

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.Nos.770 and 771 of 2018
and
C.M.P.Nos.6579 and 6500 of 2018

United India Insurance Co.Ltd.,
Muthiah Complex, 2nd Floor,
1170, Mettur Road,
Erode Town & Taluk.

..Appellant in both the C.M.As'/
III Respondents

Versus

1.Rani
2.Velu
3.Vennila
4.Amudha
5.Malaisamy

6.M/s.Nanda College of Nurshing,
291, Chinnamuthu Street,
E.K.Valasu, Erode. ...Respondents 1 to 4 in C.M.A.No.770/2018
Respondents 5 & 6/Petitioners 1 to 4 &
Respondents 1 & 2

1.Govindammal
2.Thamaraikannan (Minor)
3.Kamalesh (Minor)
Minors are rep.by their guardian
and Mother Govindammal

4.Ramasamy
5.Sundarammal
6.Malaisamy

7.M/s.Nanda College of Nurshing,
291, Chinnamuthu Street,
E.K.Valasu, Erode. ...Respondents 1 to 5 in C.M.A.No.771/2018/
Petitioners 1 to 5/Respondents 6 & 7
in CMA No.771/2018/Respondents 1 & 2

Prayer: Civil Miscellaneous Appeals filed against the judgment
and decree dated 04.02.2015 made in M.C.O.P.Nos.189 and 191 of
2009 on the file of the Motor Accident Claims Tribunal, Sub-

Court, Bhavani, respectively.

For Appellant : Mr.T.Ravichandran
For Respondents : Mr.S.P.Yuvaraj [for R1 to R4]

C O M M O N J U D G M E N T

The Appellant/Insurance Company has filed this appeal against the judgment and decree dated 04.02.2015 made in M.C.O.P.Nos.189 and 191 of 2009 on the file of the Motor Accident Claims Tribunal, Sub-Court, Bhavani, respectively.

2. By consent of both the parties, this appeal is taken up for final disposal at the 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 is that on 05.01.2009, at about 6.00 hours, while the deceased Babu (M.C.O.P.No.191/2009) riding his motor cycle bearing Registration No.TN-05-M-9634 along with a pillion rider Chinnathambi @ Munusamy (M.C.O.P.No.189/2009) from North-South in the Anthiyur to Bhavani Main road, the first respondent bus bearing Registration No.TN-34-2345 came at high speed, driven in a rash and negligent manner and dashed against the two wheeler, in which the deceased Babu and Chinnathambi @ Munusamy was proceeding, resulting in the death of both the persons. The accident occurred only due to rash and negligent driving by the driver of the 2nd respondent bus which was insured with the 3rd respondent.

5. The petitioners in M.C.O.P.No.189/2009 [C.M.A.No.770/2018] contended that the deceased Chinnathambi @ Munusamy was aged 43 years and by working as an agriculturalist earned Rs.20,000/- per month. The petitioners, who are the wife and children of the deceased Chinnathambi @ Munusamy, were dependent on his income. Due to the sudden demise of the breadwinner of the family, the petitioners are suffering. Hence, they sought for a sum of Rs.15,00,000/- as compensation from the respondents, who are the owner and insurer of the offending vehicle.

6. The petitioners in M.C.O.P.No.191/2009 [C.M.A.No.771/2018], contended that the deceased Babu was aged 25 years and by carrying on lorry service business, he was earning Rs.10,000/- per month. The petitioners, who are the wife, children and parents of the deceased were dependent on his income. Hence, the petitioners seek for a sum of Rs.15,00,000/- as compensation from the respondents who are the owner and insurer of the vehicle.

7. On the other hand, opposing both the claim petitions, by filing counter, the 3rd respondent/Insurance Company contends that the accident did not occur in the manner alleged by the petitioner. On the fateful day, the deceased Babu and Chinnathambi @ Munusamy consumed liquor and the motor cycle was driven by Babu. The 1st respondent bus was proceeding in normal speed observing all rules of traffic and only due to high speed and negligent driving of the two wheeler by the deceased Babu, he lost control of motor cycle in the curve, dashed against the 1st respondent bus, resulting in the death of both the persons travelling in the motor cycle. The rash and negligent driving by the deceased alone caused the accident. As such, the 3rd respondent/Insurance Company is not liable to pay any compensation. The age, avocation and income of the deceased person as claimed in the respective M.C.O.P.s' are not correct. Thus, the 3rd respondent/Insurance Company sought for dismissal of both the M.C.O.P.s' in 189/2009 and 191/2009.

8. Before the Tribunal, both the cases were disposed of by a common judgment. To prove their claim before the Tribunal, the petitioners examined P.W.1 to P.W.4 and produced documents Exs.P.1 to P.12. On the other hand, the respondent examined R.W.1 and produced Exs.R.1 and R.2. On the basis of available evidence, the Tribunal found negligence of the 2nd respondent's bus driver alone caused the accident and awarded a sum of Rs.6,97,500/- as compensation to the petitioners in M.C.O.P.No.189/2009 and sum of Rs.8,74,000/- as compensation to the petitioners in M.C.O.P.No.191/2009. Aggrieved over the said finding of the Tribunal, the 3rd respondent/Insurance Company has preferred the two appeals.

9. Heard both sides and perused the available materials on record.

10. The learned counsel for the 2nd respondent/appellant/Insurance Company, contends that the Tribunal wrongly fixed negligence on the part of the bus driver as the cause for the accident and awarded compensation, which is on the higher side. The Tribunal ought to have considered contributory negligence on the part of rider of the two wheeler. The contention of the respondent is that the deceased Babu was driving the two wheeler under the influence of alcohol and such fact has not been considered properly by the Tribunal. The Tribunal failed to consider the evidence of R.W.1 as well as Ex.P.6 - Rough Sketch and Ex.P.7 - observation mazhar, which clearly prove the fact of negligence of the deceased, resulting in the accident. Thus, the respondent/appellant/Insurance Company sought to entertain the appeal and to set aside the award passed by the Tribunal.

