

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.576 of 2018
and C.M.P.No.5079 of 2018

The New India Assurance Co.Ltd.,
having office at
Annapoorna Buildings,
5/1/338, Ooty Main Road,
Mettupalayam Taluk,
Coimbatore District - 641 301. ...Appellant/3rd respondent

Versus

1.R.Pushpa
2.C.Aruldass .. Respondents 1 &2/
Petitioners 1 & 2

3.M.Thirumoorthy .. 3rd respondent/
1st respondent

4.K.S.Transport, Mettupalayam
Rep.by its Managing Partner,
Mrs.Hemamailini,
Residing at No.15/H30,
Housing Unit,
Coimbatore District - 641 301. ... 4th Respondent/
2nd Respondent

(The 3rd and 4th respondents herein were
set exparte before the Lower Court)

Prayer: Civil Miscellaneous Appeal filed under Section 173 of
Motor Vehicles Act, 1988, against the order dated 21.12.2017
made in M.C.O.P.No.635 of 2016 on the file of the Motor Accident
Claims Tribunal, IV Additional District and Sessions Judge,
Coimbatore.

For Appellant : Mr.C.Ramesh Babu
For Respondents 1 & 2 : Mr.P.M.Duraiswamy

J U D G M E N T

The appellant/Insurance company has filed this appeal
against the order dated 21.12.2017 made in M.C.O.P.No.635 of
2016 on the file of the Motor Accident Claims Tribunal, IV
Additional District and Sessions Judge, Coimbatore.

2. By consent of both the parties, this matter is taken up for final disposal at the time of admission stage itself.

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

4. The case of the petitioners/claimants is that on 14.07.2011 at about 5.30 p.m., while the petitioners/claimants and their minor son were travelling in the bus, bearing Registration No.TN-40-D-1974 from Karamadai to Thimmampalayampudur, due to the high speed in which the vehicle was driven and due to application of sudden break, the deceased viz., the petitioners/claimants minor son was thrown out from the bus and run over by the back wheel of the bus, causing fatal injuries to the deceased person. The accident occurred due to negligence of the 1st respondent, driver of the bus, belonging to the 2nd respondent, which was insured with the 3rd respondent. The deceased was aged 15 years and by working as a coolly was earning Rs.10,000/- per month. The petitioners/claimants, who are the parents of the deceased have lost their only son. Hence, the petitioners/claimants seek a sum of Rs.30,00,000/- as compensation from the respondents.

5. On the other hand, opposing the claim of the petitioners/claimants, by filing counter, the 3rd respondent/Insurance Company contends that the accident did not occur in the manner alleged by the petitioners/claimants. The 2nd respondent failed to inform the insurer about the accident. The deceased travelled as a passenger in the foot board of the 2nd respondent bus and only due to his negligence, he fell down and suffered fatal injuries. Therefore, the claim of the petitioners/claimants against the respondents is not maintainable, as the deceased suffered fatal injuries due to his negligence. The claim of the petitioners/claimants about the age, avocation and income of the deceased is denied by the 3rd respondent/Insurance Company and the amount claimed by the petitioners/claimants is exorbitant. Thus, the 3rd respondent/Insurance Company sought for dismissal of the petition.

6. Before the Tribunal, the petitioners/claimants examined P.W.1 and P.W.2, produced documents Exs.P.1 to P.17 to prove their claim. On the respondents' side R.W.1 was examined and Ex.R.1 was produced. Further Ex.X.1 was also filed. On careful analysis of the evidence on record, the Tribunal found that the negligence of the 1st respondent driver alone caused the accident and passed an award for a sum of Rs.10,38,000/- payable by the respondents to the petitioners/claimants.

7. Aggrieved over the same, the 3rd respondent/Insurance Company has come forward with the present appeal, challenging quantum of the award passed by the Tribunal. According to the learned counsel for the 3rd respondent/Insurance Company, since the deceased was a bachelor, the Tribunal ought to have deducted 50% of his income towards personal expenses. However, the Tribunal, wrongly deducted 1/3rd of the amount alone towards personal expenses. That is the only contention raised before this forum. Therefore, the 3rd respondent/Insurance Company sought for modification of the award amount by entertaining the appeal.

8. Per contra, the learned counsel for the petitioners/claimants contends that no amount was provided under the head Love and Affection and the parents of the deceased are entitled for the same. Thus, they sought for enhancement of the award amount, even though no appeal was filed by them.

9. As stated above, the appeal is filed only on the issue of quantum, more particularly, regarding the amount to be deducted towards personal expenses of the deceased. The Tribunal, on the basis of P.W.2 eye-witness as well as Ex.P.1 - Complaint, Ex.P.2 - F.I.R and Ex.P.3 - Rough sketch of the occurrence spot, found that the negligence of the 1st respondent alone caused the accident. No appeal is filed against the same by the respondents. As such, the finding of the Tribunal, regarding the negligence aspect has become final.

