

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.10.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Civil Miscellaneous Appeal No.1162 of 2015

1. S.Rama
2. S.Sriram (Minor)
3. S.Vijay (Minor)
- (2nd and 3rd appellants, minors, represented
by their mother and next friend S.Rama)
4. Saroja Appellants/Petitioners

Vs

1. A.R.Abdul Habeez
2. Royal Sundaram Alliance Insurance Co. Ltd
No.6, Lattice Bridge Road
Adyar, Chennai - 600 020.
3. T.Ganesh
4. M.Paramasivam Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the decree and judgment dated 18.2.2015 passed in M.C.O.P.No.791 of 2011 by the Motor Accidents Claims Tribunal, (Chief Court of Small Causes), Chennai.

For Appellant : Mr.K.Varadakamaraj

For Respondents: Mr.M.B.Raghavan
for 2nd respondent

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JUDGMENT

Calling into question the decree and judgment dated 18.2.2015 passed in M.C.O.P.No.791 of 2011 by the Motor Accidents Claims Tribunal, (Chief Court of Small Causes), Chennai, the present civil miscellaneous appeal is filed.

2. The facts in a nutshell are as under: The appellants are the claimants, who filed the claim petition. It is stated in

the claim petition that on 12.11.2010, at about 0800 Hours, while the deceased was riding the motorcycle bearing registration No.TN-22-AC-5648 on 200 feet Inner Ring Road at Madhavaram, near Chandru Transport, TATA Ace bearing registration No.TN-18-5008 hit the motorcycle and due to the same, the deceased fell down and before the deceased could recover to get up, the lorry bearing registration No.TN-45-AR-2881, which was driven by its driver in a rash and negligent manner ran over the deceased and caused fatal injuries. It is pleaded that the death of the deceased was solely due to the negligence of the driver of the lorry. A case was registered in Crime No.584 of 2010 on the file of the Madhavaram Traffic Investigation. It was stated that the deceased, who was 42 years old, was the proprietor of Sridhar Transport, Chennai and was earning Rs.25,000/- per month. The first appellant is wife, appellants 2 and 3 are children and the fourth appellant is the mother of the deceased. The appellants, in the claim petition, claimed compensation of Rs.25 lakhs.

3. Resisting the said claim petition, the second respondent, who is the insurer of the lorry bearing registration No.TN-45-AR-2881, denied the manner of accident and further stated that it is for the appellants to prove the age, occupation and income of the injured. It was also stated that the accident was due to rash and negligent driving of the driver of TATA Ace vehicle, who was driving the vehicle without insurance. In any event, it was pleaded that the amount claimed as compensation is highly excessive.

4. The learned Tribunal, by decree and judgment dated 18.2.2015 passed in M.C.O.P.No.791 of 2011, partly allowed the claim petition and awarded compensation of Rs.14,15,000/- to the appellants.

5. Seeking to fix liability both on the lorry and the TATA Ace van and also enhancement of compensation, the claimants have filed these appeals.

6. It is the contention of the learned counsel appearing on behalf of the appellants that the Tribunal erred in holding that the accident occurred due to the rash and negligent driving of the TATA Ace auto and not due to the rash and negligent driving of the lorry, more particularly, when P.W.3, eye witness, clearly deposed that the accident and death of the deceased was caused due to the rash and negligent driving of the lorry, which ran over the deceased. He added that the Tribunal principle of Act of God let go the driver, owner and insurer of the lorry to go scotfree.

7. The learned counsel for the appellants further contended

that the death of the deceased was caused by the composite negligence of the driver of the TATA Ace as well as the driver of the lorry and, therefore, the appellants are entitled to claim compensation from either or both of them jointly and severally.

8. Per contra, the learned counsel for the second respondent submitted that the accident occurred due to rash and negligent driving of the driver of TATA Ace vehicle, who was driving the vehicle without insurance and it is not possible for the lorry driver who came behind the motorcycle and TATA Ace to stop the vehicle suddenly in order to avoid the accident and it was act of god. Since the initial negligence was on the part of the driver of TATA Ace, the Tribunal has rightly fastened the liability on the driver of the TATA Ace and directed the third respondent to pay the compensation to the appellants.

9. I have heard Mr.K.Varadhakamaraj, learned counsel for the appellants and Mr.B.Raghavan, learned counsel for the 2nd respondent and also perused the materials available on record.

10. According to the appellants, on 12.11.2010 at about 8.00 hours, the deceased was riding the motorcycle bearing registration No.TN-22 AC 5648 on 200 feet ring road at Madhavaram and while he was nearing Chandru Transport, the TATA Ace belonging to the third respondent driven by the fourth respondent in a rash and negligent manner dashed against the deceased. Due to the impact, the deceased fell down and before he could recover to get up, the lorry bearing registration No.TN-45 AR 2881 driven by its driver in a rash and negligent manner, ran over the deceased and caused the accident.

