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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 19.04.2017
DELIVERED ON : 15.06.2017

CORAM:

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

C.M.A. (MD) Nos.1754 of 2013 & 1123 of 2015
& M.P. (MD) No.1 of 2013

C.M.A. (MD) No.1754 of 2013:

The Oriental Insurance Co.Ltd.,
Through its Divisional Manager,
Door No.II, No.7, North Veli Street,
K.J.R.Complex,
Madurai.

... Appellant / Respondent No.2

Vs.

1.Vijayalakshmi
2.Minor Dhanaratchanya

... Respondents 1 & 2 /
Respondents 1 & 2

3.Karuppasamy
4.K.Rajamany

... Respondents 3 & 4 /
Respondents 4 & 3

5.Selvi K.Anitha

... Respondent 5 / Respondent 5

6.P.R.P.Exports,
Through its Proprietor
Therkku Theru Village and Post,
Melur Taluk, Madurai District.
(Minor 2nd respondent rep by her
mother 1st respondent)

... Respondent 1 / Respondent No.6

PRAYER: The Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 09.07.2013 in M.C.O.P.No.544 of 2009 passed by the Motor Accident Claims Tribunal, District & Sessions Judge / Communal Clash Cases court, Madurai.

For Appellant : Mr.C.Ramachandran
For Respondents : Mr.S.Palanivelayutham for R1 to R5
No appearance for R6

**C.M.A. (MD) No.1123 of 2015:**

1.Vijayalakshmi
2.Minor Dhanaratchanya
3.Karuppasamy
4.K.Rajamani
5.Selvi K.Anitha ... Appellants / Petitioners
(Minor 2nd respondent rep.through
her mother and guardian
1st appellant)

Vs.

1.P.R.P.Exports,
Through its Proprietor
Therkku Theru Village and Post,
Melur Taluk, Madurai District.

2.The Divisional Manager,
Oriental Insurance Co.Ltd.,
Door No.II No.7, K.G.R.Complex,
North Veli Street,
Madurai District.

... Respondents 1 & 2 / Respondents

PRAYER: The Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 09.07.2013 in M.C.O.P.No.544 of 2009 passed by the Motor Accident Claims Tribunal, District & Sessions Judge / Communal Clash Cases Court, Madurai.

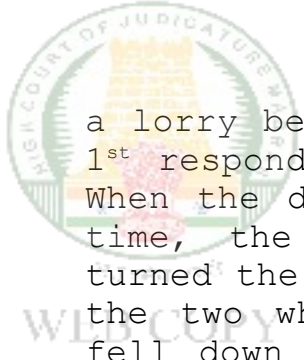
For Appellants	: Mr.S.Palanivelayutham
For Respondents	: Mr.K.Bhaskaran for R2
	No appearance for R1

COMMON JUDGMENT**(The Judgment was delivered by P.VELMURUGAN,J.)**

These Civil Miscellaneous Appeals are filed against the judgment and decree dated 09.07.2015 passed in M.C.O.P.No.544 of 2009 by the Motor Accident Claims Tribunal, District & Sessions Judge / Communal Clash Cases, Madurai.

2.The brief facts which are necessary to decide the issue involved in this appeal are as follows:

On 20.10.2008 at about 9.00 hours, the deceased namely, Dhanraj was going in his two wheeler bearing registration No.TN-58 / K-5328 from North - South at Madurai to Thirumangalam main road and



a lorry bearing registration No.TN-59 / AZ-3907, belonging to the 1st respondent, was also going in front of the said two wheeler. When the deceased was trying to overtake the said lorry, at that time, the driver of the lorry, without any signal, suddenly, turned the lorry on the right side of the road and thereby, dashed the two wheeler. Due to the same, the deceased namely, Dhanraj fell down and sustained grievous injuries including head injury. Immediately, he was taken to Thirumangalam Government Hospital. However, he died in the hospital. A criminal case in Crime No.369 of 2008 under Section 304(A) IPC was registered against the driver of the lorry. At the time of accident, the deceased was 27 years old and was working in a private company namely, Lupin Limited and was earning a sum of Rs.19,472/- per month. The legal heirs of the deceased claimed a sum of Rs.50 lakhs as compensation before the Motor Accident Claims Tribunal.

