



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.09.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

WEB COPY

C.M.A(MD)No.990 of 2017

and

C.M.P(MD)Nos.10273 of 2017 & 1487 of 2018

and

CMA (MD).No.955 of 2017**And****C.M.P(MD)No.10027 of 2017****C.M.A(MD)No.990 of 2017**

The New India Assurance Co. Ltd.,
Represented by its Divisional Manager,
Having office at Market Road,
Thanjavur Town and Munsif. ... Appellant/2nd Respondent

Vs.

- 1.Gunasekaran
- 2.Saroja
- 3.Minor Thamaraiselvi
(Minor represented by her father
1st respondent) ... Respondents 1 to 3/Petitioners
- 4.Ravichandran ... 4th Respondents/1st Respondent

PRAYER: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the award passed by the Motor Accident Claims Tribunal/Special District Court, Thanjavur, in M.C.O.P.No.658 of 2014, dated 27.04.2016, as against the appellant and allow the appeal.

For Appellant : Mr.N.Dilip Kumar
For R1 to R3 : Mr.P.Vadivel

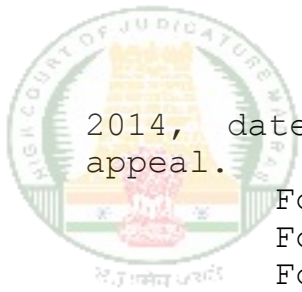
C.M.A(MD)No.955 of 2017

The New India Assurance Co. Ltd.,
Represented by its Divisional Manager,
Having office at Market Road,
Thanjavur Town and Munsif. ... Appellant/2nd Respondent

Vs.

- 1.Vignesh ... 1st Respondent/Petitioner
- 2.Ravichandran ... 2nd Respondent/1st Respondent

PRAYER: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the award passed by the Motor Accident Claims Tribunal/Special District Court, Thanjavur in M.C.O.P.No.653 of



2014, dated 27.04.2016 as against the appellant and allow the appeal.

For Appellant : Mr.N.Dilip Kumar
For R1 : Mr.P.Vadivel
For R2 : No appearance

WEB COPY

* * * * *

COMMON JUDGMENT

Both the appeals arise out of common award passed by the Motor Accident Claims Tribunal/Special District Court, Thanjavur, in M.C.O.P.Nos.658 and 653 of 2014, dated 27.04.2016 and hence, both appeals are disposed of by this common judgment.

2.The parties are referred to as per their rank in the claim petitions.

3.According to the claimants, on 13.02.2014 at 4.00 p.m., one Balamurugan has driven a two-wheeler bearing Registration No.TN-50-U-6149 along with the claimant in M.C.O.P.No.653 of 2014 and one Veerasekar as pillions. At that time, a lorry bearing Registration No.TN-02-3145 belonging to the first respondent driven by its driver in a rash and negligent and manner dashed against the motorcycle. Due to the same, the said Balamurugan died on the spot itself and the Veerasekar sustained multiple injuries and subsequently, died in spite of the medical treatment given to him. The claimant in M.C.O.P.No.653 of 2014 claimed a sum of Rs.9,90,000/- as compensation, for the injuries sustained by him. The legal heirs of the deceased Veerasekar filed M.C.O.P.No.658 of 2014 claiming a sum of Rs.20,00,000/- as compensation for the death of Veerasekar.

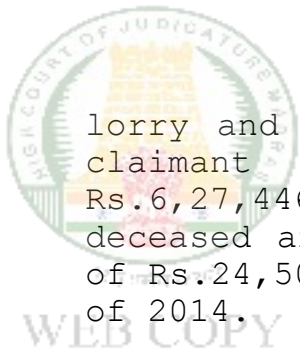
4.According to the claimants in both Original Petitions, the accident occurred only due to the rash and negligent driving by the driver of the lorry belonging to the first respondent insured with the second respondent. Hence, both the respondents are liable to pay compensation.

5.The first respondent remained ex-parte before the Tribunal in both the claim petitions.

