



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 20.03.2017
CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

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C.M.A (MD) No.496 of 2014 and
M.P (MD) No.4 of 2014 and
C.M.A. (MD) No.84 of 2017

C.M.A (MD) No.496 of 2014

The Branch Manager,
Iffco-Tokio General Insurance Co.Ltd.,
335/1A, V.V.Complex, North Bye Pass Road,
Vannarpet,
Tirunelveli-627 003.

... Appellant/2nd Respondent

Vs.

1.Gladis Stelma
2.Abra Pearl
3.Thaya Shalom
4.Leon Babu

... 1 to 3 Respondents/Petitioners
... 4th Respondent/1st Respondent

PRAYER: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Award and Decreetal order, dated 21.12.2012 made in M.C.O.P.No.176 of 2012, on the file of the MACT, II Additional District Judge, Thoothukudi.

For Appellant : Mr.B.Prasanna Vinoth
For R1 to R3 : Mr.S.Siva Thilagar

C.M.A (MD) No.84 of 2017

1.Gladis Stelma
2.Abra Pearl
3.Thaya Shalom

... Appellants/Petitioners

vs.

1.Leon Babu

2.The Branch Manager,
Iffco-Tokio General Insurance Co.Ltd.,
335/1A, V.V.Complex, North Bye Pass Road,
Vannarpet, Tirunelveli-627 003.

... Respondents/Respondents

PRAYER: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree, dated 21.12.2012 made in M.C.O.P.No.176 of 2012, on the file of the Motor Accidents Claims Tribunal, II Additional District Judge, Thoothukudi.



For Appellants : Mr.S.Siva Thilakar
For R2 : Mr.Prasanna Vinoth

COMMON JUDGMENT

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Both Civil Miscellaneous Appeals arising out of the common award, dated 21.12.2012 made in M.C.O.P.No.176 of 2012, on the file of the Motor Accidents Claims Tribunal, II Additional District Judge, Thoothukudi.

2.The appellants in C.M.A.(MD)No.84 of 2017 are claimants and the appellant in C.M.A(MD)No.496 of 2014 is the second respondent/Insurance Company in the claim petition.

3. Both appeals are heard together and disposed of by this common judgment.

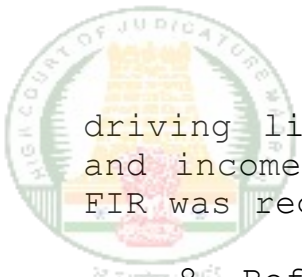
4. For the sake of convenience, the parties are referred to according to their litigative status before the Tribunal.

5.Facts of the Case:

According to the claimants, on 13.08.2010, the deceased was riding his Hero Honda Motor Bike bearing Registration No.TN-74 X-2540 and the first claimant was riding as a pillion rider along with her husband. At that time, the Motorbike bearing Registration No.TN-74-Q-4428 belonging to the first respondent was driven by its rider in a rash and negligent manner came into opposite direction and dashed against the motorbike in which, the first claimant and deceased were travelled and caused accident. The husband of the first claimant suffered multiple injuries and died on the spot. At the time of accident, the motorcycle belonging to the first respondent was insured with the second respondent. The accident occurred only due to the rash and negligent driving of the rider of the motorcycle belonging to the first respondent. Therefore, the respondents are liable to pay compensation. At the time of accident, the deceased was working as Area Manager in Christian Mission Service and earning a sum of Rs.25,000/- (Rupees Twenty Five Thousand Only) per month. The claimants are dependants of the deceased and he was aged about 58 years at the time of accident.

6.Both the respondents are filed separate counter affidavit and denied the averments made in the claim petition.

7.According to the respondents, the accident took place only due to the rash and negligent driving of the deceased. The deceased came in a wrong side and dashed against the motorcycle belonging to the first respondent, which was driven cautiously as per the Rules and Regulations. The deceased did not have valid



driving licence. The claimants have to prove the age, avocation and income of the deceased. The respondents also stated that the FIR was registered only against the deceased.

