

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 24.10.2018

CORAM

THE HONOURABLE TMT.JUSTICE S.RAMATHILAGAM

CMA.No.1443 of 2005

and

Cross Objection No.62 of 2005

CMA.No.1443 of 2005

The New India Assurance Co.Ltd.,

Rep. By its Divisional Manager

No.11 Officer's Line

C.S.I. Building, Vellore.

.... Appellant /2nd Respondent

Versus

1. Valarmathi

2. Nithyalakshmi

3. Kathiravan

4. Minor Athavan

(Minor petitioner rep. By his next
friend and mother the 1st petitioner)

5. Saradhammal

6. Venkatesan

7. The Managing Director

Tamil Nadu State Transport Corpn.Ltd.

Rangapuram, Vellore - 9.

8. The Union of India,

Represented by his Secretary,

Ministry of Surface Transport,

New Delhi.

(R8 Suo Motu impleaded vide order

of this Court dated 28.01.2015)

.... Respondents/Petitioners 1 to 6/1st Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988, against the Judgment and Decree dated 02.08.2004 made in M.A.C.T.O.P.No.424 of 2003 on the file of the Motor Accident Claims Tribunal (Principal District Court), Vellore.

For Appellant : Mr.S.Ramalingam

For Respondents: Mr.E.Kannadasan for R1 to R6
for T.S.Kannayan

Cross Objection No.62 of 2005

1. Valarmathi
2. Nithyalakshmi
3. Kathiravan
4. Minor Athavan

(Minor petitioner rep. By his next friend and mother the 1st cross objector)

5. Saradhammal
6. Venkatesan

.... Cross Objectors/Respondents

Versus

1. The New India Assurance Co.Ltd.,
Rep. By its Divisional Manager
No.11 Officer's Line
C.S.I. Building, Vellore.

.... First Respondent/Appellant

2. The Managing Director,
Tamil Nadu State Transport Corporation,
Rangapuram, Vellore - 9.

.... 2nd Respondent/7th Respondent

Prayer : Cross objections filed in CMA.No.1443 of 2005 on the file of this Hon'ble Court in which notice is served on 15.09.2005 to the cross objections and in which CMA has been filed against the decree on the file of the Principal District Judge, Vellore, Judgment in MCOP.No.424 of 2003 dated 02.08.2004.

For Appellants : Mr.E.Kannadasan
for T.S.Kannayan

For Respondents: Mr.S.Ramalingam

COMMON JUDGMENT

This Civil Miscellaneous Appeal is against the Judgment and Decree dated 02.08.2004 made in M.A.C.T.O.P.No.424 of 2003 on the file of the Motor Accident Claims Tribunal (Principal District Court), Vellore.

2. The brief facts of the case are as follows :-

On 02.07.2003, the deceased Rajasekaran was driving his Maruthi Van bearing Registration No.TN-23-S-5461 from Vellore to

Arcot, opposite to Holy Cross Church, Sathuvachari. At that time, at about 8.45 A.M, the bus bearing Registration No.TN-23-N-0885, driven in a rash and negligent manner, coming in the opposite direction, dashed against the Maruthi Van. Due to the said accident, the Maruthi Van was completely damaged and the said Rajasekaran sustained multiple grievous injuries and on his way to C.M.C.Hospital, he died. The deceased Rajasekaran was working as Special Assistant in the State Bank of India, Arcot and the claimants and the legal heirs of the deceased, claimed a sum of Rs.40,00,000/- as compensation.

3. The appellant/Insurance Company, in the counter statement, has disowned the liability and also the negligent driving on the respective vehicles insured with them. The other grounds raised by the claimants for the claim of Rs.40,00,000/-, are very much denied by the appellant/Insurance Company.

4. The Tribunal, after analyzing the evidence of P.W.2, R.W.1 and R.W.2 and Ex.R1 and documents, especially the F.I.R, has given a finding by fixing liability of 75% on the part of the driver of the bus for his rash and negligent driving and 25% for the negligence of the deceased. While awarding the compensation claimed by the claimants, the Tribunal has perused the relevant documents regarding his monthly income, his age, and the number of claimants, and determined the sum under the following heads :

Heads	Sum awarded by the Tribunal (Rs.)
Loss of income (Rs.12,000*1/3 = 4,000/- Rs.12,000-4,000 = 8,000/- Rs.8,000*12*8 = 7,68,000/-	7,68,000.00
Loss of consortium	5,000.00
Funeral Expenses	2,000.00
Loss of love and affection	2,500.00
Total Compensation	7,77,500.00

Aggrieved against the said award, the Insurance Company has preferred this appeal.

5. Questioning the liability fixed at 25%, the claimant have also filed cross-objection for enhancement of compensation. In the Cross Objection, the claimants have stated that the sum awarded by the Tribunal towards total compensation at Rs.7,77,500/- is very low because the deceased was earning Rs.20,000/- as salary and he was only 52 years old at the time of the accident. The promotion aspect of the deceased was not considered by the Tribunal. The sum awarded in the head

'consortium' is also on the meager side.

5(A). Heard both sides and perused the materials available on record.