6.The second respondent Insurance Company filed counter statement and contended that the accident had occurred only due travelling of three persons in the motorcycle and not due to the rash and negligent driving by the driver of the lorry. Hence, the second respondent is not liable to pay any compensation.

7.Before the Tribunal, the claimants examined three witnesses as P.W.1 to P.W.3 and marked 26 documents as Ex.P1 to Ex.P26. The respondents did not let in any oral and documentary evidence.

8.The Tribunal considering the pleadings, oral and documentary evidence let in by the claimants, held that the accident occurred only due to rash and negligent driving by the driver of the



lorry and considering the nature of the injuries sustained by the claimant in M.C.O.P.No.653 of 2014, awarded a sum of Rs.6,27,446/- as compensation and considering the age of the deceased and the fact that the deceased was student, awarded a sum of Rs.24,50,859/- as compensation to the claimants in M.C.O.P.No.658 of 2014.

9. Aggrieved by the said common award, the second respondent Insurance has come out with the present two appeals.

10. The learned counsel appearing for the appellant contended that the Tribunal erred in fixing the disability of the claimant in M.C.O.P.No.653 of 2014 at 47% and fixed Rs.3,000/- per percentage of disability, without properly considering the nature of injuries. The amount awarded under various heads are excessive. The Tribunal ought to have fixed the contributory negligence on the rider of the two-wheeler, as three persons had travelled in the two-wheeler at the time of accident and rider of the motorcycle did not have valid driving licence.

11. As far as quantum of compensation awarded to the claimants in M.C.O.P.No.658 of 2014 is concerned, the Tribunal erred in fixing the monthly income of the deceased at Rs.9,000/- and granting 50% addition towards future prospects. The finding of the Tribunal that the deceased was first year ITI Student, is without any material. The amount of Rs.8,37,859/- granted towards medical bills is not correct. The rate of interest awarded by the Tribunal at 9% is also excessive.

12. In support of his case, the learned counsel for the appellant has relied on the following judgments:-

(i) ***Shrimanti v. Krishna Deva Madiwal reported in 2005 ACJ 350***, wherein at paragraph 30 it has been held as follows:-

"30. It is true that the Corporation has not taken the plea of contributory negligence, but, that does not prevent the court or the Tribunal to hold so, when things speak for themselves, leading to an inference about it. In the case of *Sharada Bai v. Karnataka State Road Trans. Corpn.*, 1988 ACJ 490 (Karnataka), a coordinate Bench of this Court has also held that the contributory negligence can be and very often is inferred from the evidence adduced already on the claimants' behalf or from the perspective facts, either admitted or found established, on a balance of probabilities in the case."

(ii) ***Managing Director, Tamil Nadu State Transport Corporation (Coimbatore Division 1) Limited, Coimbatore v. Abdul Salam reported in (2003) 1 M.L.J.489***, wherein at paragraphs 13 to 15 it has been held as follows:-

"13. When three persons travelled in a motorcycle which is meant for two persons, this Court is of the view, the conduct of the persons who travelled in such a manner are liable for contributory negligence; especially when



their action is contrary to the statute.

14. Hence, we hold that the deceased was liable for 50% of the contributory negligence and consequently 50% of the compensation is deducted towards contributory negligence and the claimants/respondents 1 to 6 are entitled for the compensation of Rs.1,10,000 together with interest at 9% p.a. They are entitled for their respective share in the same ratio as appropriated by the Tribunal. The appeal is partly allowed with the above modification. Consequently, C.M.P.No.165 of 2003 is closed.

15. While we lay down the law in respect of the contributory negligence by the unauthorised travelling of three persons in a motor cycle, we make it clear that it will not be applicable to a case where a family consisting of husband, wife and children are travelling. Even in such cases, if more than one child aged above 10 to 12 years is being taken, then we make it clear that the principle of contributory negligence will be applicable in respect of any accident."

