

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.2800 of 2017
and C.M.P.No.15987 of 2017
and CMA.No.753 of 2018

C.M.A.No.2800 of 2017:-

M/s.National Insurance Company Ltd.,
Rep. By its Divisional Manager
Divisional Office,
No.33, KRT Building
Promenade Road
Tiruchirappalli-620 001

..Appellant/
II Respondent

Vs.

1.Anjalai
2.Minor Banumathi
3.Minor Rajadurai
4.Minor Parameswari
5.Kasiammal
(Minor rep by their mother
Anjalai as N/F and N/Guardian)

..Respondents 1 to 5/
Petitioners 1 to 5
..Respondents 6
Respondent No. 1

C.M.A.No.753 of 2018

1.Anjalai
2.Minor Banumathi
3.Minor Rajadurai
4.Minor Parameswari
5.Kasiammal
Minors 2 to 4 represented by mother
1st respondent.

..Appellants/Claimants

Vs

1.Kumari
2.M/s.National Insurance Company Ltd.,
Rep. By its Divisional Manager
Divisional Office,
No.33, KRT Building
Promenade Road
Tiruchirappalli-620 001

..Respondents

Prayer in both CMAs. Both Appeals filed against the judgment and decree dated 03.02.2017 passed in M.C.O.P.No.252 of 2014 on the file of Motor Accidents Claims Tribunal, Principal District Judge, Perambalur.

For Appellant : : Ms.N.B.Surekha Appellant in CMA.2800/17
& 2nd Respondent in CMA.753/2018

for Respondent : : Mr.S.Kamadevan Appellant in CMA.753/18
Respondents 1 to 4 in CMA.2800/17

R5 : : NA

R6 : : Exparte in Lower Court

COMMON JUDGMENT

C.M.A.No.2800 of 2017 is filed by the Insurance Company and C.M.A.NO.750 of 2018 is filed by the Claimants/Petitioners, challenging the judgment and decree dated 03.02.2017 passed in M.C.O.P.No.252 of 2014 on the file of Motor Accidents Claims Tribunal, Principal District Judge, Perambalur.

2. For the sake of convenience, the parties are referred to as per their litigative status before the Tribunal. It is a fatal case. The case of the petitioner is that on 20.06.2011 at about 6.45 p.m., while the deceased Raja @ Dharmaraj/husband of the 1st petitioner was riding his motor cycle bearing Reg.No.TN-01-AF-2318 along with his wife, the 1st petitioner/claimant herein as pillion rider in Perambalur to Thuraiyur Road while going near Muthukrishna Thirumanamandapam, another two wheeler bearing Reg.No.TN-46-J-8309 belonging to the husband of the 1st respondent herein and insured with the 2nd respondent came in the opposite direction at high speed and dashed against the two wheeler of the 1st petitioner's husband causing him multiple grievous injuries resulting in his death subsequently. The rider of the other two wheeler Rajinikanth/husband of the 1st respondent suffered fatal injuries and died on the spot. The 1st petitioner herein also suffered multiple grievous injuries and fracture all over the body. The husband of the 1st petitioner subsequently died due to the injuries suffered in the accident in the hospital on 27.06.2011. The accident occurred only due to rash and negligent driving of the rider of the vehicle bearing Reg.No.TN-46-J-8309 belonging to the husband of the 1st respondent herein. The deceased /husband of the 1st petitioner was aged 40 years and by working as a Mason was earning Rs.450/- per day. The Petitioners who are the wife and children of the deceased were depending on the earnings of the deceased. Due to

his sudden demise, the Petitioners have lost their head of the family and bread winner, resulting in loss of income to them. Thus, the Petitioners sought for a sum of Rs.20,00,000/- as compensation from the respondents, who are the owner and insurer of the offending vehicle.

3. On the other hand, opposing the claim of the Petitioner, by filing counter, the 2nd respondent/Insurance company contends that the accident does not occur in the manner alleged by the Petitioner. It was only due to rash and negligent driving by the deceased husband of the 1st petitioner, the accident occurred. The claim of the Petitioner about the age, avocation and income of the deceased is denied. The deceased/husband of the 1st petitioner who was riding his two wheeler bearing Reg.No.TN-01-AF-2318 without any licence suddenly turned towards left side, dashed on the 1st respondent respondent two wheeler driven by her husband causing injuries to him resulting in his death on the spot. It was only due to negligence of the deceased/husband of the 1st petitioner, the accident occurred and Rajinikanth husband of the 1st respondent died on the spot. As the accident occurred due to negligence of the 1st petitioner's husband, they are not entitled to claim any compensation. Hence, the 2nd respondent sought for dismissal of the Petition.