11. To prove the accident, the appellants have examined P.W.3 who deposed that on 12.11.2010 at 8.00 hours while he was standing near Chandru Transport, Madhavaram, he saw the deceased Sridhar was riding his motorcycle and at that time, the TATA Ace van, which came from behind the deceased hit the motorcycle. Due to hit, the rider of the motorcycle fell down and at that time, the lorry bearing registration No.TN-45 AR 2881 came in a rash and negligent manner ran over the deceased and he died on the spot. Thus, P.W.3 clearly deposed that after hitting the TATA Ace van, the deceased fell down and before he could recover to get up, the lorry ran over him and caused death of the deceased.

12. While fastening the liability on the driver of the TATA Ace van, the Tribunal observed as under:

"10. It is clear from the oral and documentary evidence adduced on the side of the petitioners, the act of driver of the tata ace was

the main root cause for the accident. If the deceased was not hit by the tata ace, he could not have fallen down from the motorcycle. At the same time, the driver of the lorry could not expect the falling down of the deceased from the motor cycle. It is not possible for the lorry driver who came behind the motorcycle and tata ace, to stop the vehicle suddenly in order to avoid the accident and it is Act of God. Therefore, the initial negligence is on the part of the driver of the Tata Ace and the driver of the Tata Ace is responsible for the accident."

13. The said finding of the Tribunal is not acceptable for the reason that it is the bounden duty of the driver of the lorry to drive the same in a careful manner by observing road rules and also while driving he ought to have seen what is happening in front of him. When the eye-witness to the accident viz., P.W.3 clearly stated that after hitting the TATA Ace van, the deceased fell down and before the deceased could recover to get up, the lorry ran over the deceased and caused the accident.

14. Originally, the appellants have filed the claim petition against the respondents 1 and 2 stating that the accident occurred due to rash and negligent driving of the driver of the lorry. Pending claim petition only, the appellants have impleaded the owner and driver of the TATA Ace van as respondents 3 and 4 for proper adjudication of the claim petition.

15. The learned counsel for the second respondent contended that though the criminal case in Crime No.584 of 2010 was registered against both the drivers of TATA Ace van and the lorry, after enquiry, the police have filed alteration report charging the owner of the TATA Ace van that he allowed the vehicle on road without insurance. He would further contend that after investigation, the police have filed the charge sheet only against the driver of TATA Ace van and the allegation on the driver of the lorry is totally self-serving allegations for the purpose of claim petition.

16. In N.K.V. Bros. (P) Ltd. v. M.Karumai Ammal, reported in (1980) 3 SCC 457, the Hon'ble Supreme Court held that nature of proof required to establish culpable rashness, punishable under IPC is more stringent than negligence sufficient under the law of tort to create liability. The observation made in paragraph 3 of the said judgment would throw some light as to what should be the approach of the Tribunal in motor accident cases. Paragraph 3 reads thus:

"3. Road accidents are one of the top killers in

our country, specially when truck and bus drivers operate nocturnally. The proverbial recklessness often persuades the courts, as has been observed by us earlier in other cases, to draw an initial presumption in several cases based on the doctrine of *res ipsa loquitur*. Accidents Tribunals must take special care to see that innocent victims do not suffer and drivers and owners do not escape liability merely because of some doubt here or some obscurity there. Save in plain cases, culpability must be inferred from the circumstances where it is fairly reasonable. The court should not succumb to niceties, technicalities and mystic maybes. We are emphasizing this aspect because we are often distressed by transport operators getting away with it thanks to judicial laxity, despite the fact that they do not exercise sufficient disciplinary control over the drivers in the matter of careful driving. The heavy economic impact of culpable driving of public transport must bring owner and driver to their responsibility to their neighbour. Indeed, the State must seriously consider non-fault liability by legislation. A second aspect which pains us is the inadequacy of the compensation or undue parsimony practised by tribunals. We must remember that judicial tribunals are State organs and Article 41 of the Constitution lays the jurisprudential foundation for State relief against accidental disablement of citizens. There is no justification for niggardliness in compensation. A third factor which is harrowing is the enormous delay in disposal of accident cases resulting in compensation, even if awarded, being postponed by several years. The States must appoint sufficient number of tribunals and the High Courts should insist upon quick disposals so that the trauma and tragedy already sustained may not be magnified by the injustice of delayed justice. Many States are unjustly indifferent in this regard."

17. In the present case, the evidence of the first appellant and the other witnesses, particularly, P.W.3 eye-witness assume much importance. Further, the appellants have proved the negligence on the part of both the drivers of the TATA Ace van and the lorry. From the oral and documentary evidence, it is to be concluded that the initial negligence is on the part of the driver of the TATA Ace van who drove the same in a rash and negligent manner and dashed against the deceased and he fell down and before the deceased could recover to get up, the lorry which was driven by the driver in a rash and

negligent manner ran over the deceased and caused the death.

