



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE: 21.12.2017

CORAM:

WEB COPY

THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

C.M.A(MD)No.40 of 2011
and
C.M.A(MD)No. 319 of 2011
and
M.P. (MD)No. 1 of 2011

C.M.A. (MD)No.40 of 2011

P.Stella ... Appellant/claimant

Vs.

1.S.Sebastian
2.K.P.Natarajan

3.The Oriental Insurance Company Limited,
Registered Office at Oriental House,
P.B.No.7037,A 25/27, Asaf Ali Road,
New Delhi - 110 002.
Represented by its,
Nagercoil Branch Manager,
having Branch Office at DDJ. Complex,
Opposite to Christopher Bus Stand,
Vadasery, Vadasery Village,
Agasteeswaram Taluk,
Kanyakumari District.

4.Tamil Nadu State Transport Corporation,
Madurai Division (III), Nagercoil Ltd.,
Represented by its,
Branch Manager,
Ranithottam, Nagercoil & Village,
Agasteeswaran Taluk,
Kanyakumari District. ... Respondents

1 to 4/ Respondents 1 to 4

5.Rajendran

6.R.Sam Raj ... Respondents/ Claimants 2 & 3
(Respondents 1 & 2 are set
exparte in the lower Court hence
notice may be dispensed with to them)

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the
<https://hcservices.ecourts.gov.in/hcservices/>
Motor Vehicles Act, 1988, against the judgment and decree in
M.C.O.P.No.138 of 2008, dated 31.08.2010, on the file of the Motor



Accident Claims Tribunal, District Court, Nagercoil, dated 31.08.2010.

For Appellant : Mr.D.Srinivasa Raghavan
For Respondents : R.1 & 2 - Set Exparte

WEB COPY

: Mr. K.Bhaskaran
For R.3
: M/s.Royce Emmanuel
For R.4
: Mr.K.Vamanan
For R.5 and 6

C.M.A. (MD) No.319 of 2011

Oriental Insurance Company Limited,
Oriental House, P.B.No.7037,
A 25/27, Asaf Ali Road,
New Delhi - 110 002.
Represented by its,
Nagecoild Branch Manager,
DDJ. Complex, Opposite to
Christopher Bus Stand,
Vadasery, Vadasery Village,
Agasteeswaram Taluk,
Kanyakumari District. ... Appellant/3rd Respondent

Vs.

1.P.Stella
2.Rajendran
3.R.Sam Raj ... Respondents 1-3 /Petitioners 1-3
4.S.Sebastian ... 4th Respondent/ 1st respondent
(in both appeals)
5.K.P.Natarajan ... 5th Respondent/ 2nd respondent
6.Tamil Nadu State Transport Corporation,
Madurai Division (III), Nagercoil Ltd.,
Represented by its,
Branch Manager,
Ranithottam, Nagercoil & Village,
Agasteeswaram Taluk,
Kanyakumari District. ... 6th Respondent/ 4th Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award made in M.C.O.P.No.138 of 2008, dated 31.08.2010, on the file of the Motor Accident Claims Tribunal cum Principal District Judge, Nagercoil.

For Appellant : Mr.K.Bhaskaran
For Respondents : Mr.D.Srinivasa Raghavan
For R.1

: Mr.K.Vamanan
For R.2 and R.3



WEB COPY

: No appearance
For R. 5
: For R.4 Tapal not yet returned
: M/s.Royce Emmanuel
For R.6

COMMON JUDGMENT

Since the both Civil Miscellaneous Appeals arise out of a award, dated 31.08.2010 made in M.C.O.P.No..138 of 2008, on the file of the Motor Accidents Claims Tribunal, District Court, Kanyakumari at Nagercoil, they are taken up together for final disposal.

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

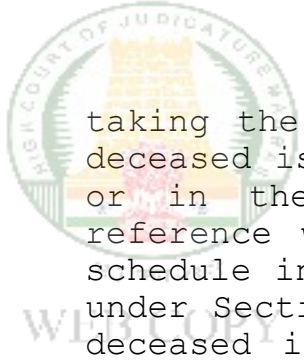
3. It is the case of fatal accident that took place on 05.02.2007 at about 08.30 a.m. while the deceased was travelling in the bus bearing Registration No. TN-74-N-0800 belonging to the fourth respondent from Vadasery to Tirunelveli. When the bus was proceeding near Nanguneri Vakaikulam infront of the Pannirupidi Ayyan College, at that time the bus bearing Registration No. TN-28-M-9199 belonging to the second respondent was driven by the first respondent in the opposite direction in a rash and negligent manner and dashed on the bus in which the deceased was travelling. On the said impact the deceased and others sustained fatal multiple injuries and the deceased died on the spot itself. The F.I.R. was registered under Sections 279,337,338 and 304-A IPC.