3.Before the Tribunal, the claim was resisted by the 2nd respondent / appellant / Insurance Company of the lorry, stating that there was no negligence on the part of the driver of the lorry. It is further stated that the place of the accident differs in the claim petition and in the FIR. The deceased, while overtaking a heavy loaded lorry, without making any signal, had driven the two wheeler in a rash and negligent manner and lost his control and thereby, dashed on the right side wheel of the lorry and caused the accident. It is further stated that if a lorry loaded with 40 tons of goods, there is no possibility to drive the lorry in a rash and negligent manner. It is also stated that the claim under various heads is on the higher side and the claimants should prove the income of the deceased and the legal heirship certificate and therefore, prayed for the dismissal of the claim petition.

4.Before the Tribunal on the side of the claimants, two witnesses were examined as P.W.1 & P.W.2 and totally 18 documents were marked as Exs.P1 to P18. On the side of the respondents, one witness was examined as R.W.1 and no document was marked. During examination, Ex.C1 was marked.

5.The Tribunal has framed the following points for consideration:

"(i) Under whose negligent, the accident occurred?

(ii) Whether the petitioners are entitled to get compensation from the respondents, if so, what is the quantum of compensation?"

After analysing oral and documentary evidences, the Tribunal has fixed the liability on the 1st respondent / owner of the lorry and also the appellant / Insurance Company and awarded a sum of Rs.40,07,602/- with interest at the rate of 7.5% per annum as compensation as under:

S.No.	Description	Award amount
1.	Transportation	5,000/-
2.	Funeral expenses	5,000/-
3.	Loss of love and affection	50,000/-
4.	Loss of consortium	20,000/-
5.	Loss of income	13,27,632/-
	Total compensation	14,07,632/-

Aggrieved over the same, the appellant / Insurance Company is before this Court by filing the Civil Miscellaneous Appeal in C.M.A.(MD)No.1754 of 2013 questioning the liability and the claimants filed the Civil Miscellaneous Appeal in C.M.A.(MD) No.1123 of 2015 for enhancement of compensation.

6.The learned counsel for the appellant / Insurance Company in C.M.A.(MD)No.1754 of 2013 would submit that the accident has not occurred due to rash and negligent driving of the driver of the lorry. The deceased, without making any signal, tried to overtake the heavy loaded goods vehicle in a rash and negligent manner and thereby, lost his control and allowed the two wheeler to hit the right side rear front wheel of the lorry and caused the accident. Hence, the driver of the lorry did not cause the accident and therefore, in the absence of negligence on the part of the driver of the lorry, the Tribunal wrongly fixed the liability on the appellant / Insurance Company. Hence, the same is liable to be set aside.

7.The learned counsel for the respondents 1 to 5 / claimants would submit that the accident had not occurred due to rash and negligent riding of the rider of the two wheeler. The deceased, while overtaking the lorry, the driver of the lorry, without making any signal, turned the lorry on the right side and thereby, dashed the two wheeler and caused the accident. Hence, the FIR was registered against the driver of the lorry and after investigation, the Police has laid charge sheet against the driver of the lorry alone. P.W.2 is the eye witness and he has deposed that as the four way road work was going on, the two wheeler overtook the lorry in a narrow service lane and at that time, suddenly, without making any signal, the lorry turned on the right side of the road and thereby dashed the two wheeler. Therefore, the Tribunal has rightly held that the accident had occurred due to rash and negligent driving of the driver of the lorry alone and the lorry was insured with the appellant / Insurance Company and therefore, fixed the liability on the appellant / Insurance Company. The deceased was working as a Marketing Executive in a private company, namely, Lupin Limited and was earning Rs.19,472/- and hence, the loss of income of the deceased has to be enhanced, and all other heads have to be enhanced.