4. Before the Tribunal, the Petitioner examined P.W.1 and P.W.2, produced documents Ex.P.1 to Ex.P.12 to prove their claim. On the other hand, the respondent examined R.W.1 and R.W.2, produced documents Ex.R.1 to Ex.R.3 to contradict the claim of the Petitioners.

5. The Tribunal, after analyzing the materials available on record found that the negligence of both the two-wheeler drivers in equal measure caused the accident and passed an award for a sum of Rs.6,34,527/-, payable by the respondents to the Petitioners.

6. Being not satisfied with the quantum of the award passed by the Tribunal, the Petitioners/claimants have come forward with the appeal in CMA.753 of 2018 seeking enhancement of the award by allowing the appeal. Whereas, aggrieved over the said finding of the Tribunal, the 2nd respondent/Insurance company has come forward with CMA.No.2700 of 2018 seeking to set aside the award passed by the Tribunal by entertaining the appeal.

7. Heard both sides and perused the records carefully.

8. The learned counsel for the 2nd respondent/Insurance company contends that the Tribunal wrongly fixed 50% negligence on the rider of the 1st respondent two wheeler and the same is not proper. The accident occurred only due to negligence of the 1st Petitioner's husband and he alone is the tortfeasor. The Tribunal failed to appreciate the fact that the Police registered FIR and also laid charge sheet against the husband of the 1st petitioner only. As such, the conclusion of the Tribunal fixing 50% negligence on the 1st respondent vehicle driver is not proper. Thus, the 2nd respondent/Insurance company sought to set aside the award passed by the Tribunal by allowing the appeal.

9. Per contra, the learned counsel for the Petitioners/claimants contends that the Tribunal failed to appreciate the evidence given by eyewitness to the accident/1st petitioner herein as P.W.1 and wrongly fixed 50% negligence on the 1st petitioner's deceased husband. The Tribunal ought to have held that accident occurred only due to negligence of the 1st respondent vehicle driver. Thus, the Petitioners/claimants sought for modifying the conclusion of the Tribunal and prayed to fix entire negligence on the 1st respondent vehicle driver and to grant entire award amount to the Petitioners by allowing their appeal.

10. It is apparent that in both the appeals, the contention is made in respect of contributory negligence only. There is no contention about the quantum arrived at by the Tribunal. Therefore, the points that is to be determined in this appeal are

(i) As to whose negligence, the accident occurred and

(ii) Whether the Tribunal is justified in fixing negligence equally on the riders of both the two wheelers.

11. It is an unfortunate case where the riders of both the vehicles involved in the accident have died. The 1st petitioner who was travelling as a pillion rider along with her deceased husband in the vehicle bearing Reg.No.TN-01-AF-2318 deposed before the Tribunal that the accident occurred only due to rash and negligent driving of the husband of the 1st respondent's vehicle driver who was driving his two wheeler bearing Reg.No.TN-46-J-8309. Admittedly, both the vehicles were moving in the opposite direction and dashed against each other. It is an admitted fact that the Police registered case against the 1st

Petitioner/claimant's husband as per Ex.P.1 copy of FIR. The 2nd respondent examined S.I. of Police who investigated the case as R.W.1 and he stated that the case was registered against the deceased Raja @ Dharmaraj, husband of the 1st petitioner and the final report also filed against him only. The copy of the charge sheet is marked as Ex.R.2. Rough Sketch of the occurrence spot is marked as Ex.R.1. It is clear from the Rough sketch that the two wheeler bearing Reg.No.TN-10-AF-2318 driven by the deceased husband of the 1st petitioner/claimant crossed the central median and dashed against another two wheeler on the other side of the road. It is clear from Ex.R.1 Rough Sketch that the 1st petitioner/claimant's husband vehicle alone went to the wrong side of the road and met with an accident. The Police have also filed Ex.P.1-FIR as well as Ex.R.2 charge sheet against the husband of the 1st petitioner/claimant. Pointing it out, the learned counsel for the 2nd respondent/Insurance company contends that the entire negligence should be placed on the deceased husband of the 1st petitioner only.

