... Appellant/2<sup>nd</sup> Respondent  
Vs.

S.Palanisamy (died)

1.Selvi

2.Ramesh

3.Srinivasan

...Respondents 1-3/Petitioner 2 to 4

4.C.Muthamilselvan

...4<sup>th</sup> Respondent/1<sup>st</sup> Respondent

(4<sup>th</sup> respondent exparte before the Tribunal)

...Respondents

**Prayer:** Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 24.07.2013 in M.C.O.P.No. 942 of 2012 on the file of the Motor Accidents Claims Tribunal, Additional District and Sessions Judge, Thanjavur.

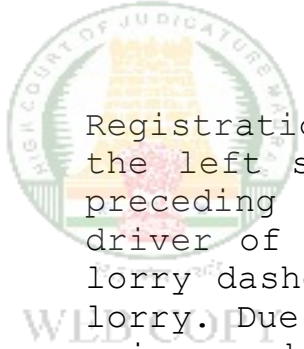
For Appellant : Mr.V.R.Subramanian  
For Respondent - 1 : Mr.G.Karnan  
Respondent - 4 : Mr.K.Kumaravel  
: No Appearance for R 2 and 3.

**JUDGMENT**

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

This Civil Miscellaneous Appeal is filed by the Insurance Company against the judgment and decree dated 24.07.2013 in M.C.O.P.No. 942 of 2012 on the file of the Motor Accidents Claims Tribunal, Additional District and Sessions Judge, Thanjavur.

2.The case of the claimants, as per the claim petition, before the Tribunal, is that the deceased Palanisamy, on 23.12.2011, at about 3.15 pm, while he was riding his two wheeler TVS XL bearing

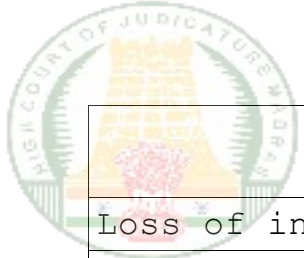


Registration No. TN 47 F0911, near Vilangudi Selliamman Temple, on the left side of Thiruvaiyaru - Ariyalur main road, a lorry was preceding from South to North, on the same direction, as the driver of the lorry suddenly applied brake, the rear side of the lorry dashed against the two wheeler, which was coming behind the lorry. Due to the accident, the rider of the two wheeler sustained grievous head injury and all over his body and as a result, he became unconscious and immediately he was admitted in Thiruvaiyar Government Hospital and was given first aid, subsequently, he took further treatment as an inpatient at various hospitals and underwent four surgeries in Narayana Hirdhiyalaya Hospital, Chennai, besides the treatment and due to the grievous head injuries, he had been in an unconscious state of mind and died on 28.11.2012 in hospital. The deceased was doing textile business in wholesale and thus was earning Rs.30,000/- per month. He was aged about 48 years. Since, the claimants have lost the income due to demise of the deceased in the accident and the accident occurred due to rash and negligent driving of the driver of the first respondent lorry bearing Registration No.TDF 7569, which is insured with the second respondent, Insurance Company, the first and second respondents are jointly and severally liable to pay compensation to the claimants. The first claimant is wife of the deceased, second and third claimants are the sons of the deceased and they 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 the accident had not occurred due to rash and negligent driving of the driver of the lorry bearing Registration No.TDF 7569. The deceased was riding his two wheeler in a rash and negligent manner and tried to overtake the lorry, which was going ahead slowly and cautiously and at that time, as the driver of the lorry applied brake, the deceased, having no control over his two wheeler, dashed behind the lorry and thus invited the accident and died after a long gap from the date of accident. The deceased sustained only simple injuries and discharged from hospital after completely cured. The claimants have to prove the age and income of the deceased. Since, the accident occurred due to rash and negligent riding of the deceased, the second respondent is not liable to pay compensation to the claimants and 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 Ex.P.1 to Ex.P.17 were marked. On the side of the respondents, no witness was examined and no document was marked.

5.After considering all the facts and circumstances of the case and oral and documentary evidence let in by claimants, the Tribunal awarded the compensation as given below:



| HEAD                       | AMOUNT AWRDED BY THE TRIBUNAL<br>(Rs) |
|----------------------------|---------------------------------------|
| Loss of income             | 2,64,000/-                            |
| Medical expenses           | 10,30,000/-                           |
| Transportation             | 1,00,000/-                            |
| Loss of love and affection | 25,000/-                              |
| Loss of consortium         | 25,000/-                              |
| Loss of estate             | -                                     |
| Funeral expenses           | 2,000/-                               |
| Total                      | 14,46,000/-                           |

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 perused the materials placed on record, oral and documentary evidence and the award passed by the Tribunal.