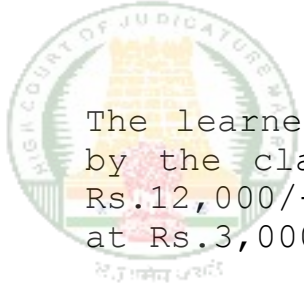
8. Before the Tribunal, the first claimant examined herself as P.W.1 and marked seven documents as Exs.P.1 to P.7. The second respondent examined one Tr.Nagarajan, Authorized Official of Private Investigator of Second respondent as R.W.1 and marked two documents as Ex.R.1 & R.2.

9. The Tribunal, considering the pleadings, oral and documentary evidence and arguments of the learned Counsel for the parties held that the accident occurred only due to the rash and negligent driving of the both the deceased and the rider of the other motorcycle belonging to the first respondent and held that both riders are equally responsible for the accident and held that the claimants are entitled to 50% of the compensation. The Tribunal considering the documents produced by the claimants awarded a total sum of Rs.7,95,500/- and directed the second respondent to pay 50% at the first instance and recover the same from the first respondent as driver of the motorcycle did not have valid driving licence.

10. Aggrieved by the said award, dated 21.12.2012, the appellants in C.M.A.(MD)No.84 of 2017 are claimants and the appellant in C.M.A(MD)No.496 of 2014 is the second respondent/Insurance Company have filed these appeals.

11.The learned Counsel for the claimants submitted that the Tribunal erred in holding that the deceased also was negligence and due to his negligence, the accident had occurred. The Tribunal ought to have considered the evidence of P.W.1 that FIR was registered without examining the P.W.1, who was eye witness. The FIR was registered at the instigation of first respondent. When the first claimant lodged the complaint with the police, they did not register the complaint informing that the rider of the other motorcycle was Medical College Student and if any case is registered, his future will be affected. The Tribunal has not given any valid reason for not accepting the salary certificate produced by the claimants to prove the avocation and salary of the deceased. The amount awarded to other heads also too meagre and prayed for allowing the C.M.A(MD)No.84 of 2017.

12.The learned counsel appearing for the second respondent/Insurance Company/appellant in C.M.A.(MD)No.496 of 2014 submitted that the Tribunal erred in holding that both the deceased and the rider of the motorcycle are responsible for the accident. The FIR was registered only against the deceased and the first claimant did not lodge any complaint. The first claimant as P.W.1 deposed that she lodged complaint with police, but they did not register the same, is not supported by any acceptable evidence.



The learned Judge having rejected the salary certificate produced by the claimants erred in fixing the salary of the deceased at Rs.12,000/- per month. The Tribunal ought to have fixed the salary at Rs.3,000/- per month.

13. I have heard the learned Counsel appearing for the claimants and the learned Counsel appearing for the respondents and perused all the materials available on record.

14. From the materials available on record, it is seen that two motorcycles were involved in the accident. According to the claimants, the accident occurred only due to the rash and negligent driving of the rider of the motorcycle belonging to the first respondent. On the other hand, the contention of the learned counsel for the second respondent/Insurance Company/appellant in C.M.A(MD)No.496 of 2014 is concerned that the accident took place solely due to the rash and negligent driving of the deceased and relied on the FIR-Ex.P1 registered against the deceased and submitted that the FIR was registered only against the deceased.

15.The contention of the learned counsel for the second respondent/Insurance Company that the Tribunal ought to have held that the accident occurred only due to the rash and negligent driving of the deceased, based on the FIR, is untenable. In number of judgments, it has been held that FIR is not sole criteria to decide the negligence on the part of the driver. The P.W.1, who is an eye witness deposed that the accident occurred only due to the rash and negligent driving on the part of the rider of the motorcycle belonging to the first respondent and police did not examine her before registering the FIR and complaint given by the first claimant was not registered. The respondents have not produced any contra evidence to disprove the evidence of P.W.1. The respondents have not examined any eye witness to prove that the accident occurred only due to the rash and negligent driving of the deceased. The Tribunal considering all the above facts held that both drivers are equally responsible for the accident by giving cogent and valid reason.

