

IN THE JUDICATE OF MADRAS HIGH COURT

DATE : 31.01.2018

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THE HON'BLE MR.JUSTICE R.SUBBIAH
and
THE HON'BLE MR.JUSTICE P.D.AUDIKEVALU

C.M.A.No.3632 of 2014

1.Saroja
2.Minor Nanthana
3.Minor Durga Nandhini
4.Virudhambal ... Appellants/Petitioners
(Minor appellants 2 & 3 are represented
by their mother 1st appellant-Saroja)

Vs.

1. Vijayalakshmi
2. Royal Sundaram Alliance Insurance Co. Ltd.,
Bus Plaza, 3rd Floor, 5G Lawsons Road,
Cantonment, Tiruchirappalli-1. ... Respondents/Respondents

Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act 1988 against the judgment and decree dated 28.02.2014 in M.C.O.P.No.206 of 2012 passed by the Motor Vehicles Accident Claims Tribunal (Principal District Court) at Perambalur.

For Appellants : Mr.C.Jagadish

For Respondents : Mr.M.Krishnamoorthy (For R2)

JUDGMENT

(Judgment of the Court was delivered by R.SUBBIAH, J.,)

This appeal has been filed by the appellants/claimants against the award dated 28.02.2014 made in M.C.O.P.No.206 of 2012, questioning the findings rendered by the Motor Vehicles Accident Claims Tribunal (Principal District Court) at Perambalur, in fixing 30% negligence on the part of the deceased Seenuvasan @ Srinivasan.

2.The brief facts, which are necessary to decide the issue involved in this appeal, are as follows_

2-1.The appellants herein are the claimants before the Tribunal and they are wife, two minor daughters and mother of the deceased Seenuvasan @ Srinivasan. It is the case of the claimants that on 31.12.2011 at about 2.45 hours, while the said Seenuvasan @ Srinivasan was riding his two-wheeler bearing Reg.No.TN 31 S 0061 from Perambalur to Ariyalur keeping left side of the road, near Varahu Kuttai, in between Sadaikanpatti and Allinagaram, a lorry bearing Reg.No.TH 28 P 3209 owned by the 1st respondent herein and insured with the 2nd respondent-Insurance Company came from opposite direction in a rash and negligent manner at a hectic speed and dashed against the two-wheeler, as a result of which the said Seenuvasan @ Srinivasan was thrown out from the two-wheeler and he sustained severe head injury and died on the spot itself. Since the accident had occurred due to the rash and negligent driving of the driver of the lorry, the claimants made a claim for compensation as against the owner of the lorry and it's insurer, before the Tribunal.

2-2.With regard to the quantum of compensation, it is the case of the claimants that the said Seenuvasan @ Srinivasan was working as a Forester, Perambalur and receiving a sum of Rs.26,000/- as monthly salary. Hence, on that basis, they have made a claim for a sum of Rs.60 lakhs as compensation.

2-3.Before the Tribunal, the case of the claimants was resisted by the Insurance Company by filing a detailed counter. It is the specific defence of the Insurance Company that at the time of accident, the insured vehicle viz., the lorry bearing Reg.No.TH 28 P 3209 was driven by its driver at a normal speed and it is the deceased who came from opposite direction and suddenly crossed the road without giving any signal at a hectic speed and in that process, he was hit by the lorry and thus, the deceased himself got involved in the accident due to his own negligence. Thus, the Insurance Company denied their liability to pay the compensation amount.

2-4.In order to prove their claim before the Tribunal, on the side of the claimants, the first claimant examined herself as P.W.1 besides examining one Authilakshmi as P.W.2, who was an eye witness to the occurrence, and two other witnesses as P.W.3 & P.W.4 and marked eight documents as Ex.P.1 to Ex.P.8. On the side of the Insurance Company, the Special Sub-Inspector of Police was examined as R.W.1 and the driver of the lorry was examined as R.W.2 and the Motor Vehicle Inspector's reports were marked as Ex.R.1 & Ex.R.2.