8. The learned counsel appearing for the appellant would submit that the accident had not occurred due to rash and negligent driving of the driver of the lorry bearing Registration No. TDF 7569. The deceased was riding his vehicle in a rash and negligent manner and when he tried to overtake the lorry, having no control over his two wheeler dashed behind the lorry and he himself invited the accident. If the deceased had ridden the two wheeler in a moderate speed and had maintained a certain distance with the lorry by observing traffic rules and regulations, the accident would not have taken place. There is no proof to show that the deceased was wearing helmet, at the time of accident. The claimants have to prove the age and income of the deceased. The driver of the lorry is not solely responsible for the accident and the contributory negligence of the deceased to the accident has also to be taken into consideration and therefore, the second respondent alone is not liable to pay compensation to the claimants and the compensation awarded by the Tribunal is highly excessive and liable to be dismissed.

9. The learned counsel for the respondents/claimants would submit that the accident had occurred due to negligence act on the part of the driver of the lorry. In the accident, the deceased sustained grievous head injury and all over his body, became unconscious and he took treatment as an inpatient at various hospitals on various spells and underwent four surgeries. He had been in an unconscious state of mind and died on 28.11.2015. Since the accident occurred due to the negligence of the driver of the first respondent lorry bearing Registration No. TDF 7569, which is insured with the second respondent Insurance Company, the first and second respondents are jointly and severally liable to pay

compensation to the claimants and the award passed by the Tribunal is just and reasonable.

10. This Court carefully perused the claim petition filed by the claimants, counter affidavit filed by the second respondent, the evidence let in by claimants and also the documents produced by the claimants.

11. Points for consideration are that,

i) Whether the accident occurred due to negligent driving of the driver of the lorry bearing Registration No.TDF 7569 or rider of the two wheeler bearing Registration No.TN 47 F0911?

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

Point No.1

12. In order to prove the manner of the accident, the brother in law of the deceased was examined as P.W.2, who is an eye witness to the accident. He has deposed that when his brother in law was coming to Thanjavur from Ariyalur in his two wheeler bearing Registration No. TN 46 H 0911, a lorry bearing Registration No. TDF 7569 was driven by its driver in a rash and negligent manner and since, suddenly he applied the brake without observing the traffic rules, his brother in law dashed against the lorry and he has further stated that the accident occurred due to rash and negligent driving of the driver of the lorry. When a suggestion was put before him that the driver of the lorry was driving the lorry cautiously and slowly and since his brother in law tried to cross the road the accident had occurred, he denied the same. It is not the case of the claimants that the accident had occurred due to head on collision or the two wheeler dashed front side of the lorry. It is needless to say that if at all, the deceased had ridden the two wheeler on the road cautiously in a moderate speed and maintaining the distance as per the motor vehicle and road traffic rules, when the lorry driver applied sudden brake, he could have stopped the two wheeler and avoided the accident. Therefore, in the absence of any contra evidence produced by the respondents and based on the materials available on record including the Ex.P.1, FIR registered against the driver of the lorry and the evidence of P.W.2, this Court finds that the accident occurred due to negligence on the part of the driver of the lorry and the rider of the two wheeler and the Tribunal has correctly held that accident had occurred due to the negligence of both the driver of the lorry and the deceased. It is pertinent to note that at the time of the accident the rider of the two wheeler, the deceased did not wear the helmet and death was due to the head injury. Further the deceased also contributed his negligence to the accident to the extent of 50% and therefore, first and second respondents are jointly and severally liable to pay only 50% of the compensation to the claimants. This point is answered accordingly.

Point No.2

13.As far the quantum of the compensation is concerned, in order to prove the income of the deceased, no documents have been produced by the claimants. But, it was simply contended that the deceased was doing textile business and was earning Rs.30,000/- per month. In our considered view, in the absence of any material evidence, to show that the deceased was doing textile business and his income was Rs.30,000/-, the Tribunal has correctly fixed notional income of the deceased at Rs.6,000/- per month.

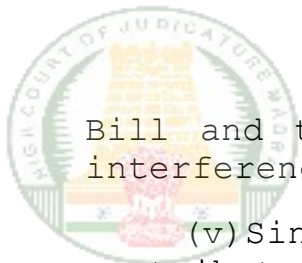
14.With regard to the age of the deceased, in the claim petition it is stated as his age is 48 and in Exs.P.4 and 5, Discharge summaries it is stated as his age is 51 and in Ex.P.11, Death certificate of the deceased, it is stated as his age is 52. However, the claimants have not produced any document to prove the age of the deceased. Therefore, in the absence of any documentary evidence, Ex.P.11, Death Certificate, given by the Head Quarters Deputy Thasildar, Ariyalur, being an authenticated document, is taken into consideration and accordingly the age of the deceased at the time of the accident is fixed as 52. Hence, the multiplier would be 11. Therefore, the loss of income would be  $\text{Rs.6,000} \times 11 \times 12 = \text{Rs.7,92,000/-}$ .

