



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on: 06.04.2017

Delivered on: 25.04.2017

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CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MR.JUSTICE P.VELMURUGAN

C.M.A. (MD) No. 952 of 2016
and CMP (MD) .No. 8539 of 2016

The Divisional Manager,
The Royal Sundaram Alliance Insurance,
No. 176,, D - F, Tiruvandrum Road,
Vannarpettai, Tirunelveli.

... Appellant/2nd respondent

Vs.

1. Karthigai Veni
2. Minor Dharshan
3. Minor Sanchana
4. Valli

(Minor Respondents 2 & 3 rep. through the
mother the 1st respondent Karthigai Veni)

... Respondents 1 to 4 /Claimants

5. Pathalamuthu

... 5th Respondent/1st Respondent

PRAYER : Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the fair and decreetal order dated 03.03.2016 made in M.C.O.P.No. 1955 of 2014 on the file of the Motor Vehicle Accident Claims Tribunal, (VI Additional District Judge), Madurai.

For Appellant	: Mr.M. Jerin Mathew for Mr. M.E. Ilango
For R1 to R4	: Mr.G. Prabhu Rajadurai
For R 5	: Mr.J.C.Rathinavel Pandian

J U D G M E N T

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

This Civil Miscellaneous Appeal has been filed by the appellant/second respondent to set aside the fair and decreetal order dated 03.03.2016 made in M.C.O.P.No. 1955 of 2014 on the file of the Motor Vehicle Accident Claims Tribunal, VI Additional District Judge, Madurai.



2. The case of the claimants in the claim petition is that on 16.06.2014 at about 9.00 a.m, when the deceased was riding a Two Wheeler, bearing Registration No.TN-59-AD-4593, from Tirunelveli to Melapalayam, at KTC Nagar from North to South side by keeping left side of the road, with observing the Traffic Rules and wearing helmet. When he came at Melapalayam Road, near BD colony, the driver of the tipper lorry, bearing Registration No.TN-72-AA-9100, belonging to the first respondent, was driving the tipper lorry in a rash and negligent manner without raising horn and hit at the backside of the two wheeler of the deceased. Due to that, back wheels of the lorry had run over the body of the deceased and caused serious injuries to the deceased. The injured was taken to the Government Hospital at Tirunelveli. After taking first aid, he was admitted in the Devadoss Multi Speciality Hospital, Madurai and further treatment was given to him and he was treated an inpatient from 16.06.2014 till 17.07.2014 and died on 17.07.2014.

3. Thereafter, a case in Crime No.186 of 2014 was registered for offences under Sections 279, 337 and 304(A) of IPC against the driver of the offending vehicle. The accident occurred due to the rash and negligent driving of the driver of the vehicle of the first respondent and the vehicle is insured with the second respondent. The first, second, third and fourth claimants are the wife, minor son, minor daughter and mother of the deceased respectively.

4. Therefore, the claimants under various heads have claimed compensation, as follows:-

HEAD	AMOUNT CLAIMED BY THE CLAIMANT (Rs.)
Loss of income	62,00,000/-
Transport to hospital	25,000/-
Extra Nourishment	50,000/-
Medical Expenses	10,000/-
Compensation for love & affection	5,00,000/-
Compensation for loss of consortium	4,00,000/-
Compensation for funeral and Transport Expenses	25,000/-
Total	82,00,000/-
Claim restricted to	50,00,000/-

5. In order to prove the case, on the side of the claimants, Exs.P.1 to Exs.P.18 were examined and Exs.P.1 to Exs.P.18 were marked and on the side of the Insurance Company, the driver of the vehicle was examined as R.W.1 and no document was marked.