(iii) **The United India Insurance Company Ltd., Karur vs. R. Alagammal and others reported in 2017 ACJ SCC Online Mad 10620**, wherein at paragraph 4, it has been held as follows:-

"4.....The Division Bench of this Court in the decision rendered in 2003 (1) MLJ 489 (Managing Director, Tamil Nadu State Transport Corporation v. Abdul Salam, Jameela, Laila) held that when three persons are travelling in a motor cycle, two as pillion riders, any unusual movement of the pillion riders would make the rider of the motor cycle to lose his control over the vehicle. Since such riding is contrary to statute, the conduct of the persons who travelled in such a manner will have to necessarily invite fastening of contributory negligence on them."

(iv) **The National Insurance Co. Ltd., v. Pattulakshmi and others, reported in 2014 SCC Online Mad 12110**, wherein at paragraph 6, it has been held as follows:-

"6..... Though entire negligence cannot be fastened on the two-wheeler, yet, on account of travel by three persons in the two-wheeler, contributory negligence could be attributed to the rider of the two-wheeler. Further, merely because the driver of the lorry was not examined, it would not automatically prove that the driver of the lorry alone was responsible for the accident. Therefore, this Court fixes 25% contributory negligence on the part of the rider of the two-wheeler."

13. Per contra, the learned counsel appearing for the claimants contended that the claimant in M.C.O.P.No.653 of 2014 has proved the nature of the injuries and his inability to do the work, as he was doing earlier. The Tribunal considering the percentage of

disability and nature of injuries sustained by the claimant, has awarded just and proper compensation and there is no reason to interfere with the said finding. As far as the claimant in M.C.O.P.No.658 of 2014 is concerned, the deceased was a student. The Tribunal as per the judgment of the Hon'ble Apex Court and this Court, fixed a sum of Rs.9,000/- per month as notional income of the deceased and granted 50% addition towards future prospects and by applying the multiplier '18', has awarded a total sum of Rs.24,50,859/- and prayed for dismissal of both the appeals.

14. In support of his case, he relied on the judgment in **National Insurance Co. Ltd., vs. R.Vimala reported in 2015 (2) TNMAC 490 (DB)**.

15. I have heard the learned counsel appearing for the appellant Insurance Company and the claimants and perused the materials available on record.

16. As far as C.M.A(MD)No.955 of 2017 is concerned, it is filed for claiming compensation for the injuries sustained by the claimant in the accident. The claimant has proved the nature of injuries by examining the Doctor as P.W.3 and marking Ex.P.15 to Ex.P.19 and Ex.P.23 to Ex.P.25. The Tribunal granted a sum of Rs.3,000/- for per percentage of disability and various amounts under the different heads. The amounts awarded under the heads of loss of enjoyment of life and marital prospects, loss of amenities and attendant charges and Transportation are excessive and hence, the same are reduced. The award of the Tribunal under other heads is confirmed. The rate of interest awarded by the Tribunal is reduced from 9% to 7.5% per annum.

17. In view of the settled position of law, this Court modifies the award of the Tribunal by reducing the compensation, as under:-

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Disability 47%	1,41,000	1,41,000	confirmed
2.	Pain and sufferings	50000	50000	confirmed
3.	Loss of enjoyment of life and marriage prospects	50,000	15,000	reduced

4.	Towards loss of amenity and attendant charges	50,000	15,000	reduced
5.	Extra nourishment	10,000	10,000	confirmed
6.	Transportation	10,000	5,000	reduced
7.	Loss of clothes and articles	5,000	5,000	confirmed
8.	Medical expenses as per Ex.P18 and Ex.P23	3,11,446	3,11,446	
	Total	Rs.6,27,446	Rs.5,52,446	By reducing a sum of Rs.75,000/-

18.The Civil Miscellaneous Appeal in C.M.A(MD)No.955 of 2017 is partly allowed and the appellant Insurance Company is directed to deposit the modified award amount of Rs.5,52,446/- (Rupees Five Lakhs Fifty Two Thousand and Four Hundred and Fourty six only), less the amount already deposited, if any, along with 7.5% interest and costs to the credit of M.C.O.P.No.653 of 2014, on the file of the Motor Accident Claims Tribunal/Special District Court, Thanjavur, within a period of **eight weeks** from the date of receipt of copy of this judgment. On such deposit being made, the claimant is permitted to withdraw the said modified amount with interest by making necessary application before the Tribunal.

