

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.10.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.M.A. No.2002 of 2018
and
C.M.P.No.15606 of 2018

M/s.National Insurance Company Ltd.,
LRN Colony,
Sarada College Main Road,
Hasthampatti, Salem-7 ... Appellant/2nd Respondent

-vs-

1.Vasantha
2.Murthy
3.Govindaraj
4.Lakshmi ... Respondents 1 to 4/Claimants 1 to 4
5.M.Gunasekaran ... 5th Respondent/1st Respondent.

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988 against the judgment and decree dated 28.02.2018 made in MCOP.No.1857 of 2015 on the file of the Motor Accident Claims Tribunal, I Additional District Court, Salem.

For Appellant : Mr.S.Vadivel
For Respondents: Mr.SP.Yuvaraj for R1 to R4
R5 - Exparte - Notice dispensed with

J U D G M E N T

[Judgment of the Court was delivered by R.SUBRAMANIAN,J.]

The Insurance Company which suffered an award for payment of Rs.30,02,919/- as compensation for the death of one Kumaresan in the motor accident that occurred on 21.12.2014 is the appellant.

2. According to the claimants, the deceased was travelling as a pillion rider in the two-wheeler and the bus bearing registration No.TN-54-F-5155 came from behind and dashed against the two-wheeler, resulting in the death of the said Kumaresan. Terming the rash and negligent driving of the bus by its driver as cause for the accident, the claimants had sought for a compensation of Rs.25,00,000/-. According to the claimants, the

deceased was a graduate in English Literature and also possessed a Diploma qualification in Computer Engineering and was working as a teacher in a private school drawing a salary of Rs.15,000/- per month.

3. The claim petition was resisted by the Insurance Company contending that the vehicle was not involved in the accident and the age, educational qualification and income of the deceased were also disputed by the Insurance Company.

4. Before the Tribunal, the claimants examined PW2 and PW3 as eye witnesses to the accident. PW2 has deposed that he did not see the registration number of the bus. PW3 had spoken about the accident. Based on the said evidence, the Tribunal concluded that the bus was in fact involved in the accident and the accident occurred due to the rash and negligent driving of the bus driver.

5. On the quantum, the Tribunal took the income of the deceased at Rs.18,000/- per month, adding 50% towards future prospects and deducting one half towards personal expenses, and applying the multiplier of 17, the Tribunal arrived at total loss of dependency at Rs.27,54,000/-. The Tribunal also awarded the following amounts under various heads,

Funeral expenses	=	Rs.20,000/-
Medical bills	=	Rs.1,78,919/-
Loss of love and affection for the mother	=	Rs.20,000/-
Loss of love and affection to the brothers	=	Rs.20,000/-
Loss of love and affection to the grandmother	=	Rs.10,000/-

Thus, the total worked out to Rs.30,02,919/-. Aggrieved the Insurance Company is on appeal.

6. We have heard Mr.S.Vadivel, learned counsel for the appellant Insurance Company and Mr.SP.Yuvaraj, learned counsel appearing for the claimants.

7. Mr.S.Vadivel, learned counsel appearing for the Insurance Company would strenuously contend that the Tribunal erred in concluding that the rash and negligent driving of the driver of the bus was the cause of the accident in the absence of proof to show that the bus was actually involved in the accident. He would also fault the Tribunal for not considering the fact that the FIR was filed after a lapse of 6 days period from the date of the accident.

8. Mr.S.Vadivel would also question the quantum of compensation contending that the Tribunal erred in taking the monthly income at Rs.18,000/- when the claimants themselves have pleaded that the deceased was earning only Rs.15,000/- per month. He would also fault the Tribunal for adding the future

prospects at 50%, while it could only be 40%, in view of the recent pronouncement of the larger bench of the Hon'ble Supreme Court in National Insurance Co. Ltd Vs. Pranay Sethi and others reported in 2018 (1) LW 331.

9. Contending contra Mr.SP.Yuvaraj, learned counsel appearing for the claimants would submit that the Tribunal was justified in taking the monthly income at Rs.18,000/- based on the evidence that was made available as well as qualification of the deceased. He would also submit that the Tribunal's conclusion on the question of involvement of the bus cannot be interfered with inasmuch as the Insurance Company has not produced vital documents like trip sheet, investigation report and the motor vehicle inspection report of the bus.

10. We have considered the rival submissions. As regards the involvement of the bus we have the evidence of PW2 and PW3. Even though PW2 would say that he did not notice the registration number of the bus, PW3 had categorically deposed that it was the bus bearing registration No.TN-54-F-5155 which was involved in the accident.

11. Admittedly, the bus is a Transport bus plying on the route with permit. The conductor of the bus is required to maintain the trip sheet which would show the route timings of the bus. The fact that the Insurance Company conducted investigation is also admitted. But, the Insurance Company had neither produced the trip sheet nor the investigation report.

12. We find that the non-production of these vital documents is fatal to the case of the Insurance Company and we will be justified in drawing adverse inference for non-production of these documents which are admittedly accessible to it. We therefore, see no reason to interfere with the findings of the question of involvement of the bus.