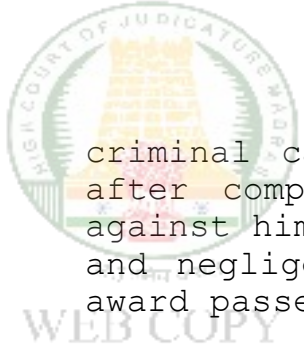
6. After considering all the facts and circumstances of the case and perusing the oral and documentary evidence let in by the parties, the Tribunal had awarded the compensation as follows:

HEAD	AMOUNT AWRDED BY THE TRIBUNAL (Rs)
Loss of income	
Loss of dependency and future prospects	8,77,500/-
Loss of future prospects	1,00,000/-
Transport to hospital	15,000/-
Extra Nourishment	25,000/-
Medical Expenses	7,27,320/-
Compensation for love & affection	2,00,000/-
Compensation for loss of consortium	1,00,000/-
Maintenance of 2 children (each Rs.1,00,000/-)	2,00,000/-
Attendant Charges	15,000/-
Loss of happiness	50,000/-
Loss of estate	1,00,000/-
Funeral expenses	25,000/-
Total	24,34,820/-

7. Aggrieved by the impugned award passed by the Tribunal, the Insurance Company has filed this Civil Miscellaneous Appeal before this Court.

8. Learned counsel for the appellant would submit that the accident occurred not due to rash and negligent driving of the driver of the offending vehicle of the first respondent. But, the accident occurred only due to rash and negligent riding of the deceased, who was riding the two wheeler. The lorry was driven at a moderate speed on the proper side of the road with sounding horn by taking necessary precautionary measures. The deceased was riding his Two Wheeler at a high speed without wearing helmet and when he attempted to overtake the lorry at a high speed, he lost control over his vehicle and he fell into the left rear wheel of the lorry. The driver of the lorry was no way responsible for the accident and the accident had occurred only due to rash and negligent riding of the deceased. The Tribunal ought to have fixed the contributory negligence on the deceased for his negligence. Hence, the award passed by the Tribunal is liable to be set aside.

<https://hcservices.courtsgov.in/hcservices/>
9. Learned counsel appearing for the respondents 1 to 4/ claimants 1 to 4 would submit that the accident occurred only due to the rash and negligent driving of the driver of the lorry. A



criminal case was registered against the driver of the lorry and after completion of investigation, a charge sheet was also laid against him. Enquiry revealed that the accident was only due to rash and negligent driving of the driver of the lorry. Therefore the award passed by the Tribunal is just and reasonable.

10. Heard the learned counsel appearing for the parties and perused the documents placed on record.

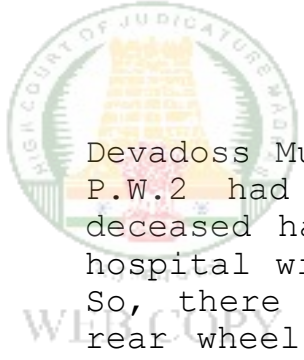
11. *Points for consideration:-*

- i) *Whether the accident occurred due to the rash and negligent driving of the driver of the offending vehicle bearing Registration No. TN-72-AA-9100 ?*
- ii) *Whether the award passed by the Tribunal is just and reasonable?*

Point No. 1

12. Learned counsel for the appellant would submit that the accident occurred not due to rash and negligent driving of the driver of the offending vehicle of the first respondent. Actually, the accident occurred only due the rash and negligent riding of deceased, who was riding his two wheeler. R.W.1 had deposed that, the lorry was being driven by him at a moderate speed on the proper side of the road and sounding horn and taking necessary precautions. The deceased was riding the motorcycle at a high speed without wearing helmet and attempted to overtake the lorry from its left side. At the time the deceased lost his control over his vehicle on account of the high speed and uneven condition of the road and fell into the left rear wheel of the lorry, which was stopped on the spot immediately. The driver of the lorry was in no way responsible for the accident and the accident occurred only due to rash and negligent ridding of the deceased. Therefore, the appellant/Insurance Company is not liable to pay compensation. Further he would submit, even otherwise the deceased also contributed his negligence to the accident. Therefore, the Tribunal had failed to look into the facts and without assigning any sound reason fastened the liability on the driver of the first respondent. The claimants have not examined any eye witness and P.W.1 and P.W.2 had not deposed that they had seen the accident. Therefore, only evidence is R.W.1, who is the driver of the offending vehicle, who had deposed the manner of the accident. Therefore the accident occurred only due to rash and negligent riding of the deceased. The Tribunal ought to have fixed contributory negligence on the deceased to the accident.