3.The Tribunal, after analysing the entire evidence adduced on either side, has rejected the evidence of P.W.2, who was an eye witness to the accident, and by relying upon Motor Vehicle Inspector's Reports (Ex.R.1 & Ex.R2), has come to the conclusion that the nature of damages caused to the vehicles noted in the MV Reports would show that the accident was the result of the head on collision. Thus, the Tribunal has fixed 30% negligence on the part of the deceased and 70% negligence on the part of the driver of the lorry. Thereafter, the Tribunal has calculated the compensation under the head of loss of income and arrived at a sum of Rs.37,85,040/- and thereafter, deducted 30% amount towards contributory negligence and 10% amount towards income tax and awarded a sum of Rs.23,84,575/- under the head of loss of income to the family. That apart, the Tribunal has awarded a sum of Rs.1 lakh for loss of consortium, a sum of Rs.40,000/- for loss of love and affection, a sum of Rs.5,000/- for transportation, a sum of Rs.10,000/- for loss of estate and a sum of Rs.5,000/- for funeral expenses. Thus, the Tribunal has passed an award for a total compensation amount of Rs.25,44,575/- (rounded off to Rs.25,45,000/-).

4.Aggrrieved over the same, the present appeal has been filed by the claimants stating that the 30% negligence fixed on the deceased has to be set aside and also seeking for enhancement of compensation as the compensation amount awarded by the Tribunal is on the lower side.

5.The learned counsel for the appellants/claimants submitted that in order to prove the rash and negligent act of the driver of the lorry bearing Reg.No.TN28-P-3209, on the side of the claimants, one Authilakshmi was examined as P.W.2, who is an eye witness to the accident. P.W.2 had categorically stated in her evidence that on the date of accident, while she was walking along with his sister on Perambalur-Ariyalur main road, she saw a lorry came in a rash and negligent manner and dashed against the two-wheeler. In fact, in her cross-examination, no favourable reply was illustrated to support the defence of the Insurance Company. But, inspite of the same, the Tribunal has rejected her evidence, on an erroneous finding that had the accident been really witnessed by P.W.2, she should have lodged a complaint with the police, but the complaint was lodged only by P.W.1, wife of the deceased. In this regard, the learned counsel for the appellants/claimants submitted that since P.W.2 has not lodged the complaint, it does not mean that she has not witnessed the accident. That apart, the learned counsel for the appellants/claimants submitted that the Tribunal has also assigned yet another reasoning to fix 30% negligence on the part of the deceased, to the effect that at the time of accident, the deceased was not wearing helmet. In this regard, the learned counsel for the appellants/claimants submitted that absolutely

no evidence was adduced to show as to whether the deceased was wearing helmet or not at the time of accident; under such circumstances, according to the learned counsel for the appellants/claimants, 30% negligence fixed on the part of the deceased by the Tribunal is liable to be set aside.

6. Countering the submissions made by the learned counsel for the appellants/claimants, it is replied by the learned counsel appearing for the 2nd respondent/Insurance Company that in order to prove that there is contributory negligence on the part of the deceased, the driver of the lorry was examined as R.W.2 on the side of the Insurance Company. R.W.2-Driver has categorically stated in his evidence that at the time of accident, he was driving the lorry at a normal speed and it is the deceased, who came from opposite direction in a two-wheeler by talking over his mobile phone and in that process, he did not notice the lorry which was coming from the opposite direction, as a result, he dashed on the center portion of the lorry. Therefore, the evidence of R.W.2-Driver would clearly show that there is contributory negligence on the part of the deceased also. Further, the learned counsel for the Insurance Company has also submitted that R.W.2-Driver has also deposed in his evidence that the deceased died due the head injury, which would show that at the time of accident he was not wearing helmet. Thus, the learned counsel for the Insurance Company submitted that absolutely there is no infirmity in fixing 30% negligence on the part of the deceased by the Tribunal. Thus, he sought for dismissal of the appeal.

7. Keeping the submissions made on either side, We have carefully gone through the entire materials available on record.

8. It is the case of the claimants that at the time of accident, the deceased was proceeding in his two-wheeler keeping on the left extreme side of Perambalur-Ariyalur Main Road and at that time, the lorry insured with the 2nd respondent came from opposite direction in a rash and negligent manner and dashed against the two-wheeler. It is the defence of the Insurance Company that the two-wheeler came from opposite direction being driven by the deceased in a rash and negligent manner and dashed at the center portion of the lorry. On the side of the insurance company, the driver of the lorry was examined as R.W.2 and he deposed that at the time of accident, he was driving the lorry in a normal speed and it is the deceased who came from opposite direction in the two-wheeler by talking over his mobile-phone and dashed against the lorry and thus, got involved in the accident. But, the evidence of R.W.2-driver is a self-interested one and his evidence was not corroborated by any other independent witness. Hence, in the absence of any corroborative piece of evidence, the evidence of the driver-

R.W.2 cannot be relied upon.

