

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 20.07.2018

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The Honourable Mr. Justice S.BASKARAN

Civil Miscellaneous Appeal No.1626 and 1710 of 2015

C.M.A.No.1626 of 2015

1.G.Vanaja
2.G.Uma
3..G.Dilly BabuAppellants/Petitioners

..vs..

1.Abdhul Hakkim
2.The New India Assurance Company Ltd.,
Divisional Office, Vellore.
3.The Managing Director,
Tamil Nadu State Transport Corporation,
(Villupuram Division)
Villupuram. Respondents/Respondents

C.M.A.No.1710 of 2015

The New India Assurance Company Ltd.,
Divisional Office, Vellore. 2nd respondent/appellant

..vs..

1.G.Vanaja
2.G.Uma
3..G.Dilly Babu Petitioners/Respondents 1
to 3

4.Abdul Hakkim 1st respondent/4th respondent
5.The Managing Director,
Tamil Nadu State Transport Corporation,
(Villupuram Division)
Villupuram. 5th respondent/3rd respondent

PRYER IN C.M.A.NO.1626 OF 2015

This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the Fair and Decreetal order dated 27.02.2015 made in MCOP.No.18 of 2010 on the file of the Motor Accident Claims Tribunal/Subordinate Judge, Gudiyatham.

PRYER IN C.M.A.NO.1710 OF 2015

This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the Fair and Decreetal order dated 27.02.2015 made in MCOP.No.18 of 2010 on the file of the Motor Accident Claims Tribunal/Subordinate Judge, Gudiyatham.

For Appellants : Mr.V.Raghavachari
(Appellants in CMA.No.1626 of 2016
respondents 1 to 3 in CMA.No. 1710
2016)

For Respondents : Mr.M.Krishnamoorthy
(Appellant in CMA.No.1710 of 2016
2nd respondent in CMA.No. 1626
2016)

COMMON JUDGMENT

The petitioners/claimants, being not satisfied with the quantum of compensation awarded by the Tribunal, dated 27.02.2015 made in MCOP.No.18 of 2010 on the file of the Motor Accident Claims Tribunal/Subordinate Judge, Gudiyatham, filed the appeal in CMA.No.1626 of 2015 to enhance the award amount, while aggrieved over the findings of the Tribunal, the second respondent-Insurance Company filed the appeal in CMA.No.1710 of 2015 to set aside the award passed by the Tribunal.

2.For the sake of convenience, the parties will be hereinafter referred to in this judgment as arrayed before the Tribunal.

3.The case of the petitioners is that on 22.04.2009, while the deceased Gopalakrishnan was driving the bus bearing Registration No.TN-23-N-1902 from Chennai to Pernampet on MBT Road, while going near Avalur Rangeela Hotel, within the Kaveripakkam Police limit, at about 1.30 p.m., a parcel van belonging to the first respondent bearing Registration No.TN-37-BB-5907 insured with the second respondent was proceeding ahead of the bus and on seeing that the deceased who was driving the

bus was proceeding at minimum speed, but, all of a sudden without any warning signal, the driver of the parcel van suddenly took the vehicle to the left side of the double road in order to park the van on the road side. Due to the sudden left turn taken by the van driver, the deceased, driver of the bus was unable to control the vehicle and dashed on the back side of the parcel van. Consequently, the deceased bus driver suffered multiple grievous injuries and number of passengers travelling in the bus also suffered injuries. Due to the injuries suffered, the driver of the bus subsequently passed away in the Government Medical College Hospital, Vellore. The accident occurred only due to the rash and negligent driving of the first respondent parcel van driver. The petitioners state that the deceased Balakrishnan was aged 48 years and was employed as driver in 3rd respondent Transport Corporation earning Rs.10,000/- per month. The petitioners, who are the wife and children of the deceased were depending on the earning of the deceased. Thus, due to the sudden demise of the first petitioner's husband and father of the other petitioners, they have lost the bread winner of the family resulting in loss of income to them. Thus, the petitioners seek a sum of Rs.20,00,000/- as compensation from the respondents 1 and 2, who are the owner and insurer of the offending vehicle.