13. On the other hand, the learned counsel for the respondents/claimants would submit that the accident occurred only due to rash and negligent driving of the driver of the lorry. FIR was registered against the driver of the lorry and charge sheet was also laid against him. P.W.2, who is the brother of the deceased, deposed that when he was in Madurai, his brother-deceased himself telephoned him and narrated the manner of the accident and he immediately rushed to Tirunelveli and thereafter admitted him in



Devadoss Multi Speciality Hospital at Madurai for treatment. Though P.W.2 had not seen the accident, his evidence shows that the deceased had narrated the manner of accident to him and he was in hospital with the deceased while the deceased was taking treatment. So, there is no reason to disagree his evidence. Admittedly left rear wheel of the lorry ran over the deceased. From the oral and documentary evidence, it is clear that the accident occurred only due to rash and negligent driving of the driver of the lorry and the Tribunal has correctly come to the conclusion that the accident occurred only due to rash and negligent driving of the driver of the lorry. No contributory negligence on the part of the deceased was proved by the appellant. Accordingly, this point is answered.

Point No. 2

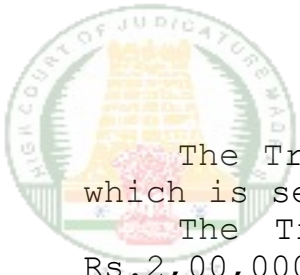
14.As far as the quantum of the compensation is concerned, though the claimants, in their claim petition, had stated that the deceased was doing business and running a company Nikki Sports Wear and but no valid document was produced and proved the same as the manner known to law. Therefore, the Tribunal had correctly fixed notional income as Rs.6500/- per month. As per Ex.P.11, Driving Licence, the date of birth of the deceased is mentioned as 15.05.1974 and the date of accident is on 16.06.2014. Therefore, on the date of the accident the deceased had completed 40 years of age. But, the Tribunal failed to consider this and simply relied on the postmortem certificate and fixed the age of the deceased as 38. Therefore, the multiplier of 15 was adopted.

As stated above, on the date of the accident the deceased had completed 40 years, the multiplier of 14 would apply. Therefore loss of income would be $\text{Rs.6500} \times 14 \times 12 = \text{Rs.10,92,000/-}$.

As per the judgment in ***Rajesh and Others Vs. Rajbir Singh and others reported in 2013 ACJ 1403 (SC)***, the Hon'ble Supreme Court has held that even in a case where persons are not having any permanent income, future prospects will have to be taken into consideration and in the age group upto 40, future prospects has to be taken as 50% and age between 40 and 50, future prospects has to be taken as 30%. In this case, on the date of accident the deceased had completed 40 years of age, hence, 30% of monthly income has been taken into consideration. Accordingly, future prospects would come to $\text{Rs.1950} \times 14 \times 12 = \text{Rs.3,27,600/-}$. Therefore, the loss of income $\text{Rs.10,92,000/-} + \text{future prospects Rs.3,27,600/-} = \text{Rs.14,19,600/-}$.

Since, there are four dependants, 1/4 of the income has to be deducted for his personal expenses. Therefore, the loss of income would be Rs.8,19,000/- . ($\text{Rs.10,92,000} - \text{Rs.2,73,000}$) and future prospects would be Rs.2,45,700/- ($\text{Rs.3,27,600} - \text{Rs.81,900}$)

The Tribunal has awarded Rs.25,000/- towards extra nutritious. The deceased was fully under treatment. Therefore the award towards extra nutritious is reduced to Rs.5,000/- from Rs.25,000/-.



The Tribunal has awarded Rs. 15,000/- towards attendant charges which seems to be higher, so the same is reduced to Rs. 5,000/-.