9. In order to prove the case on the side of the claimants, one Authilakshmi was examined as P.W.2, who is an eye witness to the accident. But, the Tribunal rejected her evidence stating that if she had really witnessed the accident, she would have lodged the complaint with the police. But, We are of the opinion that as contended by the learned counsel for the appellants/claimants, merely because P.W.2 did not lodge the complaint, it does not mean that she has not witnessed the accident.

10. That apart, the Tribunal has also relied upon the reports of the Motor Vehicle Inspector viz., Ex.R.1 & Ex.R.2 and come to the conclusion that the said reports would show that frontal assembly of the two-wheeler is damaged and equally, the front right wheel and rear side mudguard of the lorry are also damaged. By considering the nature of the damages to the vehicles, the Tribunal has come to the conclusion that there should be contributory negligence on the part of the deceased also. But, in our considered opinion, in the absence of any accident plan/sketch, the conclusion arrived at by the Tribunal by wholly relying upon the reports of the Motor Vehicle Inspector is not proper. In this regard, it would be appropriate to place reliance on the judgment of the Hon'ble Supreme Court reported in 2013(9) SCC 1966 [Jiju Kuruvila Vs. Kunjujamma Mohan], wherein it has been held as follows_

"20.5. The mere position of the vehicles after accident, as shown in a scene mahazar, cannot give a substantial proof as to the rash and negligent driving on the part of one or the other. When two vehicles coming from opposite directions collide, the position of the vehicles and its direction, etc. depends on a number of factors like the speed of vehicles, intensity of collision, reason for collision, place at which one vehicle hit the other, etc. From the scene of the accident, one may suggest or presume the manner in which the accident was caused, but in the absence of any direct or corroborative evidence, no conclusion can be drawn as to whether there was negligence on the part of the driver. In absence of such direct or corroborative evidence, the Court cannot give any specific finding about negligence on the part of any individual.

....

The mere suspicion based on Ext.B-2 'scene mahazar' and Ext.A-5 post-mortem report cannot take the place of evidence, particularly, when the direct

evidence like PW.3 (independent eyewitness), Ext.A-1 (FIR), Ext.A-4 (Charge-sheet) and Ex.B-1 (FI Statement) are on record."

In this regard, reliance could be placed upon one more decision of the Division Bench of this Court reported in 2006(2) TN MAC 228 (DB) [Minaxi Vs. Nandankar & Ors], wherein it has been held as follows_

"10.2. When a similar question arose for consideration, this Court in C.M.A.No.614 of 1991, by judgment dated 27.03.2001, held as follows_

"13.The Bus dashed against the motor-cycle and the motorcyclist was run over by the Bus and only due to the impact of the Bus with the motorcycle, such severe damages have been caused to the motor-cycle. By dashing of heavy vehicle like Bus against the motor-cycle only the motor-cycle will be damaged much. It cannot be expected that the Bus, such a heavy vehicle would have been damaged. Due to dashing of the heavy vehicle, the Bus, the motor-cycle has been smashed and it has been completely damaged and the mtorcyclist fell down and the motor-cycle and the motorcyclist were ran over by the Bus and under such circumstances, there is no possibility at all for causing any damage to the Bus and only the motor-cycle would have been damaged. So, We find no force in the argument advanced by the learned counsel, on this aspect."

10.3. Applying the above ratio to the facts of the case, we hold that merely because the Scooter got damaged on its front bumper, it cannot be stated that the Scooterist was responsible for the accident and the submission of the learned counsel for the Transport Corporation is liable to be rejected."

The dictum laid down in the above said decisions is squarely applicable to the present facts of the case also. Hence, the findings of the tribunal that there is contributory negligence of 30% on the part of the deceased, merely based on the reports of the Motor Vehicle Inspector, is not correct, particularly in the absence of any corroborative piece of evidence, such as accident plan/sketch. Therefore, the 30% negligence fixed by the Tribunal on the part of the deceased is liable to be set aside and accordingly, the same is hereby set aside.