6. On the side of the appellant/Insurance Company, who is the insurer of the Maruthi Van, has argued that the claim made by the claimants was not covered under the insurance policy issued by the Insurance Company because the policy covers only on liability to third party, whereas, the deceased was the owner and he was driving the car at the time of the accident. It is also argued on the side of the appellant that there is no negligence on the part of the driver of the Maruthi Van, since, the bus which came in opposite direction, in a rash and negligent manner, dashed against the Maruthi Van and throw away the car and the car was fully damaged and that the accident occurred only due to the rash and negligent driving of the driver of the Corporation Bus. On a perusal of the award, it is seen that P.W.1 was examined before the Tribunal, and he has stated as follows :- ""

“எதிரில் வந்த பஸ் வேகமாகவும் அதிவேகமாகவும் வந்து மோதிவிட்டார். சுமார் 10 அடி தூரத்துக்கு இழுத்துத் தள்ளிக் கொண்டு ரோட்டின் ஓரமாக நின்று விட்டது””

7. On the side of the respondents/claimants, it was deposed before the Tribunal that the driver of the Maruthi Van has not observed the vehicle coming in the opposite direction and has not applied brake and came in a rash and negligent manner and dashed against the bus in right side and hence the accident occurred. The documents filed by the claimant relating to the accident is one F.I.R. Ex.P1 is the F.I.R. and the said complaint was given by one Govindaraj, but he was not examined before the Tribunal. The Tribunal, after verifying the F.I.R and the Motor Vehicle Inspector Report Exs.P4 and P5 and also the evidence of the respondent driver R.W.1, has fixed the liability at 75% on the driver of the Corporation Bus and 25% on the deceased. Because, it is a clear evidence that the deceased, who is the driver of the Maruthi Van crossed, the divider and the bus which came in the opposite direction was also driven by rash and negligent manner and resulted accident. Hence, the Tribunal fixed the liability at 25% on the deceased driver of the Maruthi Van and 75% on the driver of the bus, which is very much proper and reasonable. But on the side of the appellant/Insurance Company, it is argued that Ex.P7-Policy, no premium has been collected from the driver and owner of the Maruthi Van and only covered under the third party liability. Hence, 25% liability fixed by the Tribunal need not be fixed by the appellant, since, there is no premium has been collected. On the other hand, the claimants/respondents 1 to 6 have argued

that when the vehicle is insured with the appellant/Insurance Company it is liable to pay the compensation.

8. The appellant argued by citing the case law reported in 2008 (3) CTC 38 (Oriental Insurance Co. Ltd., versus Rajni Devi and others). The relevant portion of the Judgment reads as follows :

"10. The deceased was the owner of the vehicle. For the reasons stated in the Claim Petition or otherwise, he himself was to be blamed for the accident. The accident did not involve motor vehicle other than the one which he was driving. The question which arises for consideration is that the deceased himself being negligent, the Claim Petition under Section 166 of the Motor Vehicles Act, 1988 would be maintainable.

11. Liability of the Insurer Company is to the extent of indemnification of the insured against the respondent or an injured person, a third person or in respect of damages of property. Thus, if the insured cannot be fastened with any liability under the provisions of the Motor Vehicles Act, the question of the Insurer being liable to indemnify the insured, therefore, does not arise."

The Insurance Company would depend upon the terms of the policy when the principal is that where the third party is involved the liability of the Insurance Company would be unlimited. But, in this case, the driver-cum-owner was driving the vehicle and the accident occurred due to his negligence. Hence, the argument of the appellant is that the Insurance Company is not liable to pay the compensation.

9. In the Cross Objections filed by the claimants/respondents 1 to 6 in the Civil Miscellaneous Petition have categorically stated that the sum awarded under various heads are very meager and since, as per P.W.1, it is proved that the deceased was earning Rs.18,000/- per month, the Tribunal has taken only Rs.12,000/- for calculating loss of income, hence this Court is of the view to enhance the loss of income by taking Rs.18,000/- as per P.W.1.

10. Now, on going through the award passed by the Tribunal under various heads, it is stated that the sum awarded for consortium is very much on the lower side, considering the age of the wife of the deceased, who is 46 years, hence the sum under the head 'consortium' is enhanced to Rs.15,00,000/-. The sum awarded to the other claimants for loss of love and affection, one minor and other claimants are 2 to 6 in number have also to be properly considered and the sum awarded towards

funeral expenses at Rs.2,000/- is modified as Rs.10,000/-.

11. Accordingly, the compensation awarded by the Tribunal under various heads are modified as follows :

Heads	Amount awarded by the Tribunal (Rs.)	Amount modified by this Court (Rs.)
Loss of Income (Rs.18,000*1/4 = 3500 ; Rs.18,000-3,500 = 13,500) (Rs.13,500*12*8)	7,68,000.00	12,96,000.00
Loss of consortium	5,000.00	5,000.00
Funeral Expenses	2,000.00	10,000.00
Loss of love and affection	2,500.00	2,500.00
Total compensation	7,77,500.00	13,13,500.00

12. In view of the above, the Civil Miscellaneous Appeal is dismissed and the Cross Objection filed by the claimants/respondents 1 to 6 is partly allowed enhancing the award of Rs.7,77,500/- granted by the Tribunal in MACTOP. No.424 of 2003 to Rs.13,13,500/-. No costs. The respondents 1 to 6 are directed to pay additional Court fee for the enhanced amount.

13 .The Appellant/Insurance Company is directed to deposit the enhanced award amount, in respect of above Appeal as per the modified award passed by this Court, with interest at 7.5% per annum and costs, before the Tribunal, after adjusting the amount, if any, already deposited, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the Tribunal is directed to transfer the same to the respective shares of respective claimants to their bank account through RTGS within one week thereon.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

gbi/lpp

To

1. The Motor Accident Claims Tribunal
(Principal District Court)
Vellore.

2. The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to Mr.S.Ramalingam, Advocate sr.73156

+1cc to Mr.E.Kannadasan, Advocate sr.no.72575

CMA.No.1443 of 2005
and

Cross Objection No.62 of 2005

nr 02/04/2019



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