5.Before the Tribunal, on the side of the claimants P.W.1 and P.W.2 were examined and Exs.P.1 to P.9 were marked. On the side of the respondents R.W.1 was examined and no document was marked.

6.The Tribunal, after considering the pleadings, oral and documentary evidence and arguments of the learned counsel for the claimants, came to the conclusion that the accident had occurred only due to the rash and negligent driving of the first respondent and directed the respondents 1 to 3 are jointly or severally liable to pay compensation to the claimants.

7.This Court considered the rival submissions and perused the materials available on record.

8.The learned counsel for the appellant/claimant in C.M.A.(MD) No. 40 of 2011 argued that in respect of multiplication of age is concerned the age of the deceased is to be taken, but in this case age of the mother is taken for the determination of income is not correct and further no where in the Motor Vehicles Act it is stated



taking the age of the mother for multiplication in case where the deceased is a bachelor. In fact nowhere in the Motor Vehicles Act or in the judgment of the Honourable Supreme Court there is reference with regard to the deceased is a Bachelor or not. The schedule in Motor Vehicle Act is applicable only to the claim made under Section 163(A) of Motor Vehicle Act. Therefore the age of the deceased is alone for applying relevant multiplier. For that the learned counsel for the appellant submitted the ruling reported in 2017 (2) TN MAC 609 (SC), National Insurance Company vs. Pranay Sethi and others. Further the learned counsel submitted that in respect of multiplication of age is concerned the age of the deceased is to be taken as held in Sarla Varma and others vs. Delhi Transport Corporation in 2009 ACJ 1298, which is followed in Reshma Kumari and others vs. Madan Mohan and another reported in 2013(1) TN MAC 481 (SC).

9. On the other hand on the respondent in C.M.A.(MD)No.40 of 2011 it is argued that in the case of death of bachelor for determination of loss of income, the multiplication for the age of the mother is to be taken. In this case the Tribunal correctly applied the multiplier for the age of the mother for the determination of loss of income and there is no infirmity. Hence the Civil Miscellaneous Appeal may be dismissed.

10. In 2017 (2) TN MAC 609 (SC), National Insurance Company vs. Pranay Sethi and others in respect of the multiplication of age is concerned the deceased age is to be taken as held in Sarla Varma and others vs. Delhi Transport Corporation and another reported in 2009 ACJ 1298 which is followed in Reshma Kumari and others vs. Madan Mohan and another reported in 2013(1) TN MAC 481 (SC).

11. On perusal of the ruling reported in 2009 ACJ 1298 in para 18 it is stated as follows:

"...Besides, the selection of multiplier cannot in all cases be solely dependent on the age of the deceased. For example, if the deceased, a bachelor, dies at the age of 45 and his dependants are his parents, age of the parents would also be relevant in the choice of the multiplier."

12. Hence in 2009 ACJ 1298 it is held that in the case of death of a Bachelor the age of the parents is taken for the determination of loss of income. On perusal of ruling 2017(2) TNMAC 609 SC submitted by the appellant C.M.A.(MD)No. 40 of 2011, it is not specifically stated that for the death of bachelor the age of the bachelor is to be taken for determination of loss of income. In 2017 (2) 609 SC the decision taken in Sarla Varma and others vs. Delhi Transport Corporation and another reported in 2009 ACJ 1298 and the decision taken in Reshma Kumari and others vs. Madan Mohan and another reported in 2013(1) TN MAC 481 (SC) were followed in 2017 (2) TN MAC 609 SC.

13. Further for taking multiplier decision taken in Sarla Varma and others vs. Delhi Transport Corporation and another reported in

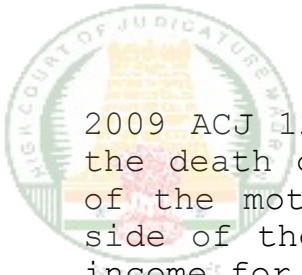
2009 ACJ 1298 were followed. In Sarla varma case it is stated for the death of a bachelor for determination of loss of income the age of the mother will be taken. Hence the argument put forth on the side of the appellant in CMA 40 /2011 stating that for the loss of income for the death of a bachelor the age of the deceased is taken into account is not acceptable. Hence it is held that the Tribunal for arriving the loss of income for deceased taking the age of the mother of the deceased Bachelor is correct. The age of the mother is shown 47 years in the claim petition. For the age group of 47 years the multiplier is "13". But the Tribunal taken the multiplier "11" is not correct. Hence for arriving the loss of income of the deceased the multiplier is "13".