15.(i). In view of the law laid down by the Hon'ble Apex Court in 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 this case, there are three dependants, therefore, 1/3 of the income has to be deducted towards personal expenses of the deceased. So the loss of income would be  $\text{Rs.5,28,000/-}$  ( $\text{Rs.7,92,000} - \text{Rs.2,64,000}$ ). As already held, the Insurance Company is liable to pay only 50% of the compensation to the claimant and the same would come to  $\text{Rs.2,64,000/-}$  (50 % of 5,28,000).

(ii) Further, the deceased was 52 years old at the time of accident, therefore loss of future prospects will not be applicable. (iii) As far as the other heads of compensation are concerned, the Tribunal awarded  $\text{Rs.25,000/-}$  towards loss of consortium and the same is enhanced to  $\text{Rs.1,00,000/-}$ , the Tribunal awarded  $\text{Rs.25,000/-}$  towards loss of love and affection and the same is enhanced to  $\text{Rs.1,50,000/-}$ , the Tribunal awarded  $\text{Rs.2,000/-}$  towards funeral expenses and the same is enhanced to  $\text{Rs.25,000/-}$ . The tribunal has not awarded any compensation towards loss of estate and  $\text{Rs.5,000/-}$  is awarded towards the same. Likewise, not awarded any compensation towards attendant charges. Since, he was under continuous treatment for nearly one year i.e. From 23.12.2011 till 28.11.2012, a sum of  $\text{Rs.1,00,000/-}$  is awarded for the same.

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(iv) The Tribunal has awarded  $\text{Rs.10,30,000/-}$  towards medical expenses and  $\text{Rs.1,00,000/-}$  towards Transportation and Ambulance



Bill and the same seems to be just and reasonable and needs no interference of this Court.

(v) Since, it is already held that the deceased also contributed to the accident to the extent of 50% and therefore, the appellant is liable to pay only 50% of the compensation to the claimants and the claimants are entitled to get the following compensation:-

| HEAD                                   | AMOUNT CLAIMED BY CLAIMANT in (Rs.) | AMOUNT AWRDED BY TRIBUNAL (Rs) | AMOUNT AWARDED BY THIS COURT (Rs.) | DUE TO CONTRIBUTORY NEGLIGENCE REDUCED TO 50 % (Rs) |
|----------------------------------------|-------------------------------------|--------------------------------|------------------------------------|-----------------------------------------------------|
| Loss of income                         | 50,000,000/-                        | 2,64,000/-                     | 5,28,000/-                         | 2,64,000/-                                          |
| Medical expenses                       |                                     | 10,30,000/-                    | 10,30,000/-                        | 5,15,000/-                                          |
| Transportation                         |                                     | 1,00,000/-                     | 1,00,000/-                         | 50,000/-                                            |
| Loss of love and affection             |                                     | 25,000/-                       | 1,50,000/-                         | 75,000/-                                            |
| Loss of consortium                     |                                     | 25,000/-                       | 1,00,000/-                         | 50,000/-                                            |
| Loss of estate                         |                                     | -                              | 5,000/-                            | 2,500/-                                             |
| Extra Nutritious and Attendant Charges |                                     | -                              | 1,00,000/-                         | 50,000/-                                            |
| Funeral expenses                       |                                     | 2,000/-                        | 25,000/-                           | 12,500/-                                            |
| Total                                  | 50,000,000/-                        | 14,46,000/-                    | 20,38,000/-                        | 10,19,000/-                                         |

16. In the result,

(i) This Civil Miscellaneous Appeal in C.M.A.(MD)No.19 of 2015 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/Insurance Company 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 1<sup>st</sup> claimant being the wife of deceased as well as the dependant is entitled to Rs.5,69,000/-and 2<sup>nd</sup> and the 3<sup>rd</sup> claimants the sons of the deceased are entitled to each Rs.2,25,000/- Since the accident occurred in the year of 2011, the claimants are permitted to withdraw the entire amount that would be deposited by the appellant. The 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. The appellant is permitted to withdraw the excess amount, if any.

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Sd/-

Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar

To

1.The Additional District and Sessions Judge/  
The Motor Accidents Claims Tribunal  
Thanjavur.

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

+1cc to M/S. R.SUBRAMANIAM, Advocate, SR.No.58439.

+1cc to M/S. G.KARNAN, Advocate, SR.No.58377.

Judgment made in  
C.M.A. (MD) No.19 of 2015  
and  
C.M.P. (MD) No.8322 of 2016  
05.06.2017

Arul/dsk

SDS/SKN:RSK/SAR 1/17.07.2017/7P/5C