12. Refuting the same, the learned counsel for the Petitioners contend that taking advantage of the 1st petitioner's husband was taking treatment at the hospital for the injuries suffered, a false case was registered against the deceased/husband of the 1st petitioner and the same need not be taken into consideration. It is also pointed out that the charge sheet was laid without proper appreciation of materials available on record. It is also pointed out that due to the demise of the 1st petitioner's husband, the criminal case was closed. As such, the Tribunal has to independently assess the negligence aspect.

13. In the case on hand, the 2nd respondent examined their official as R.W.2 and he produced Investigation Report as Ex.R.3 stating that the Police have registered case against husband of the 1st petitioner/claimant only.

14. Admittedly, both the two wheelers are moving in the opposite direction and dashed against each other. However, keeping in mind the fact that the FIR and charge sheet was laid against the deceased/husband of the 1st petitioner and the accident occurred on the wrong side of the road, as the 1st petitioner's husband drove the vehicle across the central median of the road, it will be appropriate to apportion the negligence between the 1st petitioner's husband as well as the 1st respondent's husband at 60% : 40% ratio. Accordingly, the

conclusion of the Tribunal fixing 50% negligence on the drivers of both the vehicle is modified as shown above. The Point is answered accordingly.

15. The Petitioners contend that the deceased was aged 40 years and by working as a Mason was earning Rs.450/- per day. In the absence of any other document to prove the age of the deceased on the basis of Ex.P.2-Copy of the Post Mortem Certificate and Ex.P.3-Copy of the death certificate of the deceased Raja @ Dhamaraj, the Tribunal correctly fixed the age of the said person as 40 years. Even though there is no proof for the employment and income of the deceased, considering the fact that the accident occurred on 20.06.2011 and the deceased was employed as Mason, the Tribunal fixed the monthly income at Rs.6000/- and the same is appropriate. As the deceased was aged 40 years, the multiplier applied is '15'. Considering the number of dependants are four, $1/4^{\text{th}}$ is deducted towards personal expenses. Thus, the loss of dependency is calculated as follows:-

Monthly salary - 6000

25% added towards future prospects (1500)

6000 + 1500 = Rs.7500/-

Deduction $1/4^{\text{th}}$ towards personal expenses (1875) $[7500 - \frac{1}{4}]$

$7500 - 1875 = 5625 \times 12 \times 15 = 10,12,500/-$.

16. The learned counsel for the Petitioners/claimants contends that due to sudden demise of the deceased Dhamaraj, the petitioners 2 to 4 who are aged minor children at the time of the accident, lost love and affection of their father. He 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] and contended that the sum of Rs.1,00,000/- awarded by the Tribunal under the Loss of Love and affection should be confirmed. Considering the Rulings stated above, this court is inclined to award Rs.1,00,000/- under the head "loss of love and affection". Further, by following the Apex Court Ruling reported in 2017(2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and Others], under conventional heads "Loss of consortium" Rs.40,000/-; Rs.15,000/- under the head "Funeral expenses" and Rs.15,000/- under the head "loss of estate", is awarded by this court. That apart, it will be appropriate to confirm the award of Rs.10,000/- under the head "Transport expenses" and under Medical expenses Rs.2,27,253/-, and towards Damage to clothes Rs.2,000/- as awarded by the

Tribunal. In view of the foregoing discussion, the modified award amount is as follows:-

Sl.No.	Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this court (Rs.)
1.	Loss of dependency	8,10,000	10,12,500/-.
2.	Loss of consortium	1,00,000/-	40,000/-
3.	Loss of love and affection to petitioners 2 and 3	1,00,000/-	1,00,000
4.	Transport charges	10,000/-	10,000/-
5.	Funeral expenses	20,000/-	15,000/-
6.	Loss of estate	---	15,000/-
7.	Damage to clothes	2,000/-	2,000/-
8.	Medical expenses	2,27,253/-	2,27,253/-
	Total	12,69,253/-	14,21,753
			Actual amount due is Rs.5,68,701/- (40%)

Since 60% negligence is fixed on the deceased 1st petitioner/husband viz., Dharmaraj, the Petitioners/claimants are entitled only to 40% of the compensation arrived by this court. Hence, a sum of Rs.5,68,701/- is award.