4. On the other hand, opposing the claim petition, the second respondent Insurance company filed counter contending that the parcel van bearing Registration No.TN-37-BB-5907 was not insured with them. The driver of the said van was not responsible for the accident. It is only due to the rash and negligent driving of the bus by the deceased, the accident occurred. The second respondent-Insurance Company is not liable to pay any compensation. The claim of the petitioners about the age, avocation and income of the deceased is denied. The amount claimed by the petitioners is exorbitant. Thus, the second respondent-Insurance Company sought for dismissal of the claim petition.

5. Likewise, opposing the claim of the petitioners, the 3rd respondent Transport Corporation contends that as their bus bearing Registration No.TN-23-N-19002 was proceeding near Avalur Sangeetha Hotel, driven by the deceased Gopalakrishnan, the driver of the Mini Lorry bearing Registration No.TN-37-BB-5907 belonging to the first respondent, without noticing the on coming traffic, suddenly took the parked vehicle in to the National Highway and inspite of the best efforts taken by the driver of the bus to avoid dashing against the Mini Lorry, by turning to the left side, the said Mini Lorry driver again turned the vehicle to the left side and dashed against the respondent bus resulting in the accident. The negligence of the Mini Lorry driver alone caused the accident. The claim of

the petitioners about the age, avocation and income of the deceased is not correct. The amount claimed by the petitioners is highly excessive. Thus, the 3rd respondent Transport Corporation sought for dismissal of the claim petition.

6. Before the Tribunal, the petitioners examined P.W.1 to P.W.3, produced documents Ex.P1 to Ex.P11 to substantiate their claim. On the side of the respondents, R.W.1 and R.W.2 were examined and Ex.R1 was produced to contradict the claim of the petitioners.

7. The Tribunal, on careful analysis of the evidence, found the negligence of both vehicle drivers in equal proportion caused the accident and concluded that compensation payable to the petitioners will be of Rs.15,42,304/- and after deducting 50% of the said amount as the deceased driver himself contributed to the accident with 50% negligence, passed an award for a sum of Rs.7,71,152/- payable by the first and second respondent to the petitioners. Being not satisfied with the quantum of compensation awarded by the Tribunal, the petitioners/claimants filed the appeal in CMA.No.1626 of 2015 to enhance the award amount, while aggrieved upon the findings of the Tribunal, the second respondent Insurance Company filed the appeal in CMA.No.1710 of 2015 seeking to set aside the award passed by the Tribunal.

8. I have heard the learned counsel appearing for the appellants/claimants and the learned counsel appearing for the second respondent-Insurance Company and perused the materials available on record.

9. The learned counsel appearing for the appellants/claimants in CMA.No.1626 of 2015 contends that the Tribunal failed to take note of the future prospects and no amount was provided for the same. The Tribunal ought to have fixed the entire negligence on the first respondent van driver only instead of fixing the contributory negligence on the deceased which is unwarranted. The amount awarded by the Tribunal is very low. Thus, the Appellants/Petitioners seek to enhance the award amount by entertaining the appeal in CMA.No.1626 of 2015.

10. Per contra, the learned counsel appearing for the appellant-second respondent-Insurance Company in CMA.No.1710 of 2016 contends that the Tribunal ought to have rejected the claim petition in full as the negligence of the deceased was the only reason for the accident. Due to high speed in which the bus was driven by the deceased, he lost the control and dashed on the parcel van, resulting in injuries to the occupants of the bus as well himself. The Tribunal erred in fixing the negligence at 50% each on both the vehicle drivers instead of putting the

entire negligence on the deceased bus driver. The Tribunal also failed to consider the averments in Ex.P1 First Information Report, wherein it is stated that the bus driven by the deceased came at high speed and dashed on the parcel van proceeding ahead of the bus. The Tribunal ought to have rejected the evidence of P.W.2 as his presence at the place of accident is doubtful. The Tribunal failed to appreciate the evidence of R.W.1 which clearly proved that negligence of the bus driver alone caused the accident. As per Ex.P1 FIR, the entire negligence ought to have been fixed on the deceased bus driver only. Thus, the appellant-Insurance Company in CMA.No.1710 of 2016 sought for setting aside the award passed against them by entertaining the appeal.