18. It is not the case of the contesting second respondent that on the first hit by the TATA Ace van, the deceased sustained fatal injuries. The materials produced would reveal that after hitting the TATA Ace van, the deceased fell down and before he could recover to get up, the lorry ran over the deceased, which would clearly establish the manner in which the driver of the lorry drove the same in an uncontrollable speed and negligent manner. Because of the lorry ran over only, the deceased died on spot. Therefore, this Court is of the considered view that the driver of the lorry has more negligence than the driver of the TATA Ace van and this a fit case to fasten liability both on the lorry as well as TATA Ace van. The reasoning given by the Tribunal that the act of the driver of the TATA Ace van was the main root cause for the accident is imaginary when the fact remains that the appellants have proved that the accident occurred due to rash and negligent driving of the drivers of TATA Ace van and the lorry.

19. As stated supra, the negligence of the driver of the lorry involved in this case is more and the deceased died only after ran over the lorry. Therefore, it would be appropriate to fasten 60% liability on the lorry bearing registration No.TN-45 AR 2881 and 40% liability on the TATA Ace van bearing registration No.TN-18 5008.

20. Coming to the quantum of compensation, taking the monthly income of the deceased at Rs.10,000/- and deducting one-fourth towards personal expenses and also applying multiplier "14", the Tribunal calculated the loss of dependency at Rs.12,60,000/-.

21. The learned counsel for the appellants contended that there was no quarrel in taking the monthly income of the deceased at Rs.10,000/-. However, he would contend that the Tribunal has failed to give addition towards future prospects. There was no dispute that the deceased was owning two lorries in his name at the time of accident. In the absence of documentary proof, the Tribunal has taken the monthly income of the deceased at Rs.10,000/-. As stated supra, the monthly income fixed by the Tribunal at Rs.10,000/- has not been questioned by the appellants. However, if the deceased alive, he would have earned more as he died due to accident at the age of 42. Therefore, it would be appropriate to give 25% addition of salary towards future prospects. Adding 25%, the monthly income of the deceased would comes to Rs.12,500/- and deducting one-fourth towards personal expenses, the contribution to the family would comes to Rs.9,375/- per month and the annual contribution would comes to Rs.1,12,500/-.

22. At the time of accident, the deceased was aged 42 years. For the age group 41 - 45, the multiplier to be applied is "14". Adopting multiplier "14", the loss of dependency is calculated at Rs.15,75,000/-.

23. The Tribunal awarded Rs.25,000/- towards loss of consortium to the first appellant; Rs.25,000/- each for love and affection; Rs.25,000/- towards funeral expenses and Rs.5000/- towards transport charges.

24. In Civil Appeal No.6961 of 2015 etc. batch dated 31.10.2017 (National Insurance Co. Ltd. v. Pranay Sethi and others), the Hon'ble Supreme Court held that figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs.15,000/-, Rs.40,000/- and Rs.15,000/-. Following the decision of the Hon'ble Supreme Court in National Insurance Co. Ltd. v. Pranay Sethi and others, supra, this Court awards Rs.15,000/- for funeral expenses; Rs.40,000/- for loss of consortium; Rs.15,000/- for loss of estate; Rs.80,000/- for loss of love and affection to appellants 2 and 3 and Rs.25,000/- for loss of love and affection to the fourth appellant.

25. In the light of the above mentioned discussion, the total sum of Rs.14,15,000/- awarded by the Tribunal is enhanced to Rs.17,50,000/- as under:

Heads	Rs.
Loss of dependency	15,75,000.00
Loss of consortium	40,000.00
Funeral expenses	15,000.00
Loss of estate	15,000.00
Loss of love and affection (appellants 2 and 3)	80,000.00
Loss of love and affection (4 th appellant)	25,000.00
Total	17,50,000.00

26. In the result, the Civil Miscellaneous Appeal is partly allowed with proportionate costs. The total compensation of Rs.14,15,000/- awarded by the Tribunal is enhanced to

Rs.17,50,000/- . The second respondent is directed to deposit 60% of the enhanced compensation with interest at the rate of 7.5% per annum from the date of petition till the date of deposit within period of eight weeks from the date of receipt of a copy of this order. The third respondent is directed to deposit 40% of enhanced compensation with interest at the rate of 7.5% per annum from the date of petition till the date of deposit within the same period of eight weeks from the date of receipt of a copy of this order. The first appellant is entitled to Rs.7,00,000/-, the appellants 2 and 3 are entitled to 4,00,000/- each and the 4th appellant is entitled to Rs.2,50,000/- with accrued interest. On such deposit, the appellants are permitted to withdraw the amount as apportioned with accrued interest on filing proper application before the Tribunal. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CCC)

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Sub Assistant Registrar

vs

To

The Motor Accident Claims Tribunal,
(Chief Court of Small Causes), Chennai.

+lcc to Mr. B.S.Padmanabhan, Advocate, S.R.No. 69119

+lcc to Mr.M.B.Gopalan Associates, Advocate, S.R.No. 69820

C.M.A.No.1162 of 2015

GJ(CO)

GN(25/04/2019)

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