8. Heard the learned counsel for the appellant / Insurance Company, learned counsel for the respondents 1 to 5 / claimants and perused the entire record, award passed by the Tribunal and also considered the submissions made on either side.

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9. The points for consideration in these appeals are as follows:

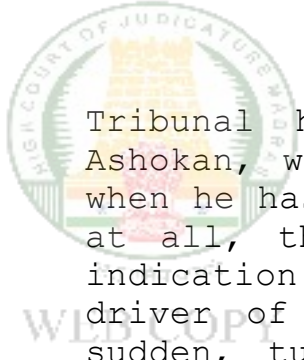
"(i) Whether the accident had occurred due to rash and negligent driving of the driver of the lorry alone or deceased also contributed his negligence to the accident?

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

10. Point No.1:-

In this aspect it is relevant to refer the evidence of P.W.1. He has deposed during the chief examination that the deceased while overtaking the lorry, has raised horn and thereafter, the driver of the lorry gave indication to overtake the lorry, but, the driver of the two wheeler suddenly, turned the lorry on the right side of the road and caused the accident. Whereas during the cross examination he has admitted that the right side of the rear front wheel of the lorry got scratched. As per the Inspection report of the lorry involved in accident annexed with Ex.R.1, Investigation Report of the insurance company, the right side rear front wheel of the lorry is scratched and there was no damage on the front portion of the lorry. As per Inspection report of two wheeler involved in accident, rear side number plate and rear side danger light of the two wheeler are damaged.

11. P.W.2, who is said to have been a co-employee of the deceased, is the eye witnesses to the accident. However, he had not chosen to give first information to the Police. P.W.2 gave information to the brother of the deceased and his brother alone informed the accident to the Police. Admittedly, it is not the case of the parties that the lorry was coming from the opposite direction in a rash and negligent manner and dashed against the two wheeler. It is also not the case of the claimants that the lorry was coming behind the two wheeler in a rash and negligent manner and dashed behind the two wheeler and caused the accident. As per the recitals of FIR and the deposition of P.W.2, it is stated that near a bridge, the lorry was proceeding before the two wheeler and when the deceased tried to overtake the lorry, the driver of the lorry gave indication but thereafter all of a sudden turned the vehicle on the right side. On perusal of the reports of the Motor Vehicle Inspector there was a damage on the right side rear front wheel of the lorry and not in the front portion of the lorry. On careful perusal of the deposition of P.W.2 and Inspection reports of lorry and two wheeler involved in the accident, the evidence of P.W.2 is not a credible one. The



Tribunal has erroneously relied on the 161 statement of one Ashokan, who said to have travelled with the P.W.2, more soever, when he has not been examined in this case before the Tribunal. If at all, the deceased raised horn and driver of the lorry gave indication and permitted to overtake the lorry, but later on, the driver of the lorry in a rash and negligent manner, all of a sudden, turned the lorry and hit on the back side of the two wheeler, entire two wheeler might have been damaged. But reports of the Motor Vehicles Inspector show otherwise. However, P.W.2 admitted that on the place of accident four ways road work was going on. The lorry is a goods vehicle, while it was going with heavy load on the spot when the road work was going on, the contention that the driver of the lorry turned the lorry rashly and negligently, hit the two wheeler is not believable. In that situation deceased would have waited for sometime and thereafter proceeded further. Under the said circumstances, the deceased and the driver of the lorry are equally responsible for the accident. Further, at the time of accident the deceased did not wear helmet. It shows that the deceased also contributed his negligence to the accident. Therefore, the Tribunal is not right in fixing liability solely on the driver of the lorry. Accordingly, the liability is fixed both on the deceased and the driver of the lorry and both are responsible for the accident and the liability is fixed at 50:50. The point no.1 is answered accordingly.