19.As far as C.M.A(MD)No.990 of 2017 is concerned, the Tribunal has fixed the notional income of the deceased at Rs.9,000/- per month and added 50% towards future prospects. Since the deceased was a Student and aged about 19 years at the time of accident, it would be appropriate to award 40% of the income towards future prospects. After adding 40% towards future prospects, the amount comes to Rs.12,600/- (Rs.9,000 + 40% of Rs.9,000) and after deducting 50% towards personal expenses, the loss of income of the deceased is fixed as Rs.6,300/-. The deceased was 19 years at the time of accident. As per the judgment reported in **2009(2)TN MAC 1 (SC) Sarla Verma v. Delhi Transport Corporation**, the multiplier applicable is '18'. Thus, the loss of income of the deceased would be Rs.6300 x 12 x 18=13,60,800/-. The loss of income awarded by the Tribunal is reduced from Rs.14,58,000/- to Rs.13,60,800/-. The compensation awarded by the Tribunal under the head of funeral expenses is excessive and the same is reduced from Rs.25,000/- to 15,000/- and the amount awarded towards loss of estate is on the lower side and therefore the same is enhanced from Rs.10,000/- to Rs.15,000/-. The award of the Tribunal under other heads are confirmed. The rate of interest awarded by the Tribunal is reduced from 9% to 7.5% per



annum.

20. In view of the settled position of law, this Court modifies the award of the Tribunal by reducing the compensation, as under:-

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of income	14,58,000	13,60,800	reduced
2.	Funeral expenses	25,000	15,000	reduced
3.	Loss of estate	10,000	15,000	enhanced
4.	Transport charges	10,000	10,000	confirmed
5.	Loss of love and affection to the claimants 1 & 2	1,00,000	1,00,000	confirmed
6.	Loss of love and affection to the third claimant	10,000	10,000	confirmed
7.	Medical expenses	8,37,859	8,37,859	confirmed
	Total	Rs.24,50,859	Rs.23,48,659/- rounded off to Rs.23,48,660/-	By reducing a sum of Rs.1,02,200/-

21. The Civil Miscellaneous Appeal in C.M.A(MD)No.990 of 2017 is partly allowed and the appellant Insurance Company is directed to deposit the modified award amount of Rs.23,48,660/- (Rupees Twenty Three Lakhs Fourty Eight Thousand Six Hundred and Sixty only), less the amount already deposited, if any, along with accrued interest and costs to the credit of M.C.O.P.No.658 of 2014, on the file of the Motor Accident Claims Tribunal/Special District Court, Thanjavur, within a period of eight weeks from the date of receipt of copy of this judgment. On such deposit being made, the respondents 1 & 2 are entitled to a sum of Rs.9,41,760/- each with interest by making necessary application before the Tribunal. The third respondent/minor is entitled to a sum of Rs.4,65,140/- and the Tribunal shall deposit the said amount in any one of the Nationalized bank in a Fixed Deposit initially for a period of three years and renewable thereafter, till the minor



attains majority. The father of the third claimant is permitted to withdraw the accrued interest once in three months directly from the bank. No costs. Consequently, connected miscellaneous petitions are closed.

WEB COPY

Sd/-

Assistant Registrar (CS III)

// True Copy //

Sub Assistant Registrar (CS)

To

The Special District Judge,
Special District Court,
The Motor Accident Claims Tribunal,
Thanjavur.

Copy to:

The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.2copies.

+2CC to Mr.N.DILIPKUMAR , Advocate SR.Nos. 84564,84562.

+2CC to Mr.P.VADIVEL , Advocate SR.Nos. 84857,84858.

C.M.A(MD) Nos.955 & 990 of 2017
17.09.2018

DS/ /SAR- (27.04.2019) 8P 8C