11.The fact that the two vehicles were involved in the accident resulting in the death of first petitioner's husband Balakrishnan is admitted. The first petitioner, who deposed as P.W.1 stated about the accident which took place on 22.04.2009 and further deposed that her husband Gopalakrishnan suffered injuries all over the body and inspite of getting treatment at Government Hospital, Vellore, died due to the injuries sustained in the accident. P.W.1 was not present at the occurrence spot at the time of the accident. However, the petitioners examined eye witness to the accident as P.W.2 and he has clearly stated that on 22.04.2009, while he was proceeding in the third respondent bus bearing Registration No.TN-23-N-1902 from Chennai to Pallikonda, he was seated near the front entrance of the bus. While the bus was proceeding near Avalur Rangeela Hotel around 1.30 p.m., at normal speed, the parcel van bearing Registration No.TN-37-BB-5907, which was going ahead of the bus, suddenly turned to the left side of the road, as such the bus driver unable to control the bus dashed on the back side of the parcel van resulting in the accident. Thus, P.W.2 clearly stated about the manner in which the accident occurred. In this case, the police have registered Ex.P1 First Information Report against the driver of the third respondent bus, who subsequently passed away. The Motor Vehicle Inspector's report of both vehicles are produced as Ex.P2 and Ex.P3. It is clear from the same that there is no mechanical defect in either of the vehicles. On the side of the 3rd respondent, no oral evidence was let in to establish the negligence aspects.

12.On the other hand, the persons who deposed as R.W.1 and R.W.2 on behalf of second respondent have not witnessed the occurrence. Even though, it is contended by the 2nd respondent Insurance Company that P.W.2 has not produced his ticket or any other proof to show that he travelled as passenger in the third respondent bus at the time of the accident, as rightly pointed out by the Tribunal only because P.W.2 has not produced the ticket, it cannot be stated that he would not have travelled in

the bus. As such, nothing is elicited in the cross examination of P.W.2 to discredit his evidence. As per the contents of Ex.P1 FIR, it is stated that the parcel van which was going ahead of the bus and without noticing the said van, the bus driver proceeded at high speed and only after the passengers noticed the same and started shouting, the driver of the bus tried to turn to the left side of the road and in the process dashed on the back side of the parcel van going ahead of the bus. Due to the impact of hitting the van, the bus moved in a zig zag manner, turned to the left side of the road and stopped in the adjoining paddy field. Due to the same, the complainant as well as some other passengers and the driver of the bus also suffered injuries. The relevant portion of the First Information Report reads as follows:-

“ பஸ் சுமார் 1.30 மணிக்கு சென்னையிலிருந்து மேலூர் எம்.பி.டி. ரோட்டில் அவுஸ் அருகில் உள்ள ரங்கீலா ஒட்டல் எதிரில் வந்து கொண்டிருந்த போது எங்களுக்கு முன்னால் டி.என். 37 பிபி.5907 என்ற ஒரு பார்சல் வேன் மெதுவாக சென்று கொண்டிருந்தது. எங்கள் பஸ் டிரைவர் வேனை கவனிக்காமல் அதிகவேகமாக ஓட்டிக் கொண்டு போனார். வண்டியிலிருந்தவர்கள் எல்லோரும் கூச்சல் போட்டதும் பஸ் டிரைவர் பஸ்ஸை வேகமாக இடதுபுறமாக வளைந்து ஓட்டியபோது அந்த வேனின் இடதுபுற பின் பக்கம் மோதி விட்டதில் பஸ் தாறுமாறாக ஓடி ரோட்டின் இடதுபுறம் உள்ள வயல் காட்டில் போய் நின்றது.”