12. As far as the quantum of compensation is concerned, as per Ex.P.4 Postmortem Certificate, Ex.P.7 Post Graduate Certificate the age of the deceased at the time of accident was 27. As per Ex.P.12 the deceased was working as a Marketing Executive in Lupin Limited and based on Ex.P.13 Salary Certificate for the month of April 2007, the Tribunal fixed income of the deceased at Rs.8,677/- per month.

13. According to the claimants, the claimants 1 and 2 i.e., wife and minor child along with parents of the deceased are the dependants of the deceased. However, there is no evidence to prove that the parents of the deceased are the dependants of the deceased. During the course of examination of the 1st claimant as P.W.1, she deposed that the parents and sister of the deceased respectively i.e., the claimants 3 to 5 were not living with them under one roof under the care and custody of the deceased. Neither family card nor any other relevant material evidence has been produced to prove this fact. In the absence of the any reliable material, it is made clear that claimants 1 and 2 alone are the dependants of the deceased. In view of the decision, in the case of, **Sarla Verma and others Vs. Delhi Transport Corporation and another**, reported in **2009 ACJ 1298**, this Court is of the view that one third of the income, towards personal expense



14. Considering Exs.P.3, 4, 7, 8 and 9, the age of the deceased at the time of accident was 27, the correct multiplier is 17. The Tribunal fixed the monthly income of the deceased at Rs.8677/- (Basic Pay Rs.8477/- + Education Allowance Rs.200/- = Rs.8,677). On perusal of the Ex.P.14, Basic pay is Rs.8477/-, HRA is Rs.2400/-, Education allowance is Rs.200/-, Conveyance allowance is Rs. 700/- and Field Expenses - Reimbursement is Rs.7695/-. Considering the Ex.P.14, salary certificate of the deceased, monthly income of the deceased for the purpose of calculating loss of income is fixed as Rs.11,577/- per month (Basic Pay = 8,477/- + HRA = Rs.2400/- + Conveyance allowance = Rs.700/- = Rs.11,577/-). The wife and minor child are the dependents of the deceased. In view of the decision reported in **2009 ACJ 1298 in Sarala Verma and others Vs. Delhi Transport Corporation and another** one third towards personal expenses has to be deducted and that the monthly contribution to the family of the deceased would be $\text{Rs.11,577} \times \frac{1}{3} = 7,718/-$. In view of the above, the loss of income of the deceased is calculated as $\text{Rs.7,718} \times 12 \times 17 = 15,74,472/-$. As discussed above, the negligence is fixed at 50:50, ie., both the driver of the lorry and the deceased are equally liable for the accident. Therefore, 50% has to be deducted from the loss of income of the deceased. Accordingly, the **loss of income** of the deceased is calculated as under:

$$= 15,74,472 \times 50\% = 7,87,236/-$$

The age of the deceased, at the time of accident, was 27 years and therefore, definitely, some amount towards future prospects has to be added as per the decision of the Hon'ble Supreme Court reported in **2013(9) Supreme Court Cases 54 (Rajesh and others Vs. Rajbir Singh and others)**. Accordingly, the claimants are entitled for **future prospects** and the same is as under:

$$\text{loss income} \times (50/100) = \text{Rs.3,93,618/-}$$

15. The Tribunal awarded Rs.20,000/- towards **loss of consortium**. The 1st claimant, who is the wife of the deceased, lost her husband in her young age and hence, the said award towards this head is not reasonable and the same is enhanced to Rs.1,00,000/-.

(ii) The Tribunal awarded a sum of Rs.50,000/- towards loss of love and affection. The claimants have lost the love and affection of the deceased and hence, this Court is of the view that a sum of Rs.50,000/- is awarded to each of the claimants 1 to 5. Accordingly, the **loss of love and affection** would come to Rs.2,50,000/-.

