

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

RESERVED ON : 26.07.2017

PRONOUNCED ON : 21.11.2017

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THE HONOURABLE MRS.JUSTICE J.NISHA BANUC.M.A(MD)No.827 of 2014

1.Veera Lakshmi
2.Minor.Sundara Prasath
3.Minor.Ajith Comber
4.Duraisamy
5.Alagumani
(minors 2&3 are rep.by its (natural guardian mother)
1st petitioner ... Appellants/ Petitioners

VS.

1.The Commissioner of Police, Madurai City,
Madurai.
2.The Superintendent of Police, Madurai
District,
Madurai. ... Respondents / Respondents

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act against the order made in M.C.O.P.No.1673 of 2007 dated 13.11.2013 on the file of the Motor Accident Claims Tribunal (District and Sessions Judge (communal clashes Court) Madurai.

For Appellant :Mr.A.Hajamohideen For Respondents
: Mr.R.Velmurugan
Govt.Advocate

***********J U D G M E N T**

This Civil Miscellaneous Appeal has been filed by the appellant against the award, dated 13.11.2013 on the file of the Motor Accident Claims Tribunal (District and Sessions Judge (communal clashes Court) Madurai.

2. The case of the appellant is that the accident occurred on 12.8.2006 at about 3 p.m. near the junction of TPK-EP and Muthupatti Road, byekara. At the time of accident, the deceased was riding his motor cycle NT 72 2041 along with his friend one Sentil Comber from Byekara E.P.Main road to Mutthupatti from west to east. At that time, the respondent's police van bearing Registration No.TN.59 G 0392 which was coming from the opposite direction, in a rash and negligent manner, suddenly dashed against the bike. Due to the heavy



impact, Pandi and pillion rider-senthilkumar were thrown away and sustained grievous injuries. On the way to hospital, Pandi died. The accident happened only due to the rash and negligent driving of the respondent's vehicle against whom the traffic III police had registered a case in Cr.No.154/2006.

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3. Learned counsel for the appellants submitted that due to the sudden demise of the first petitioner's husband, the petitioners were thrown to poverty and the first appellant lost her companion at her young age, so also the minor appellants, apart from the valuable guidance and care of their father. Further, the parents have also lost their lovable son. Hence, they pray for appropriate orders.

4. The second respondent has filed a detailed counter affidavit in which it is stated that the vehicle involved in the accident did not belong to the first respondent. Further, the rider and deceased Pandi were under the influence of alcoholic state and without proper driving license, the deceased drove the vehicle in question in a rash and negligent manner and due to which, the accident occurred and therefore, the claimants are not entitled to get any relief. The claim of the appellants are on the higher side on various heads and no proof has been filed as to the income of the deceased and therefore, the petitioner are not entitled for any heads.

5. Before the tribunal, on the side of claimants, two witnesses were examined as P.Ws.1 and 2 and marked four documents as Exs.P.1 to P.4 and on the side of the respondents, one witness was examined and no documents were marked by the respondent police.

6. After considering all the materials and evidence, the Court below dismissed the claim of the claimant and therefore, the appellants are before this Court.

7. The learned counsel appearing for the appellants submitted that the Court below without appreciating the oral and documentary evidence available on record has wrongly come to the conclusion that the respondents are not liable to pay compensation to the appellants and hence, he prays for appropriate orders.

8. *Per contra*, the learned counsel for the respondents submitted that the Court below found that the appellant was solely responsible for the accident as he was driving the vehicle in a drunken mood and therefore, dismissed the claim of the appellant and thus, no interference is required in the judgment of the Court below and prays for the dismissal of this civil miscellaneous appeal.