13.It is thus clear that the bus dashed on the first respondent van which was going in the front of the bus. As rightly pointed out by the Tribunal that if both the vehicle drivers were careful in driving their vehicles by maintaining safe distance, the accident could have been avoided. Even though, it is pointed out by the learned counsel appearing for the petitioners/claimants that only because the van driver suddenly turned his van towards left side without any warning signal, the bus dashed against it, the same cannot be accepted. Further, when the vehicles are moving in Highway, if safe distance is maintained, any emergency can be tackled. In the case on hand, the petitioners have not produced the rough sketch of the occurrence spot or observation mahazar of the occurrence spot prepared by the police. In such circumstances, it cannot be stated as to whether the deceased driver of the bus maintained safe distance or whether the accident occurred in the middle of the road or on the left side of the road. In such circumstances, the conclusion of the Tribunal that both the vehicle drivers are equally responsible for the accident is appropriate and there is no ground to interfere with the same.

14. Admittedly, the deceased Gopalakrishnan was employed as driver in the third respondent Transport Corporation bus and he is stated to be 48 years old. The petitioners produced record sheet of the deceased as Ex.P6, wherein his date of birth is given as 09.05.1965. Even then, in Ex.P3 Postmortem Certificate, the deceased age is mentioned as 48 years. Taking into consideration the date of birth given in Ex.P6 and the accident occurred on 22.04.2004, the Tribunal has correctly fixed the age of the deceased as 45 years.

15. The petitioners produced the salary slip of the deceased Gopalakrishnan for the month of February, 2009 as Ex.P7. On the basis of the same, the monthly salary of the deceased is fixed at Rs.9,061/-. The correct multiplier to be applied is 14. Further, the deceased being a permanent employee of the 3rd respondent Transport Corporation and he was aged about 45 years, 30% of the income is to be added towards future prospects and not 50% as added by the Tribunal. Considering the number of dependents were 3, 1/3rd of the income is to be deducted towards personal expenses of the deceased. As such, the loss of income is calculated as follows:-

Rs.9051/- + 30% = Rs.2718/- + Rs.9,051/- = Rs.11,779/-
deduct 1/3rd amount of Rs.3926/- towards personal expenses. The monthly contribution is Rs.7853/-. Thus, the loss of income is Rs.7853/- x 12 = Rs.94,236/- x 14 = Rs.13,19,304/-.

16. Following the Apex Court decision reported in 2017 (2) TN MAG 609 (SC) NATIONAL INSURANCE CO. LTD., Vs. PRANAY SETHI AND OTHERS, towards loss of estate, loss of consortium and funeral expenses, this Court is inclined to modify the compensation as under:-

Loss of consortium	=	Rs. 40,000.00
Funeral Expenses	=	Rs. 15,000.00
Loss of Estate	=	Rs. 15,000.00

17. The learned counsel appearing for the Appellants/Petitioners contended that the petitioners 2 and 3 who are the children of the deceased have lost the love and affection of their father and they will suffer the same for their entire life and as such the amounts granted by the Tribunal under the head "loss of love and affection" is very nominal and sought for enhancement. In support of the same, the learned counsel for the petitioners relied upon the Ruling of the Kerala High Court reported in 2017 SCC Ker 23174 [1.Valsamma and others Vs. V.A.Baiju, 2. Rev.FR.Joseph Vattakalam, and 3.The National Insurance Co.Ltd., - MACA.Nos.711 and 921 of 2010], and the Ruling of this court reported in 2018(1) TN MAC 289 [Branch Office, New India Assurance Co.Ltd., Vs. Meenkashi and others].

Considering the same, it will be appropriate to provide for Rs.50,000/- each under the head "loss of love and affection".

18. Accordingly, the compensation awarded by the Tribunal is modified as follows:-

Sl No	Heads	Amount awarded by the Tribunal	Awarded by this Court
1.	Pecuniary Loss of income	15,22,304.00	13,19,304.00
2.	Loss of Estate	5,000.00	15,000.00
3.	Loss of consortium	-	40,000.00
4.	Funeral Expenses	5,000.00	15,000.00
5.	Loss of love and affection	10,000.00	1,00,000.00
	Total	15,42,304.00	14,89,304.00

Accordingly, the sum of Rs.15,42,304/- awarded by the Tribunal is modified and the same is reduced to Rs.14,89,304/- and the same is round of Rs.14,89,000/-. As already stated above, the driver of the both the vehicles are responsible equally and as such the deceased himself having contributed 50% negligence, the petitioners are entitled to get 50% of the award amount only and accordingly the first respondent and second respondent Insurance company are liable to pay only 50% of the award amount i.e. Rs.7,44,500/- to the petitioners.

