



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.11.2017

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A (MD) No.404 of 2016

and

C.M.P (MD) No.5547 of 2016

National Insurance Company Limited
Through its Branch Manager,
Nagercoil,
Kanyakumari District.

..Appellant/Respondent No.3

Vs.

Chelliah
S/o.S.S.Pandaram (Mentally unsounded)
Rep. Through his wife & next friend Umarani
Leepuram, Leepuram Post,
Kanyakumari Village,
Agastheeswaram Taluk,
Kanyakumari District (Died) ...Deceased/1st Petitioner
1.C.Umarani
2.C.Misanthi
3.Minor Anusha
(Minor is rep. Through her mother and
natural guardian 1st Respondent herein)
...Respondents 1 to 3/Petitioners 2 to 4
4.Poothan Pillai ...Respondent No.4/Respondent No.1
5.K.Sree Kumar ... Respondent No.5/Respondent No.2

PRAYER: Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act, to set aside the judgment and decree passed by the Motor Accident Claims Tribunal, II Additional Sub Court, Nagercoil in M.C.O.P.No.129 of 2006, dated 14.06.2012.

For Appellant	: Mr.D.Sivaraman
For R1 to R3	: Mr.E.M.Ramachandran
For R4	: Mr.J.John Jayakumar
For R5	: No appearance

JUDGMENT

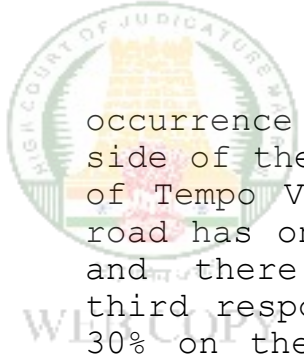
[Judgment of the Court was made by V.BHAVANI SUBBAROYAN,J.]

Being dissatisfied with the award passed by the Motor Accident Claims Tribunal (II Additional Sub Court), Nagercoil, in M.C.O.P.No.129 of 2006, dated 14.06.2012, the Insurance Company as appellant has filed this appeal challenging the quantum of compensation.

2.The case of the claimants is that on 02.07.2003 at about 19.30 hours, the deceased Chellaiah was riding a TVS Suzhuki Motorcycle bearing Registration No.TN-74-E-2821 along with his wife as pillion rider. When they were nearing Panchalingapuram turning, they stopped the Motorcycle and were standing in the side of Kanyakumari-Nagercoil main Road and at that time, the first respondent drove the vehicle bearing registration No.TN-41-F-5987 which belong to the second respondent in a rash and negligent manner in terrific speed without observing any traffic rules and regulations of the road came from north to south in Nagercoil, Kanyakumari Road had hit the two wheeler. In the impact, the deceased and his wife were thrown away and sustained grievous injuries all over their body. Immediately, the first petitioner was admitted in Kumaraswamy Health Centre, Perumalpuram and took first aid treatment. Thereafter, he was admitted in Dr.Jeyasekaran Hospital, Nagercoil and took treatment as inpatient from 03.07.2003 to 13.09.2003. From there, he was taken to Perambur Railway Hospital as he was under Coma stage. According to doctor's opinion since there was no chance to recover fully and due to non-recovery, he was given private Siddha treatment till his death on 27.03.2008. In the said accident, the deceased sustained grievous injury in his head. Due to that injury he was unable to walk, speak and or to do anything and during the pendency of the case he died on 27.03.2008. The criminal case was registered by the Kanyakumari Police Station in Cr.No.274 of 2003 under Sections 279, 337 and 338 of IPC.

3.The respondents 1 and 2 filed a counter and contended that the second respondent is the owner of the Tempo and the first respondent is the driver and the third respondent is the insurer of the vehicle. The respondents resisted the claim by disputing the manner of the accident and their liability to pay the compensation.

4.The third respondent filed a counter and contended that the claimants have to prove the age, income of the deceased and also the injuries sustained in the accident. There is no averment of permanent disability in the petition sustained by the petitioner due to the injuries. It was a collision of two vehicles and as per the FIR registered and as per the statement of wife of injured her husband was riding from East towards West and the Tempo Van was coming from North towards South i.e., the tempo was coming in its correct side. The rough sketch clearly shows that the place of



occurrence was on the eastern side of the road i.e., the correct side of the Tempo Van. There was no negligence on the part of driver of Tempo Van and stopping the vehicle by the deceased on the main road has on wrong side, which is the negligence Act of the deceased and there was contributory negligence on the part of deceased. The third respondent would contend that the negligence can be fixed as 30% on the part of the tempo driver and 70% on the part of the injured petitioner.