13. On the quantum, the Tribunal has taken the monthly income at Rs.18,000/-. Admittedly, the deceased was a graduate in English Literature and was also a Diploma in Computer Application. It is also admitted that he was employed as teacher in a private school. We therefore see no reason to conclude that fixing of Rs.18,000/- as monthly income is on the higher side. The Tribunal has taken the future prospects at 50%. Considering the larger bench judgment of the Hon'ble Supreme Court in National Insurance Co. Ltd Vs. Pranay Sethi and others reported in 2018 (1) LW 331, future prospects could only be 40%. The Tribunal has also awarded Rs.20,000/- towards loss of love and affection to the major brothers of the deceased. This, in our opinion, is not justified. Therefore, the compensation awarded by the Tribunal needs to be reworked and the same is reworked as

follows:-

Loss of dependency	
Rs.18,000/- + 40% -1/2 x 12 x 17	= Rs.25,70,400/-
Loss of love and affection to mother	= Rs. 40,000/-
Loss of love and affection to grandmother	= Rs. 10,000/-
Funeral expenses	= Rs. 25,000/-
Loss of estate	= Rs. 15,000/-
Medical expenses	= Rs. 1,78,919/-
Attender charges for a period of 3 months	= Rs. 15,000/-
Transportation	= Rs. 10,000/-

Total	= Rs.28,64,319/-

The same is rounded off to Rs.28,64,000/-. The award will carry interest at 7.5% per annum. The Tribunal has apportioned the compensation to the major brothers of the deceased also. We do not think such apportionment is justifiable. The major brothers cannot be considered as dependents. We therefore apportion the compensation as follow:-

- (i) The 1st claimant/ 1st respondent mother of the deceased will take Rs.24,00,000/- along with proportionate interest and costs and
- (ii) The 4th respondent grandmother of the deceased will take the remaining amount of Rs.4,64,000/- with proportionate interest.

14. The Insurance Company has deposited 50% of the award amount pursuant to the interim order made in this appeal. The Insurance Company is directed to deposit the balance amount within 6 weeks from the date of receipt of a copy of the judgment. On such deposit the claimants 1 and 4 are permitted to withdraw their respective shares. The claimants 2 and 3 who are major brothers are not entitled to any share.

15. In fine, the appeal is partly allowed. No costs. Consequently, the connected miscellaneous petition is also closed.

सत्यमेव जयते

-s/d-

Assistant Registrar (CS-IX)

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Sub-Assistant Registrar

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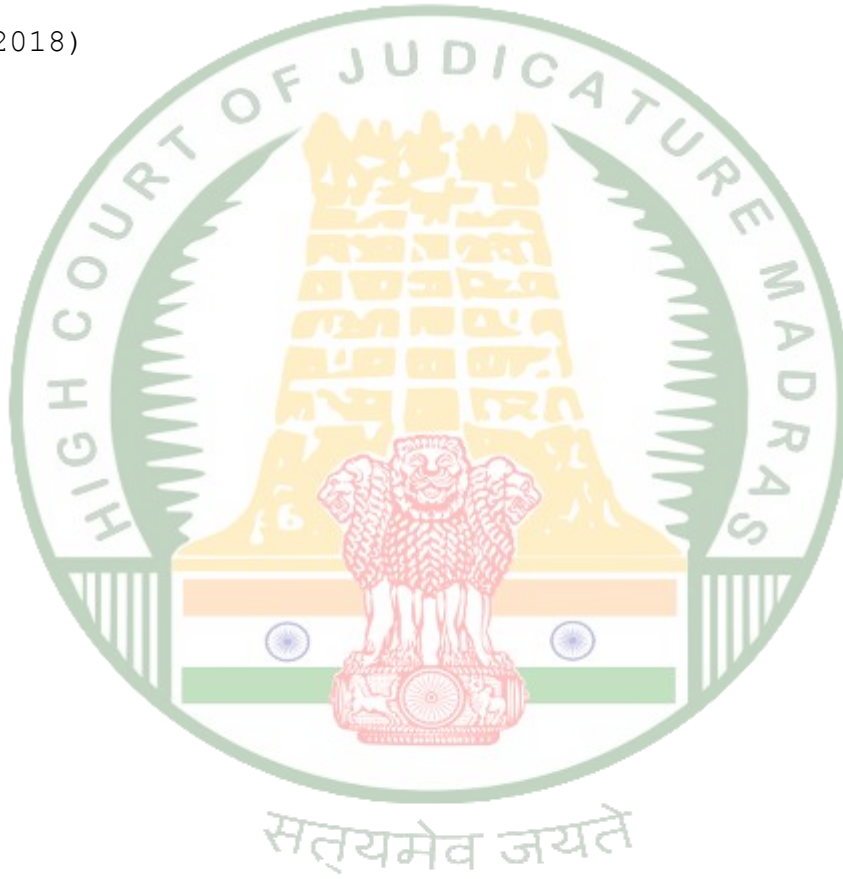
1.The I Additional District Judge
The Motor Accident Claims Tribunal,
Salem.

2. The Section officer
VR Section, High Court, Madras 104.

+1 CC to Mr.S.Vadivel, Advocate sr 74522.
+1 CC to Mr.S.P.Yuvaraj, Advocate sr 74691.

C.M.A. No.2002 of 2018

KJI (CO)
SP (12/12/2018)



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