19. CMA.No.1626 of 2015

In the result, the Civil Miscellaneous Appeal is dismissed. No costs.

20.CMA.No.1710 of 2015

In the result, the Civil Miscellaneous Appeal is allowed. No costs. The amount of Rs.7,71,152/- awarded by the Tribunal dated 27.02.2015 made in MCOP.No.18 of 2010 on the file of the Motor Accident Claims Tribunal/Subordinate Judge, Gudiyatham is reduced to Rs.7,44,500/-. The Second respondent-Insurance Company is directed to deposit the entire award amount of Rs.7,44,500/- with interest at the rate of 7.5% p.a. from the date of claim petition till the date of deposit within a period of six weeks from the date of receipt of a copy of this order. Excess amount, if any paid by the second respondent-Insurance company shall be refunded. On such deposit, the first appellant/first petitioner is entitled to 40% of the award amount and the appellants 2 and 3/petitioners 2 and 3 are entitled to 30% each of the award amount. The appellants/petitioners are permitted to withdraw their respective share with accrued interest by filing necessary application before the Tribunal.

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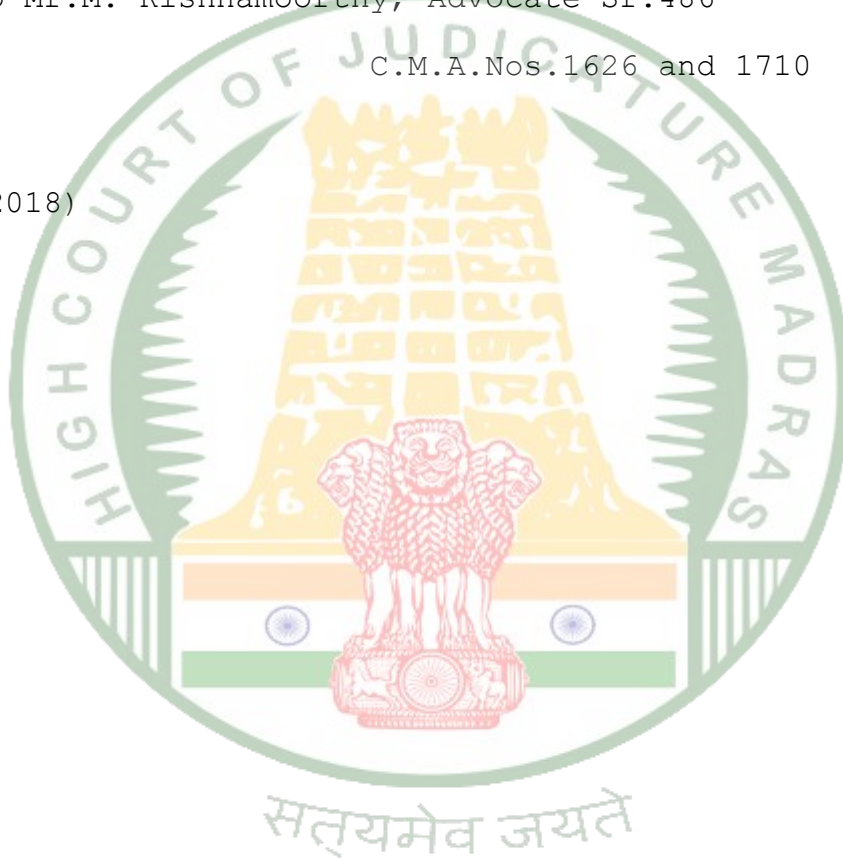
The Subordinate Judge,
Motor Accident Claims Tribunal
Gudiyatham.

Copy to: The Section Officer,
VR Section, High Court, Madras.

+ 2 ccs to Mr.M. Kishnamoorthy, Advocate Sr.486

C.M.A.Nos.1626 and 1710 of 2015

RJ(CO)
EU(14/11/2018)



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