5. Before the Tribunal, the claimants in order to substantiate their case, examined five witnesses and marked Exs.P1 to P15. On the side of the respondents, one Ganesh was examined as R.W.1 and one document was marked as Ex.R1.

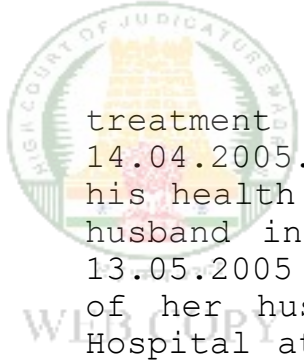
6. Upon consideration of the oral and documentary evidence, the Tribunal came to the conclusion that the accident has taken place only due to the rash and negligent driving of the driver of the Tempo Van and awarded compensation of Rs.22,56,500/- along with interest @ 7.5% p.a.

7. Heard learned counsel for the appellant and the learned counsel for the respondents 1 to 4 and perused the materials available on record.

8. The learned counsel for the claimants would submit that there is no dispute that the deceased was working as I-Grade Technician in Southern Railway and was drawing a salary of Rs.8,743/- per month. He was 43 years old at the time of accident. He further submitted that the award passed by the Tribunal is just and reasonable and there is no interference is required.

9. The learned counsel for the appellant Transport corporation would submit that the Tribunal without calculating the monthly income of the deceased, has awarded a total sum of Rs.10,00,000/- towards loss of income.

10. P.W.1 is the wife of the deceased Chelliah. She had deposed that on 02.07.2003 at about 7.30 p.m., her husband was riding motorcycle bearing Registration No.TN-74-E-2821 from Leepuram to Panchalingapuram and proceeding from East to West near the turning at Panchalingapuram, a tempo bearing Registration No.TN 41-F-5987 came from North to South in a rash and negligent manner at a high speed and without blowing horn hit against the motorcycle. In the impact, the P.W.1 and her husband were thrown out from the motorcycle and she was injured in her forehead, left hand and left knee and her husband sustained injuries in the lips and in the forehead and left foot. After the accident, her husband was admitted in the hospital by one Kanthakumar and Thankanadar in a Kumaraswamy Hospital and her husband was incapacitate and her husband was sustained severe injuries. Thereafter, he was admitted in the Jeyasekaran Hospital for further treatment from 03.07.2003 to 13.09.2003. Since her husband has not recovered and she had admitted her husband in Chennai Perampur Railway Hospital for further



treatment from 02.11.2003 to 17.11.2003 and from 15.03.2005 to 14.04.2005. Even after taking treatment from the Railway Hospital, his health condition has not improved. After that, she admitted her husband in the Palacadu Railway Hospital and took treatment from 13.05.2005 to 23.05.2005. Even after that there was no improvement of her husband's health condition and shifted him to the Sidha Hospital at Sahayamathapuram. At the time of filing the petition, her husband was taking treatment in Nagercoil Railway Hospital and her husband was not able to walk and speak and not doing anything, in almost coma stage and her husband has lost his life. P.W.1 would submit that her husband earning a sum of Rs.8,743/- as monthly salary, had 15 years of service left and she had incurred a huge sum for his treatment and claimed Rs.30,00,000/- as compensation.

11. P.W.2 has stated about the injuries sustained by the deceased Chellaiah. P.W.3 the Doctor also confirmed the health condition that when he was examining the deceased Chelliah in the hospital, the deceased was not at all in consciousness. P.W.4 also deposed that when he was examining the deceased for treatment, he was in the unconscious stage.

