

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 06.12.2017
PRONOUNCED ON : 06.04.2018
CORAM

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.M.A.No.3261 of 2006

National Insurance Co. Ltd.,
Rep. By its Branch Manager,
Karur.

...Appellant/2nd Respondent

Versus

1. Mallika
2. Minor Sabari
3. Minor Sarath Kumar
4. Minor Anandhi
5. Minor Gokil Kannan
Minors represented by their
Next Friend Mother Mallika
6. Thanjammal
7. Chinnasamy ...Respondents/Petitioners
8. M/s.V.K. Aravind Transports...8th Respondent/1st Respondent
9. R. Gnasekar ...9th Respondent/3rd Respondent
10. United India Insurance Co. Ltd.,
rep. By its Branch Manager,
54A, Palani Road,
Tindugal - 624 001.10th Respondent/4th Respondent

Appeal filed under Section 173 of the Motor Vehicle Act, 1988 against the award and decree dated 13.03.2006 made in M.C.O.P. No.738 of 2004 on the file of the Motor Accidents Claims Tribunal, Additional District Judge, Dharmapuri at Krishnagiri.

For Appellant : Mr. S. Arunkumar

For Respondents: Mr.T. Ravichandran for R10
Respondents 1 to 7 :NA
Respondents 8 & 9 : Exparte

JUDGMENT

The present appeal has been preferred by the Insurance Company/appellant as against the award made in MCOP No.738 of 2004, dated 13.03.2006, on the file of Motor Accidents Claims Tribunal, Additional District Judge, Dharmapuri at Krishnagiri.

2. The brief facts leading to the filing of the claim petition are as under :-

On 19.06.2004 at about 5.30 hours, while the deceased was driving the tempo behind the bus bearing Registration No.TN 47 F 4793 belonging to the 8th respondent, which was insured with the appellant, the driver of the bus in a rash and negligent manner, abruptly stopped the bus before the bus stop. Due to the said sudden act, the driver of the tempo, viz., the deceased, applied sudden brake. In spite of the same, the tempo dashed against the back side of the bus due to which the driver of the tempo sustained multiple grievous injuries. Immediately, the driver of the tempo was taken to the Government Hospital at Pallapattai. However, in spite of treatment, the deceased succumbed to the injuries. The legal representatives of the deceased filed the claim petition claiming a sum of Rs.10,00,000/- as compensation. The Tribunal awarded a sum of Rs.7,68,000/- as compensation under the following heads :-

Loss of income	:	Rs.6,80,000/-
Loss of Consortium	:	10,000/-
Loss of love and affection to petitioners 1 to 5	:	50,000/-
Loss of love and affection to petitioners 6 and 7	:	20,000/-
Funeral expenses	:	5,000/-
Transportation	:	3,000/-
Total		Rs.7,68,000/-

3. Challenging the negligence and quantum of compensation awarded, the Insurance Company has filed this appeal.

4. The learned counsel for the appellant submits that the accident had occurred only due to the negligence on the part of the driver of the Tempo, viz., the deceased. However, the Tribunal erred in holding that the driver of the bus was responsible for the accident. It is the further contention of the learned counsel for the appellant that Ex.R2, the rough sketch, prepared depicting the scene of occurrence clearly reveals that the deceased was solely responsible for causing the accident and, therefore, fastening of negligence on the driver of the bus is unwarranted. It is further submitted that the income fixed is on the higher side and the multiplier adopted is not proper and accordingly, the same requires to be reduced. It is the further submission of the learned counsel for the appellant that the contributory negligence fixed on the driver of the bus is unsustainable and not supported by the materials available on record.

5. In order to appreciate the contentions advanced above, it is necessary to have a perusal of the evidence.

6. Based on the complaint, FIR has been registered against the Driver of the bus, who has stopped the vehicle at

a distance before the exact bus stop. A perusal of the order of the Tribunal reveals that the Tribunal has taken into consideration Ex. R2, the rough sketch, which reveals, that the width of the black top road is 26 feet and the mud road on both sides is 15 feet wide. It is further evident from the order that the accident had happened on the mud road, which means that as part of the bus was stopped on the mud road. In such circumstances, the Tribunal held that the stopping of the bus in a place prior to the bus stop was a negligent act on the part of the driver of the bus, however, had the tempo maintained the requisite distance, the accident could have been averted. Therefore, the driver of the tempo, viz., the deceased was also equally negligent in causing the accident.

7. The foremost question that arises for determination is whether the negligence is on the part of both the driver of the bus as well as the deceased or only on one side, and if so, on whom?

8. A perusal of the materials on record reveal that the black top road was of a width of 26 feet and on both sides, mud road to the extent of 15 feet was available. The oral and documentary evidence available on record further disclose that the driver of the bus suddenly stopped the bus before the bus stopping, however, partly on the mud portion of the road. Stopping the bus before the bus stop is a negligent act on the part of the driver of the bus. However, equally true it is that the vehicles following one another are supposed to leave a gap of 10 meters so as to avoid accidents due to sudden braking by the preceding bus. In the case on hand, though the bus had stopped suddenly before the bus stop, had the driver of the tempo been diligent enough and had left adequate space between the tempo and the bus, the accident could have easily been avoided. Further, it is to be pointed out that had the tempo been driven in a safe manner and had not been over speeding, the impact of the tempo on the bus would not be of such a force to cause such grievous injuries on the deceased leading to his death. The injuries sustained by the deceased clearly shows that the tempo was also driven in a rash and negligent manner, which was also equally responsible for the accident. Therefore, the finding of the Tribunal that the bus and the tempo were equally responsible for the accident is based on materials available on record and, accordingly, the said finding is confirmed.