16.As far as quantum of compensation is concerned, the claimants have produced salary certificate of the deceased. The employer of the deceased was not examined and therefore, the Tribunal has fixed a sum of Rs.12,000/- per month and after deducting 1/3 fixed at Rs.8,000/- as monthly income and applying the multiplier of 8, awarded a sum of Rs.7,68,000/- as loss of income. He also submitted that the Tribunal erred in applying the multiplier of 8 instead of 9. The age of the deceased is 58 years at the time of accident. As per the judgment reported in **2009(2) TN MAC 1 (SC) Sarla Verma v. Delhi Transport Corporation**, the correct multiplier is 9. This Court fixed the multiplier of 9 and awarded a sum of **Rs.8,64,000/-** (Rupees Eight Lakhs Sixtyfour Thousand

Only) as loss of income ($8000 \times 12 \times 9 = 8,64,000$).

17. The learned counsel for the appellant submitted that the amount awarded towards loss of love and affection and consortium is too meagre, has considerable force. A sum of Rs.15,000/- (Rupees Fifteen Thousand only) awarded by the Tribunal towards loss of consortium, which is on the lower side, is enhanced to a sum of **Rs.50,000/-** (Rupees Fifty Thousand Only).

18. Further, a sum of Rs.10,000/- (Rupees Ten Thousand only) was awarded by the Tribunal towards loss of love and affection, which is on the lower side, is enhanced to a sum of **Rs.25,000/-** each (Rupees Twenty Five Thousand Only) and totally a sum of **Rs.75,000/-** to respondents 2 to 4.

19. Similarly, a sum of **Rs.2,500/-** (Rupees Two Thousand Five Hundred Only) was awarded towards Funeral Expenses and this Court finds that the same is very meagre and therefore, a sum of **Rs.5,000/-** (Rupees Five Thousand Only) is awarded by this Court.

20. The rate of interest awarded by the Tribunal at 7.5% per annum is confirmed.

21. In view of the settled position of law, this Court modifies the award of the Tribunal by reducing the compensation, as below:-

S.N o	Description	Amount awarded by Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed or enhanced or granted
1.	Loss of Income	7,68,000	8,64,000	enhanced
2.	Loss of Consortium	15,000	50,000	enhanced
3.	Loss of Love and Affection	10,000	75,000 (25,000x3)	enhanced
4.	Loss of funeral expenses	2,500	5,000	enhanced
	Total	7,95,500	Rs.9,94,000	By reducing a sum of Rs.1,98,500/-

22. In the result,

(i) This Civil Miscellaneous Appeal in C.M.A(MD)No.84 of 2017 is partly allowed, enhancing the award of the Tribunal from **Rs.7,95,500/-** (Rupees Seven lakhs Ninety Five Thousand Five Hundred only) to a sum of **Rs.9,94,000/-** (Rupees Nine Lakhs Forty Four Thousand Only). No costs.

(ii) The claimants are entitled to a sum of Rs.4,97,000/- along with interest at the rate of 7.5% per annum from the date of petition till date of realisation and proportionate costs, as apportioned by the Tribunal, as the negligence is fixed at the ratio of 50:50 on the rider of the two wheeler and the deceased.

(iii) The Claimants are directed to submit their Savings Bank Account Details along with the copies of their passbooks to the Tribunal **forthwith**;

(iv) The second respondent- 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.176 of 2012 on the file of the Motor Accident Claims Tribunal-cum-II Additional District Court, Thoothukudi, within a period of **eight weeks** from the date of receipt of a copy of this judgment;

(v) The 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

(vi) On such payment of Additional Court fees, if any, by the claimants, the Tribunal is directed to transfer the entire award amount along with accrued interest and costs directly to the respective Personal Savings Bank Account Numbers of the Claimants, through RTGS/NEFT system, after getting their Account Details, within a period of **two weeks thereafter**;

23. In view of the judgment passed in C.M.A(MD)No.84 of 2017, C.M.A(MD)No.496 of 2014 is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar (Crl.side)

/True Copy/

Sub Assistant Registrar

To

The Motor Accident Claims Tribunal,
II Additional District Judge, Thoothukudi.

+ 1 CC TO Mr.S.SIVA THILAGAR, ADVOCATE IN SR No. 15883
+ 1 CC TO Mr.B.PRASANNA VINOTH, ADVOCATE IN SR No. 16121

AM/MRN

TE/JC/SAR-IV : 07/06/2017 : 6P/4C

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M.P(MD)No.4 of 2014 and
C.M.A.(MD)No.84 of 2017
20.03.2017