11. On the other hand, the learned counsel for the respondent, who entered appearance as cavetor, strongly opposed the plea of the Insurance Company for admitting the appeal on the ground that the Tribunal has correctly assessed the evidence available on record and arrived at just and proper conclusion. According to the petitioners/claimants no ground is made out to interfere with the finding of the Tribunal. Thus, the learned counsel for the petitioners/claimants sought for dismissal of the appeal.

12. Before the Tribunal, the petitioners examined eye-witness to the occurrence as P.W.3 and P.W.4. It is the contention of the petitioners that only due to rash and negligent driving by the driver of the 2nd respondent college bus, the accident occurred. Both P.W.3 and P.W.4 categorically stated that the accident occurred only due to negligence of the 2nd respondent bus driver only. Further, the police have also registered Ex.P.5 - F.I.R against the 2nd respondent bus driver only. The petitioners also produced rough sketch of the accident spot as Ex.P.6 and the copy of the observation mazhar as Ex.P.7. Taking into account the contents of both the documents along with the oral evidence of P.W.3 and P.W.4, it is apparent that the accident occurred only due to rash and negligent driving of the 2nd respondent's bus driver. The finding of the Tribunal was based on proper appreciation of materials available on record and the same needs no interference.

13. The petitioners in M.C.O.P.No.189/2009 contended that the deceased Chinnathambi @ Munusamy was aged 43 years and by doing agricultural work, he was earning Rs.3,00,000/- per annum. As per Ex.P.1 - Post mortem report and Ex.P.2 - Death certificate, the age of the deceased Chinnathambi @ Munusamy was stated to be 40 years. In the absence of any other document regarding his age, it will be appropriate to fix the deceased Chinnathambi @ Munusamy, age as 40 years, on the basis of Exs.P.1 and P.2. As far as the claim about avocation and income there is no proof for the income earned by the deceased and there is also no evidence regarding the property possessed by the deceased. As such the tribunal has fixed the notional monthly income at Rs.4,500/-. Considering the fact that there are more than 3 dependents, the Tribunal has correctly deducted 1/4th of the income towards the personal expenses of the deceased. As the deceased was aged 40 years, the Tribunal applied the multiplier '15', which is just and correct. The Tribunal has awarded amounts under different heads which appear to be very reasonable and nominal. Considering the fact that the accident occurred only due to negligence of the 2nd respondent bus driver, the Tribunal directed the respondents who are the

owner and insurer of the vehicle to pay the compensation and the same needs no interference. Considering the above circumstances and the fact that the Tribunal fixed the amount of compensation at Rs.6,99,500/- payable to the petitioners in M.C.O.P.No.189/2009 by the respondents appears to be just and proper and no ground is made out to interfere with the same by the respondent/appellant/Insurance Company. In the light of the above said discussion, this Court is of the view that the Tribunal awarded a just and fair compensation on well founded reasoning and the same needs no interference. As such, the appeal preferred against the award passed in M.C.O.P.No.189/2009 in C.M.A.No.770/2018 has to fail.

14. The petitioners in M.C.O.P.No.191/2009 contended that the deceased Babu was aged 25 years and by carrying on lorry service business, he was earning Rs.10,000/- per month. As per Ex.P.9 - Post mortem report and Ex.P.11 - Death certificate, the age of the deceased Babu was stated to be 25 years. In the absence of any other document regarding his age it will be appropriate to fix the deceased Babu's age as 25 years on the basis of Exs.P.9 and P.10. As far as avocation and income there is no proof of the income earned by the deceased and there is also no evidence on the property possessed by the deceased. As such the Tribunal has fixed the notional monthly income at Rs.4,500/-. Considering the fact that there are more than 5 dependents, the Tribunal has correctly deducted 1/4th of the income towards the personal expenses of the deceased. As the deceased was aged 25 years, the Tribunal applied the multiplier '18', which is just and correct. The Tribunal has awarded amounts under different heads which appear to be very reasonable and nominal. Considering the fact that the accident occurred only due to negligence of the 2nd respondent bus driver, the Tribunal directed the respondents, who are the owner and insurer of the vehicle to pay the compensation and the same needs no interference. Considering the above circumstances and the fact that the Tribunal fixed the amount of compensation at Rs.8,74,000/- payable to the petitioners in M.C.O.P.No.191/2009 by the respondents appears to be just and proper. Thus no ground is made out to interfere with the same by the respondent/appellant/Insurance Company. In the light of the above said discussion, this Court is of the view that the Tribunal awarded a just and fair compensation on well founded reasoning and the same needs no interference. As such, the appeal preferred by the petitioners M.C.O.P.No.191/2009 in [C.M.A.No.771/2018] has to fail.

15. In the result, the award passed by the Tribunal on 04.02.2015 made in M.C.O.P.Nos.189 and 191 on the file of the Motor Accident Claims Tribunal, Sub-Court, Bhavani, respectively, is confirmed and the appeal is dismissed in the admission stage. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Subordinate Judge,
the Motor Accident Claims Tribunal,
Bhavani.
- 2.The Section Officer,
V.R.Section, High Court, Madras.(2 copies)

+2cc to Mr.T.RAVICHANDRAN, Advocate, S.R.No. 25049 & 25050
+1cc to Mr.SP.YUARAJ, Advocate, S.R.No.25335

C.M.A.Nos.770 and 771 of 2018

MP (CO)
TR (04/07/2018)

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