17. In the result, CMA.No.2800 of 2017 filed by Insurance company is allowed and the award amount is reduced to Rs.5,68,701/- from Rs.6,34,627/-. Consequently, CMA. No.753 of 2018 filed by Petitioners/claimants is dismissed.

(ii) The award amount will carry interest at the rate of 7.5% from the date of petition till the date of realisation;

(iii) This Court, by order dated 19.09.2017 in C.M.P.No.15987 of 2017 in CMA.No.2800 of 2017 directed the Appellant/Insurance company to deposit the entire award amount along with proportionate interest and cost. Therefore, the Insurance company is now entitled to withdraw the excess sum lying in deposit, after satisfying the award of this court.

iv) The Claimants 1 and 5 are entitled to withdraw the award amount along with accrued interest. The apportionment of the award amount is as under:-

1st Claimant - 30%

Claimants 2 to 4 - 20% each

5th claimant - 10%

The Tribunal shall pass necessary orders following the appropriate procedure for disbursal of the award amount. In

respect of minors Claimants 2 to 4, their share shall be invested in a Fixed deposit in a Nationalised Bank, till they attain majority and the accrued interest therein, shall be withdrawn by the 1st Petitioner/mother once in three months. No costs. Consequently connected CMP is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

nvsri

To

1. The Motor Accidents Claims Tribunal,
Principal District Judge, Perambalur.

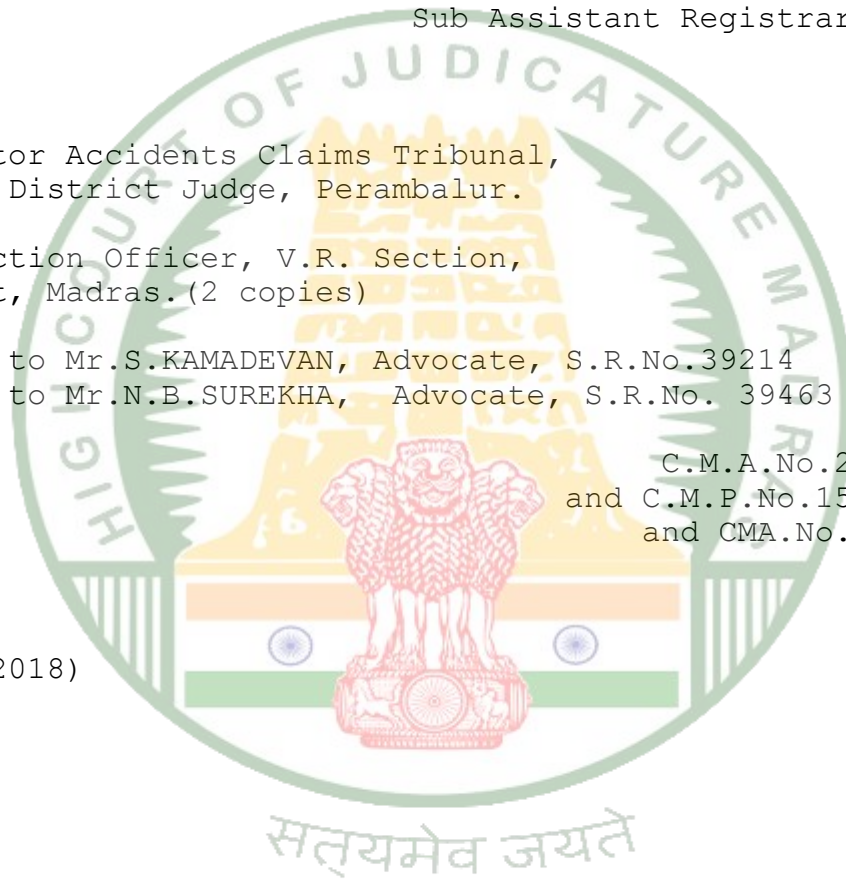
2. The Section Officer, V.R. Section,
High Court, Madras.(2 copies)

+1cc to Mr.S.KAMADEVAN, Advocate, S.R.No.39214

+1cc to Mr.N.B.SUREKHA, Advocate, S.R.No. 39463

C.M.A.No.2800 of 2017
and C.M.P.No.15987 of 2017
and CMA.No.753 of 2018

GMR(CO)
TR(10/08/2018)



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