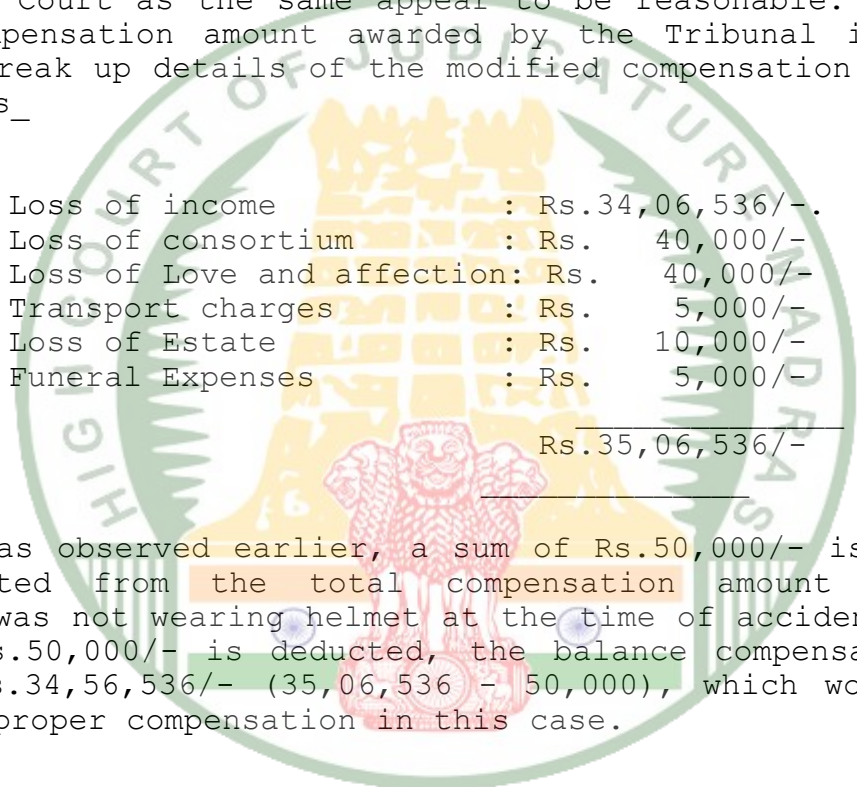
11.However, We find that the evidence on record would show that the deceased died only due to the head injury. The Insurance Company has also taken a defence that at the time of accident, the deceased was not wearing helmet. But, no evidence was produced on the side of the claimants to show that the deceased was wearing helmet at the time of accident. Under such circumstances, We are of the opinion that from the total compensation amount, a sum of Rs.50,000/- has to be deducted for fault of the deceased in not wearing the helmet at the time of accident.

12.So far as the quantum of compensation is concerned, it is seen that the Tribunal, by placing reliance on Pay Bills and arrear bill viz, Ex.P.4 to 7, has come to the conclusion that the deceased was receiving a sum of Rs.23,106/- as monthly salary and thereafter, by adding 30% amount towards future prospects, arrived at a sum of Rs.30,038/- ($23,106 + 6,931.80 = 30,037.80$, rounded off to Rs.30,038). Thereafter, the Tribunal has deducted 1/4th amount towards personal expenses and arrived at a sum of Rs.22,528, rounded off to Rs.22,530/-, as monthly loss of income. Then, by applying multiplier 14 based on the age of the deceased, who was 43 years at the time of accident, the Tribunal has arrived at a sum of Rs.37,85,040/- ($22,530 \times 12 \times 14$). The calculation made by the Tribunal to arrive at a sum of Rs.37,85,040/- is well within the principles laid down by the Hon'ble Supreme Court in various decisions. The contributory negligence of 30% fixed by the Tribunal need not be deducted, as the same is set aside by this Court as held supra. Hence, only 10% amount has to be deducted from the said sum of Rs.37,85,040/- towards income tax. If so deducted, the balance amount comes to Rs.34,06,536/- ($37,85,040 - 3,78,504$), which would be the just and proper compensation for the loss of income. Accordingly, the sum of Rs.23,84,575/- awarded by the Tribunal under the head of loss of income is hereby modified and enhanced to Rs.34,06,536/-.

13.Further, the Tribunal has awarded a sum of Rs.1 lakhs for loss of consortium for the 1st claimant/wife. As per the recent decision of the Hon'ble Supreme Court reported in 2017(2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi

and others], the wife of the deceased is entitled to get only a sum of Rs.40,000/- for the loss of consortium. Hence, the sum of Rs.1 lakh awarded by the Tribunal for the loss of consortium is hereby reduced to Rs.40,000/-.