10. The petitioners/claimants claimed that the deceased was aged 15 years and by working as a coolly was earning Rs.10,000/- per month. On the basis of Ex.P.5 - Post mortem certificate, the age of the deceased is fixed at 15. Even though the deceased was stated to be working as a coolly, there is no proof for the same. As such, the Tribunal is justified in fixing the notional income at Rs.5,000/- per month and adding 40% income towards future prospects. Thus, the monthly notional income of the deceased is calculated as follows:-

$$\text{Rs.5,000} + 40\% = \text{Rs.7,000/-}$$

11. Admittedly, as the deceased was a Bachelor, 50% of his income is to be deducted towards Personal expenses, instead of 1/3rd deducted by the Tribunal. Thus, the contribution of the deceased to the family will be $\text{Rs.7,000} * 50\% = \text{Rs.3,500/-}$ per month. The correct multiplier to be applied is '18'. As such, the loss of income is calculated as follows:-

$$\text{Rs.3500} * 12 * 18 = \text{Rs.7,56,000/-}$$

Thus, a sum of Rs.7,56,000/- is granted as compensation under the head "Loss of income".

12. In view of the judgment of the Supreme Court reported in 2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs.

Pranay Sethi and Others], the compensation has to be awarded towards loss of estate and funeral expenses and thus, this court is inclined to grant a sum of Rs.15,000/- each towards loss of estate and funeral expenses.

13. The petitioner contended that they lost their only son. For awarding compensation under the head love and affection, the learned counsel for the Petitioners/Claimants 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]. The said claim of the petitioners/claimants appears to be reasonable. Even though no Cross Objection is filed, this Court is empowered to award a just and proper compensation. Hence, for loss of Love and Affection, the petitioners are awarded Rs.25,000/- each.

14. Accordingly the award passed by the Tribunal is modified as follows:-

Sl. No.	Head	Amount granted by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)
1	Loss of Income	10,08,000.00	7,56,000.00
2	Funeral Expenses	15,000.00	15,000.00
3	Loss of Estate	15,000.00	15,000.00
4	Love and Affection	-	50,000.00
5	Transportation	-	5,000.00
6	Total	10,38,000.00	8,41,000.00

15. In the result, the Civil Miscellaneous Appeal is Allowed as follows:-

(i) The award of the Tribunal is reduced to Rs.8,41,000/- from Rs.10,38,000/-.

(ii) The award amount will carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

(iii) In view of the above modified award amount, the 3rd respondent/Insurance Company is directed to deposit the award amount, less the amount, if any, already deposited, along with accrued interest within a period of six weeks from the date of receipt of a copy of this judgment.

(iv) The apportionment of the modified reduced award amount is as follows:-

1st and 2nd petitioner - 50% each.

(v) On such deposit, the petitioners/claimants are

permitted to withdraw the amount awarded as above by filing proper application before the Tribunal. The Tribunal shall pass appropriate directions for the disbursal of the amount as stated supra on the filing of such application.

No costs.

bri

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

1.The IV Additional District and Sessions Judge,
Coimbatore.

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

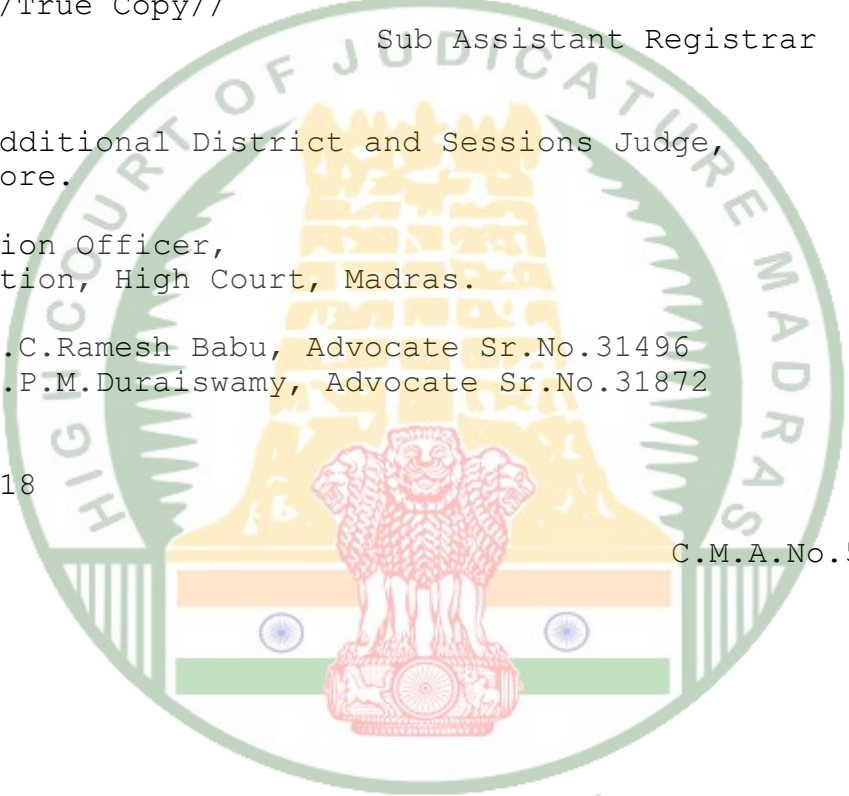
+1cc to Mr.C.Ramesh Babu, Advocate Sr.No.31496

+1cc to Mr.P.M.Duraiswamy, Advocate Sr.No.31872

PA(CO)

sm:31.5.2018

C.M.A.No.576 of 2018



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