9. While fixing the loss of income, the Tribunal has considered the age of the deceased by verifying the date of birth in his Driving Licence as 23.04.1971 and hence at the time of the accident, the age of the deceased was 33 years. Further, it is also observed that as per Ex.P7, the deceased had badge to drive the transport vehicle and further it is observed that the accident occurred, while he was driving the tempo. Hence, his age & occupation have been sufficiently

proved before the Tribunal. It is also the finding of the Tribunal that a Driver of a vehicle will definitely earn not less than Rs.5,000/- p.m. and based on the fact that he will be earning Rs.60,000/- per year and after deducting 1/3rd amount for his personal expenses at Rs.20,000/-, his contribution to the family is Rs.40,000/-. Hence, by applying the multiplier of 17 by taking his age at 33, the loss of income has been calculated at Rs.6,80,000/- is an appropriate one. Considering the number of dependants, who are seven in number wife, children and parents, each awarded a sum of Rs.10,000/- for the loss of care and affection of their husband, father and son. Further the 1st petitioner wife is awarded a sum of Rs.10,000/- as loss of Consortium. Rs.5,000/- towards funeral expenses and Rs.3000/- towards transportation, thus the award calculated as Rs.7,68,000/- are quite reasonable and proper one. Hence, the amount awarded under the various heads are liable to be confirmed. This award was passed in the year 2006 against the accident occurred on 19.06.2004. Hence, it won't be proper and justifiable to scrutinise the amount awarded by the Tribunal under various heads as excessive.

10. For the reasons aforesaid, there being no merits in the appeal, it is liable to be dismissed. Accordingly, the appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

11. The appellant/Insurance Company is directed to deposit 50% of the award amount along with interest at 7.5% per annum from the date of petition till the date of deposit and costs as ordered by the Tribunal, less the amount, if any, already deposited, to the credit of the claim petition, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank account of the respective major claimants through RTGS within a period of two weeks thereafter. Insofar as the share of the minors are concerned, the same shall be kept in fixed deposit till the minors attain majority and the 1st claimant, mother of the minors is permitted to withdraw the interest accruing thereon once in three months for utilising the same for the welfare of the minors.

Sd/--
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

1. The Additional District Judge, Dharmapuri at Krishnagiri.

Copy to: The Section Officer, VR Section,
High Court, Madras.

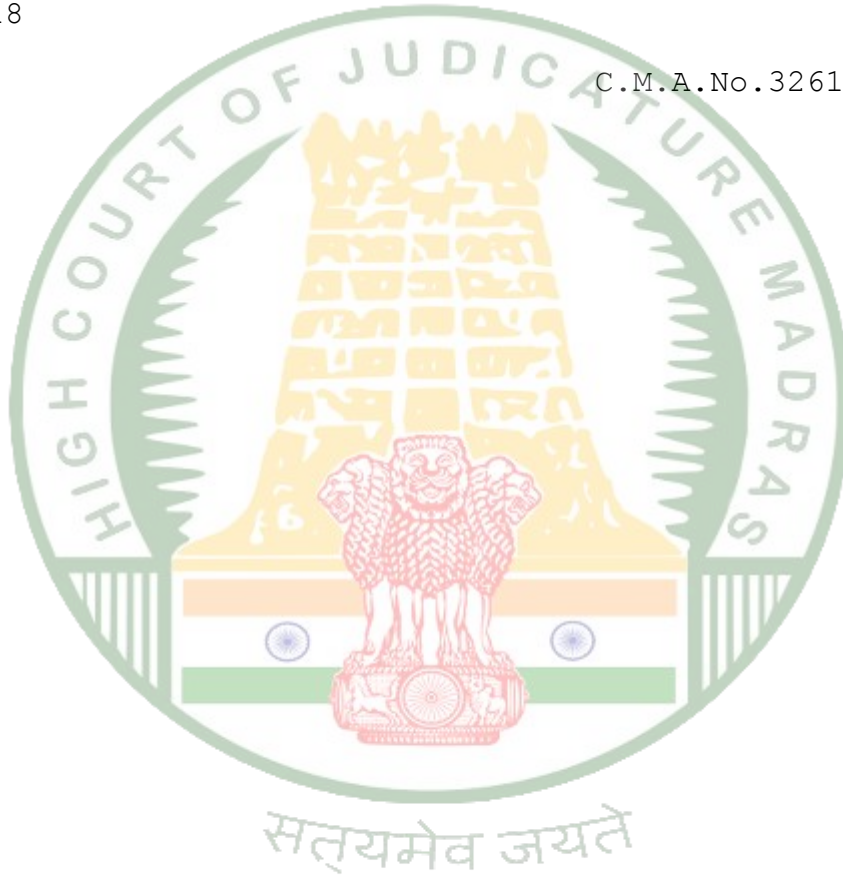
+1cc to Mr.S.Arunkumar, Advocate Sr.No.25607

+1cc to MR.T.Ravichandran, Advocate Sr.No.25438

VGI (CO)

sm:5.6.2018

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