9. Heard the learned counsel appearing on both sides and perused the materials available on record.



10. In the case on hand, P.W.2 has been examined as an eye witness and he has deposed that on the fateful day, he and the deceased drove the vehicle slowly and in the left side of the road from E.B main road to Muthpatti and at that time, the respondents van bearing registration No.T.No.59 G 0392, the police van driven by its driver, in a rash and negligent manner without following the traffic rules, all of a sudden hit the two wheeler and the deceased and P.W.2 were thrown out from the spot and sustained injuries. He further deposed that the police van came to the right side and caused the accident. However, the learned Judge did not consider the crucial evidence of the eye witness, namely, P.W.2, but based on the First Information Report, she proceeded the case and delivered the judgment. It is apt to mention that nobody can be judge of his own cause. But, it is unfortunate in the present case that the First Information Report has been registered to suit the needs of the respondent police by conveniently not preparing the rough sketch and map.

11. Before the Court below, the claimants pleaded that the accident had occurred only due to the rash and negligent driving of the second respondent's driver, to which the Court below was of the view that it is because of the deceased that the accident had occurred. For arriving at such conclusion, the court below had adopted the peculiar view stating that the appellants have not marked rough sketch to show that the accident had occurred due to the rash and negligent driving of the respondent. As per the Police-Order 244, it is stated about "Sketch Map" in which it is stated that it is incumbent on the Investigating Officer to prepare these maps or plans of scenes of crime to be attached to the relevant case diaries. The Investigating Officer has also given discretion in preparing plans of scenes of occurrence in any other case not listed in the first part of this rule. The sketch map has invariably to accompany the charge sheet in the cases mentioned in sub-clause (a) of this rules. The map or plan has to be drawn to a scale as it may have to be exhibited in court and it shall bear the signature of reason that the appellants have not filed protest petition against the First Information Report cannot be accepted for the reason that a person who is in a distressed mind cannot be expected to go and file a protest petition against the First Information Report. Even then, that cannot be the reason to deny the compensation.

12. On assumption, the learned Judge presumed that the deceased would have been in alcoholic state, though in the postmortem report there was no mention that the deceased was in an alcoholic state. The learned Judge further observed that due to the delay in the postmortem, the alcohol would have been digested in the intestine within three hours. Such idealistic view adopted by the Court below is unfortunate without basing on any evidence and therefore, it cannot be sustained in the eye of law.



13. In my considered opinion, the respondent police failed to do their statutory duty to prepare rough sketch just to escape the clutches of law. Therefore, the contention that P.W.2 has given the compliant and signed the First Information Report cannot be accepted for the reason that as already pointed out earlier, the burden of proof lies on the respondent police to substantiate the fact that the deceased was cause for the accident, which they have not done so. Further, atleast, the police could have sent the pillion rider for medical check up, but, which was also not done by the respondent to prove their case.

14. Above all, in the case on hand, to suit the needs of the respondent police, postmortem was done after 15 hours of the accident. On the basis of the First Information Report, if the court is of the view that the deceased was in an alcoholic mood, either it should have done blood test or urine test to unearth the truth, but, such parameters have not been followed in this case. As already stated earlier, the delay in non-sending the body of the deceased is not the fault of the claimants, but, to suit the case of the respondent police.

15. Viewed from any angle, the reasons attributed by the Court below on the basis of the First Information Report that the deceased was in alcoholic mood is highly unfortunate. This Court emphasised that the First Information Report is not omniscient in all the cases and it is not the conclusive proof and it is also not an encyclopedia for deciding the case. It is a piece of evidence by which the court below ought to have decided the matter, but, it had mechanically passed the order, which is impugned in this civil miscellaneous appeal.

16. Above all, a very detailed counter affidavit has been filed by the second respondent and such a counter has been prepared based on the judgment of the lower Court to fill up the lacuna caused in the judgment of the Court below, which cannot be entertained by this Court.

17. For the foregoing reasons and observations and discussions, the order of the Court below is liable to be set aside and this Civil Miscellaneous Appeal liable to be allowed in the following manner.