14. That apart, the Tribunal has awarded a sum of Rs.40,000/- (at the rate of Rs.10,000/- each) for the loss of love and affection to the claimants 1 to 4, and a sum of Rs.5,000/- for transport charges, a sum of Rs.10,000/- for loss of estate and a sum of Rs.5,000/- for funeral expenses. The compensation awarded by the Tribunal under these heads needs no interference from this Court as the same appear to be reasonable. Thus, the total compensation amount awarded by the Tribunal is modified and the break up details of the modified compensation amount are as follows_



Loss of income	: Rs.34,06,536/-.
Loss of consortium	: Rs. 40,000/-
Loss of Love and affection:	Rs. 40,000/-
Transport charges	: Rs. 5,000/-
Loss of Estate	: Rs. 10,000/-
Funeral Expenses	: Rs. 5,000/-
	Rs.35,06,536/-

However, as observed earlier, a sum of Rs.50,000/- is liable to be deducted from the total compensation amount since the deceased was not wearing helmet at the time of accident. If the sum of Rs.50,000/- is deducted, the balance compensation works out to Rs.34,56,536/- (35,06,536 - 50,000), which would be the just and proper compensation in this case.

15. In fine, the appeal is partly allowed and the total compensation amount of Rs.25,45,000/- awarded by the Tribunal is hereby modified and enhanced to Rs.34,56,536/-, in which the 4th claimant/mother is entitled to Rs.4,56,536/- and the claimants 1 to 3 are entitled to the balance amount in equal share. The 2nd respondent/Insurance Company is directed to deposit the entire compensation amount, after deducting the amount if any already deposited, with interest at the rate of 7.5% per annum 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. On such deposit being made, the 1st claimant and the 4th claimant are entitled to withdraw their respective share amounts by making necessary application before the Tribunal. The share amounts of the minor claimants/claimants 2 & 3 shall be

deposited in any one of the nationalised banks till they attain majority and their mother/1st claimant is entitled to withdraw the interest accrued thereon once in every three months. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

ssv

To,

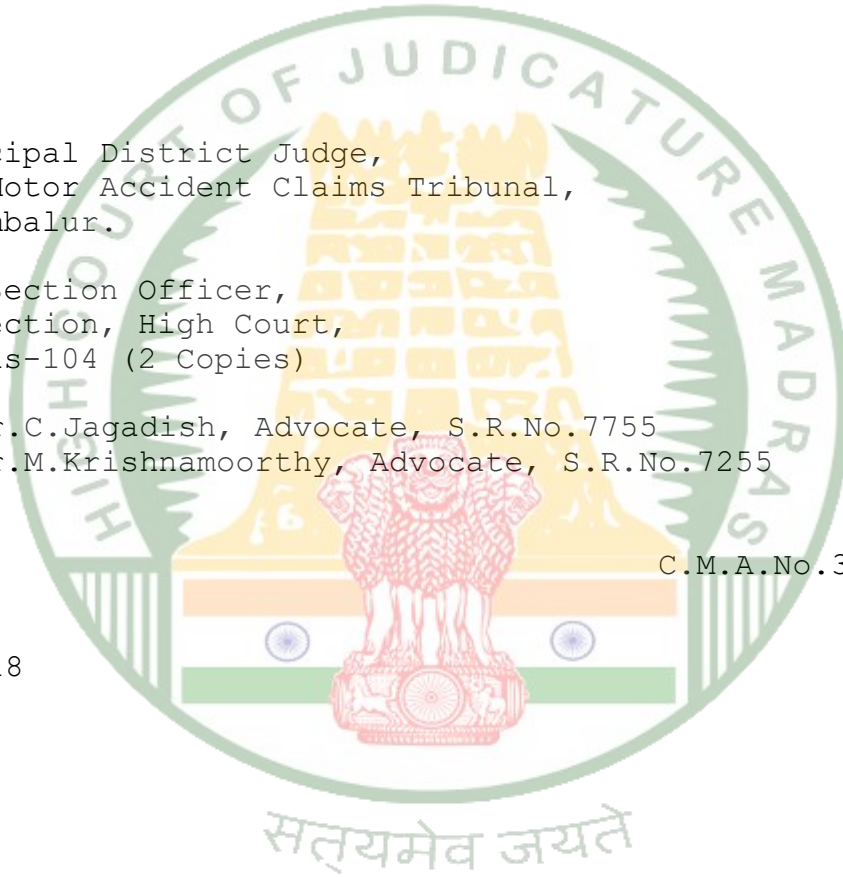
1. Principal District Judge,
The Motor Accident Claims Tribunal,
Perambalur.
2. The Section Officer,
VR Section, High Court,
Madras-104 (2 Copies)

+1cc to Mr.C.Jagadish, Advocate, S.R.No.7755

+1cc to Mr.M.Krishnamoorthy, Advocate, S.R.No.7255

C.M.A.No.3632 of 2014

AD(CO)
CS/04/04/18



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