14. In C.M.A. (MD) No. 40 of 2011, as per the Salary Certificate of the deceased, monthly income of the deceased is Rs. 6,508/- rounded off Rs. 6,600/-. The deceased was a bachelor at the time of the accident. He is the Government Employee. Hence 50% prospects was to be added with the monthly income of the deceased (i.e.,) income was fixed (3300+6600=9900) at the time of accident. Hence 50% is to be deducted towards personal expenses. Hence monthly income of the deceased is fixed by this Court is $9900/2 = \text{Rs. } 4500/-$ and hence the award of compensation by this Court towards loss of income is $\text{Rs. } 4500 \times 12 \times 13 = 7,02,000/-$. In respect of all other heads the award passed by the Tribunal is confirmed.

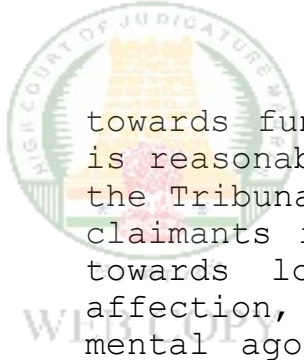
15. In CMA 319 of 2011, the learned counsel for the appellant argued that in the case two vehicles involved in the accident there was a possibility of contributory negligence on the part of the driver of the R4 and hence the accident had occurred due to the rash and negligent drivers of both vehicles and the negligence fixed by the Tribunal stating that the accident had occurred due to the rash and negligent driving of R1 is not correct hence contributory negligence may be fixed on the driver of the fourth respondent and CMA 319 of 2011 may be allowed.

16. On the other hand on the respondents/claimants side it is argued that the accident had occurred only due to the rash and negligent driving of R1 and there was no contributory negligence on the part of the driver of R4. In this case, FIR was registered as against of the Driver of R2. The driver of R2 has not given any complaint as against the driver of R4 stating that the accident had occurred due to the rash and negligent driving of the driver of R.4. On perusal of the Motor Vehicle Inspector Report, only heavy damage was caused to the vehicle of R2. Further the Insurance Company failed to examine the driver of R2. Hence the contributory negligence on the part of the driver of R4 is not proved. Hence it is held that the accident had occurred due to the rash and negligent driving of R1, who is the driver of R.2. Hence it is held that there was no contributory negligence on the part of the driver of R.4.

17. The Tribunal awarded Rs. 10,000/- towards loss of love and affection, Rs. 1,000/- towards transport expenses, Rs. 5,000/- towards mental agony. Rs. 500/- towards damage to the cloths; Rs. 5,000/-



WILCOX



towards funeral expenses. The above amount granted by the Tribunal is reasonable and not excessive. Hence, the above amount ordered by the Tribunal is confirmed and hence no need to interfere. Hence the claimants in M.C.O.P.No.138 of 2008 is entitled to Rs.7,02,000 /- towards loss of income, Rs.10,000/- towards loss of love and affection, Rs.1,000/- towards transport expenses, Rs.5,000/- towards mental agony. Rs.500/- towards damage to the cloths. Rs.5,000/- towards funeral expenses in toto the petitioners are entitled to Rs.7,23,500/- towards compensation.

18.In the result, the Civil Miscellaneous Appeal in C.M.A.(MD). No.40 of 2011 is partly allowed by enhancing the compensation awarded by the Tribunal in M.C.O.P.No.138 of 2008, from Rs.3,11,900/- to Rs.7,23,500/- with 7.5% interest p.a. Insofar as C.M.A.(MD)No.319 of 2011 is concerned, as no infirmity or irregularity was found in the award passed by the Tribunal, the judgment and decree in M.C.O.P.No.138 of 2008, dated 31.08.2010 on the file of the Motor Accident Claims Tribunal cum Principal District Court, Kanyakumari at Nagercoil is confirmed. Consequently, C.M.A.(MD)No.319 of 2011 is dismissed. The Insurance Company is directed to deposit the entire award amount with accrued interests and costs, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit being made, the claimants are permitted to withdraw their respective award amount, with accrued interests and costs as apportioned by the Tribunal, without filing any formal petition. No Costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-III)

/True copy/

Sub Assistant Registrar

To

1.The District Judge,
The Motor Accident Claims Tribunal
(District Court), Nagercoil.

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

+2cc to Mr.K.BHASKARAN,Advocate,SR. 94439,94440

C.M.A (MD) Nos.40 and 319 of 2011
21.12.2017

GSP

KK/JC/SAR 1/07.03.2018/ 6P- 6C/