17.1. In the claim petition, the claimants have stated that the deceased was earning a sum of Rs.4,500/- per month by eking out his livelihood as loadman at the time of accident. In the case of *SYED SADIQ v. DIVISIONAL MANAGER, UNITED INDIA INSURANCE CO. LTD.*, reported in 2014 (1) TN MAC 459, it is held that in the absence of definite income a sum of Rs.4,500/- can be taken as monthly income of the deceased and therefore, the deceased would have easily earned at least a minimum amount of Rs.4,500/- per month as monthly income, which is very reasonable. Further, as per the judgment in *Sarla Varma Vs. Delhi Transport Corporation*, reported in

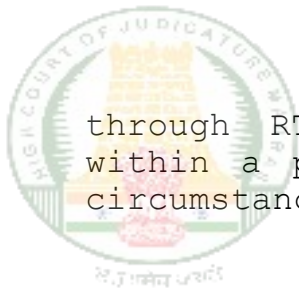
2009 SC 3104, if 50% of the income is taken for future prospects of the deceased, which comes to Rs.2,250/- and put together, it would be around Rs.6,750/-. After deducting 1/4 of his personal expenses, his monthly income can safely be arrived at Rs.5,074/- per month and it is rounded off to Rs.5,000/- and therefore, if multiplier 16 is adopted, it works out to Rs.5,000x12x16=Rs.9,60,000/- towards the loss of income of the deceased. Further, a sum of Rs.25,000/- each is awarded towards loss of love and affection to the claimants; The first respondent became a young widow and therefore, a sum of Rs.1,00,000/- is awarded towards loss of consortium to the wife of the deceased and a sum of Rs.5,000/- is awarded towards funeral expenses.

Sl. No.	Head(s)	Amount awarded by this Court
1.	Loss of Income	Rs.9,60,000/-
2.	Loss of Consortium to 1 st Claimant/Wife of the deceased	Rs.1,00,000/-
3.	Loss of Love and Affection to each minor children	Rs. 75,000/-
4.	Loss of future prospectus	Rs.50,000/-
5.	Funeral Expenses	Rs. 5,000
Total		Rs.11,90,000

The said amount shall carry with interest at 7.5% p.a. from the date of petition till the date of realisation of the amount awarded by this Court. Out of the said amount, the first claimant is permitted to withdraw 40% of the award amount and the minors of the deceased are entitled to 20% each of the award amount and the amount relating to the minors shall be deposited by the Tribunal in any one of the Nationalised Banks in a Fixed Deposit scheme, till they attain majority. The first respondent, who is the mother and 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; and the fourth and fifth respondent, who is the father and mother of the deceased is permitted to entitled to 10% each of the award amount granted by this Court.

18. The second respondent is directed to deposit the entire enhanced award amount along with accrued interest and costs to the credit of M.C.O.P.No.1673 of 2007 on the file of the Motor Accident Claims Tribunal (District and Sessions Judge (communal clashes Court) Madurai, within a period of four weeks from the date of receipt of a copy of this judgment;

19. On compliance of payment of Court fees and other procedures, the Tribunal is directed to transfer the award amount, as approved by this Court in this Civil Miscellaneous Appeal, along with accrued interest and costs directly to the respective Personal Savings Bank Account Numbers of the appellants-claimants,



through RTGS/NEFT system, after getting their Account Details, within a period of four weeks, thereafter; and in the facts and circumstances of the case, there shall be no order as to costs.

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20. Accordingly, this civil miscellaneous appeal is allowed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CSII)

/True Copy/

Sub-Assistant Registrar

To

The District and Sessions Judge
(communal clashes Court),
Motor Accident Claims Tribunal
Madurai.

Copy to:-

The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

+One cc to Mr.A.Hajamohideen, Advocate, SR.No.88446

+One cc to The Special Government Pleader, SR.No.88639

ssm

RL/5C/6P/KP/SAR4/4/12/2017

Judgment made in

C.M.A (MD) No.827 of 2014

21.11.2017