(iii) For funeral expenses, the Tribunal awarded Rs.5000/- towards funeral expenses. This Court is of the view that a sum of Rs.25,000/- is reasonable towards **funeral expenses**.



(iv) The Tribunal awarded a sum of Rs.5,000/- towards **transportation**. This Court is of the view that a sum of Rs.10,000/- is reasonable.

(v) The Tribunal has not awarded any amount towards **loss of estate**, this Court awards Rs.5,000/- towards the same.

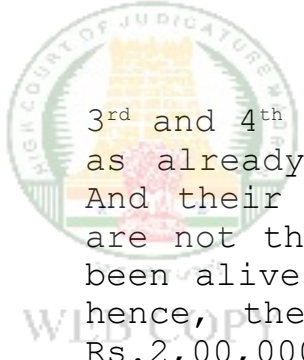
16. Since, it is already held that the accident had occurred due to negligence on the part of both the deceased and driver of the lorry, each having been held liable for contributory negligence to the extent of 50 per cent, the compensation is calculated thus:- :

S. No.	Description	Amount awarded by		DUE TO CONTRIBUTORY NEGLIGENCE REDUCED TO 50% (Rs)
		Tribunal	this Court	
1.	Loss of income	13,27,632	15,74,472	7,87,236
2.	Future prospects	--	7,87,236	3,93,618
3.	Loss of consortium	20,000	1,00,000	50,000
4.	Loss of love and affection	50,000	2,50,000	1,25,000
5.	For funeral expenses	5,000	25,000	12,500
6.	Transportation	5,000	10,000	5,000
7.	Loss of estate	--	5,000/-	2,500
Total compensation		14,07,632	27,51,708/-	13,75,854

Hence, the claimants are entitled for the modified compensation of Rs.13,75,854/- with 7.5% interest per annum.

17. In the result, the award dated 09.07.2013 in M.C.O.P.No.544 of 2009 passed by the learned Motor Accident Claims Tribunal, District & Sessions Judge / Communal Clash Cases, Madurai is hereby modified as above and the Civil Miscellaneous Appeal C.M.A.(MD)No.1754 of 2013 is partly allowed and modified and C.M.A.(MD)No.1123 of 201 is dismissed and modified as above. No costs. Consequently, connected M.P is closed.

18. The Appellant Insurance Company/second respondent 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 1st claimant being the wife of deceased as well as the dependant is entitled to Rs.6,00,000/-, 2nd claimant minor daughter of the deceased as well as dependant of the deceased is entitled to Rs.4,00,000/- and the



3rd and 4th dependants are the father and mother of the deceased and as already held that they all were not residing under one roof. And their names are not found in the family card and hence they are not the dependants of the deceased. However, had the deceased been alive, he would contribute to some extent to his parents and hence, the 3rd and 4th claimants are entitled to Rs.1,00,000/-and Rs.2,00,000/-respectively. The 5th claimant is the sister of the deceased is entitled to Rs.75,854/-. Since the accident occurred in the year 2008, the claimants 1,3,4 and 5 are permitted to withdraw the entire amount that would be deposited by the appellant. The claimants 1,3,4 and 5 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 child, in a Fixed Deposit in any one of the Nationalized Banks, renewable periodically until she attains majority. The first respondent/first claimant is permitted to withdraw the interest amount once in six months, if she wants, for maintaining the minor child. The appellant Insurance company is permitted to withdraw the excess amount, if any.

Sd/-
Assistant Registrar

/True copy/

Sub Assistant Registrar

To
The District & Sessions Judge / Communal Clash Cases Court,
The Motor Accident Claims Tribunal,
Madurai.

+1 CC to M/s.S.PALANI VELAYUTHAM, Advocate, SR No. 60296.

NBJ/DSK
PSM/KKR/SAR2/14.07.2017/9P/3C

Pre delivery judgment made
in
**C.M.A. (MD) Nos.1754 of 2013
and 1123 of 2015
& M.P. (MD) No.1 of 2013
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