The Tribunal has awarded Rs.15,000/- towards transportation, Rs.2,00,000/- towards loss of love and affection, Rs.7,27,320/- towards medical expenses, Rs.1,00,000/- towards loss of consortium and Rs.25,000/- towards funeral expenses. The amount awarded under the above five heads appear to be reasonable.

The Tribunal has awarded Rs.1,00,000/- towards loss of estate, which seems to be very high, therefore, it is reduced to Rs. 5,000/-.

15. The compensation claimed by the claimant, the compensation awarded by the Tribunal and the compensation enhanced by this Court are as follows:-

HEAD	AMOUNT CLAIMED BY THE CLAIMANT (Rs.)	AMOUNT AWRDED BY THE TRIBUNAL (Rs)	AMOUNT AWARDED BY THIS COURT (Rs.)
Loss of income	62,00,000/-		8,19,000/-
Loss of dependency and future prospects	-	8,77,500/-	-
Loss of future prospects	-	1,00,000/-	2,45,700/-
Transport to hospital	25,000/-	15,000/-	15,000/-
Extra Nourishment	50,000/-	25,000/-	5,000/-
Medical Expenses	10,000/-	7,27,320/-	7,27,320/-
Compensation for love & affection	5,00,000/-	2,00,000/-	2,00,000/-
Compensation for loss of consortium	4,00,000/-	1,00,000/-	1,00,000/-
Maintenance of 2 children (each Rs.1,00,000/-)	-	2,00,000/-	-
Attendant Charges		15,000/-	5,000/-
Compensation for funeral and Transport Expenses	25,000/-	-	-
Loss of happiness	-	50,000/-	-
Loss of estate	-	1,00,000/-	5,000/-
Funeral expenses	-	25,000/-	25,000/-
Total	82,00,000/-	24,34,820/-	21,47,020/-
Claim restricted to	50,00,000/-	-	-

<https://hcservices.courts.gov.in/hcservices> 16. In the result,

(i) This Civil Miscellaneous Appeal in C.M.A. (MD) No.952 of 2016 is partly allowed modifying the award passed by the claims



Tribunal as shown above.

(iv) In the facts and circumstances of the case, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

The appellant is directed to deposit the compensation with interest at 7.5% per annum from the date of petition, if already not deposited, if already deposited any amount less the amount already deposited, 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 claimant are entitled to the modified compensation, in which the 1st claimant being the wife of deceased as well as the first class heir is entitled to Rs.9,50,000/-, 2nd claimant minor son of the deceased is entitled to Rs.4,50,000/-, 3rd claimant minor daughter of the deceased is entitled to Rs.4,50,000/- and the 4th Claimant mother of the deceased is entitled to Rs.2,97,020/-. Since the accident occurred in the year 2014, The claimants 1 and 4 are permitted to withdraw their share in the award amount less the amount already withdrawn if any, with proportionate interest and cost, through RTGS by filing necessary Application before the Tribunal and the Tribunal is directed to deposit the shares of the minor children in any one of the Nationalized Banks until they attained majority. The 1st claimant is permitted to withdraw the interest amount once in six months, if she wants, for maintaining the minor children. The appellant is permitted to withdraw the excess amount, if any.

Sd/-

Assistant Registrar (P&A)

/True Copy/

Sub Assistant Registrar

To

The VI Additional District Judge,
(Motor Vehicle Accident Claims Tribunal),
Madurai.

+ 1 CC TO Mr.M.E.ILANGO, ADVOCATE IN SR No. 53803
+ 1 CC TO Mr.G.PRABHU RAJADURAI, ADVOCATE IN SR No. 53704
+ 1 CC TO Mr.J.C.RATHNAVEL PANDIAN, ADVOCATE IN SR No. 54286

CM/DSK

TE/MR/SAR-I : 30/06/2017 : 7P/5C

Judgment made in
C.M.A.(MD)No.952 of 2016 and
CMP(MD).No. 8539 of 2016
25.04.2017