12. These evidence of the doctors prove that the injured was not conscious through out his treatment. P.W.5 has stated that Chelliah was working in Southern Railway at Palacadu and thereafter he transferred to Salem Division. Considering the above fact, the Tribunal has awarded a sum of Rs.10,00,000/- towards loss of income during treatment period. Rs.2,00,000/- awarded for pain and suffering. Rs.55,000/- awarded for Transport to hospital and Rs.1,500/- awarded for damage to clothes. Taking into consideration the submission of the learned counsel for the appellant, this Court fixed the monthly income of the deceased at Rs.6,232/- per month and by adding 50% future prospects of Rs.2,077/- the income would be Rs.8,309/- and deducting 1/3 for personal expenses and applying multiplier 14, the total loss of income was arrived at Rs.9,30,608/- ($8309 \times \frac{2}{3} \times 12 \times 14$). This Court is of the view that a sum of Rs.2,00,000/- awarded by the Tribunal towards loss of pain and suffering is on higher side and the same is reduced to Rs.1,00,000/- from Rs.2,00,000/-. Further, this Court awards a sum of Rs.30,000/- towards attendant charges. The Tribunal without any basis for medical expenses has awarded a sum of Rs.10,00,000/-, the same is reduced to Rs.1,50,384/- as per the medical bills produced. Rs.55,000/- towards transport expenses awarded by the Tribunal is confirmed. This Court awards a sum of Rs.40,000/- towards loss of consortium and awards further sum of Rs.15,000/- towards loss of estate and further sum of Rs.15,000/- towards funeral expenses.

13. The FIR registered was only against the driver of Tempo Van and not against Chelliah and no evidence was produced to show that the driver was acquitted in the criminal proceedings before the Judicial Magistrate Court. The evidence of P.W.1 was not rebutted and no contra evidence was produced to show that the deceased was at fault or he had contributed to the said accident.



14.The careless act of the Tempo van driver has been proved by the sketch that at the time of accident the deceased was standing on the left corner of the junction and only the Tempo Van driver has driven carelessly and dashed against the Motor-bike. Hence, the counter of the respondent that there should be a contributory negligence to be fixed and the driver of the Tempo Van to be relieved of his liability to which extent cannot hold good and the same is rejected.

15.The death has been caused only due to the injury sustained by the deceased, wherein he was in coma stage from day 1 till he died. There is a nexus between the accident and the death.

16.Hence, this Court finds that the Tempo driver is at fault and the Insurance Company as a Insurer is liable to pay the compensation awarded by this Court.

17.The award of the tribunal is modified as under:-

Sl.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	For loss of income	10,00,000	9,30,608	reduced
2.	Loss of pain and suffering	2,00,000	1,00,000	reduced
3.	For Transportation	55,000	55,000	confirmed
4.	For attendant charges	-	30,000	awarded
5.	For medical expenses	10,00,000	1,50,384	reduced
6.	For damage to clothes	1,500	-	deleted
7.	Loss of consortium	-	40,000	awarded
8.	Loss of estate	-	15,000	awarded
9.	For funeral expenses	-	15,000	awarded
	Total	Rs.22,56,500	Rs.13,35,992 (rounded of to Rs.13,36,000/-)	By reducing a sum of Rs.9,20,500/-



18. In the result, this Civil Miscellaneous Appeal is partly allowed, reducing the award of the Tribunal from Rs.22,56,500/- to a sum of Rs.13,36,000/- along with interest @ 7.5% per annum from the date of petition till date of realization with proportionate costs. The appellant shall deposit the modified award amount with interest and costs, within a period of six weeks from the date of receipt of a copy of this judgment, less the amount already deposited.

19. On such deposit, the major claimants are permitted to withdraw their share in the award amount with proportionate accrued interest and costs as per the ratio of apportionment made by the Tribunal. Insofar as the minor claimant is concerned, the Tribunal is directed to deposit her share in the award amount in any one of the Nationalised Bank, in fixed deposit, initially for a period of three years renewable thereafter, till she attain majority. The first claimant/mother, being the guardian of minor claimant, is permitted to withdraw the accrued interest, once in three months directly from the Bank and utilize the same for the welfare of the minor child. No costs. Consequently, connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(RTI)

/True Copy/

Sub-Assistant Registrar

To

1. The II Additional Subordinate Judge,
Motor Accident Claims Tribunal,
II Additional Subordinate Court, Nagercoil.

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

+One cc to Mr.D.Sivaraman, Advocate, SR.No.87858

+One cc to Mr.A.Sivaji, Advocate, SR.No.88279

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RL/6C/6P/KK/SAR1/23/1/2018