



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 17.07.2018

DELIVERED ON : 09.08.2018

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU
C.M.A. (MD)No.1144 of 2013

1.Mary Jennat
2.Mary Jenifa
3.Mary Shanthi
4.Minor Rajappan
5.Minor Mary Sabeena
6.S.Teenammal : Appellants/Petitioners
[Minor appellants 4 & 5 are rep. through
their mother/natural guardian - 1st appellant]

vs.

The General Manager,
Tamil Nadu State Transport Corporation Ltd.,
Rani Thottam,
Nagercoil. : Respondent/Respondent

PRAYER : Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and decree made in M.C.O.P.No.937 of 2011 on the file of the Motor Accident Claims Tribunal (Fast Track Court No.2), Tirunelveli, dated 26.03.2012.

For Appellants : Mr.T.Selvakumaran

For Respondent : Mr.P.Prabhakaran

JUDGMENT

Assailing the judgment and decree passed by the learned Judge, Fast Track Court No.2, Motor Accident Claims Tribunal, Tirunelveli, in M.C.O.P.No.937 of 2011, dated 26.03.2012, the instant civil miscellaneous appeal is filed.

2. Heard the learned Counsel appearing for the respective parties and perused the records carefully.

3. It is a case of fatal. The accident occurred on 02.08.2011 and in consequence to the same, one Rose Thangam died and his legal heirs, as claimants, have filed the claim petition. The Tribunal, after considering the stated facts and circumstances, has awarded a sum of Rs.50,000/- under "No Fault Liability".
hence, the appellants / claimants are before this Court, seeking



enhancement.

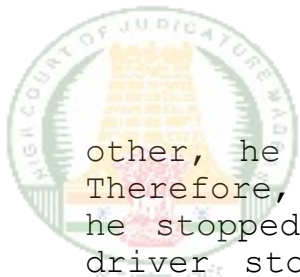
4. According to the appellants, on 02.08.2011, about 1.15 p.m., the deceased, namely, Rose Thangam, was riding his Bajaj Platina motorcycle bearing registration No.TN-75-B-1406 and when he came near Puthankadai, Kulasekaram - Karungal Main Road, a bus, bearing registration No.TN-74-N-0791, belonging to the respondent Corporation, driven by its driver in a rash and negligent manner, dashed head-to-head, thereby, the rider of the motorcycle, ie., Rose Thangam was thrown away and succumbed to the injuries.

5. On the other hand, the accident is admitted by the respondent, but, the manner is disputed. It is their version that the driver of the bus had seen the motorcycle, coming in a rash and negligent manner, before 25 feet and on seeing the motorcycle overpassing the median line, according to the respondent, the driver has stopped the bus. Despite the same, the deceased came and dashed against the right side headlight of the bus, out of which, the deceased died and therefore, the negligence falls wholly on the deceased.

6. Perusal of record shows that the place of accident is a sloppy curve road; the Bus marched downwards and the motorcycle was on the opposite direction, ie., moving towards the top, in the slope. Perusal of postmortem report shows that the deceased died due to shock and Haemorrhage due to head injury. It is also seen that immediately after the accident, the driver of the respondent bus has gone to Thiruvattar Police Station and registered a case in Crime No.529 of 2011, under Section 304(A) IPC.

7. It is seen from the records that on the side of the claimants, two witnesses, viz., P.Ws 1 & 2, were deposed, supporting the case of the claimants. However, the same was not taken into account by the Tribunal, as they were not sure as to the manner of the accident, ie., either the motorcycle dashed against the bus or the bus dashed against the motorcycle. Therefore, the Tribunal considering the evidence of the respondent Corporation's driver and taking into account the First Information Report held that the deceased was the cause for the accident.

8. Perusal of the chief examination of the driver would go to show that the bus was going down in the steep curve and the motorcycle was in the opposite direction. It is further stated that in the sloppy area, the driver noticed the motorcyclist, about 25 feet distance in the opposite direction, coming in a negligent manner and therefore, he stopped the bus on the left side of the road. However, during cross examination, he has stated that the motorcycle dashed against the right side headlight of the bus, in the curve of the sloppy road. On the one hand, the driver has deposed that he has stopped the bus 25 feet away and on the



other, he has deposed that the accident occurred on the curve. Therefore, the evidence of the driver is not clear as to whether he stopped the bus on the curve or not. Even assuming that the driver stopped the bus on the curve, on seeing the negligent riding of the motorcyclist, had he alarmed the rider of the motorcycle by raising Horn?, and by blinking the headlights, accident could have been averted. There is no whisper as to the steps taken by the driver to alert the rider, other than simply stating that he had stopped the bus. It creates doubt on the version of the driver as to the manner of accident. It is not the case of the respondent that the deceased was under the influence of alcohol. Moreover, driver of the bus, who is on wheels of heavy vehicle owed a duty of care to other road users and he cannot escape from its clutches. As per the postmortem certificate, the deceased died on the spot. Whether the deceased would have died if the driver had really stopped the bus, as averred?, is the further extended question that emerges in the minds of this Court, since the deceased is no more to rebut the respondent's narration of accident.

9. Perusal of the driver's deposition would further shows that immediately after the accident, the driver rushed to the police station to lodge a complaint and that the conductor of the bus took care of the victim. This creates much suspicion to the minds of this Court. The reason is that an accident occurred, out of which, the rider of the offending motorcycle was lying on the road with grievous injuries on his last breathe. Whether, at that moment, the driver of a public Corporation be able to go to a police station, in person, to lodge a complaint about the accident, instead of calling for an Ambulance over phone and took care of the victim, who was on his last breathe? In the opinion of this Court, these things crumbles the case of the respondent as to the manner of the accident.

10. It is a settled principle that First Registration Report or Rough Sketch does not form conclusive parts of evidence. Moreover, the legislation itself is a welfare legislation. Such being so, this Court is not in a position to concur with the Tribunal's finding with regard to the question of liability. But, at the same time, this Court cannot brush aside the fact that the deceased also contributed the accident, because the accident occurred in the centre of the road and not on the right or left extremes. Therefore, this Court is inclined to fix contributory negligence. Accordingly, negligence is fixed equally, ie., 50:50, on both the driver of the bus as well as rider of the motorcycle, ie., deceased.

11. Since the finding of the Tribunal regarding negligence is interfered with, the award passed by the Tribunal deserves



12. It is seen from the records that the deceased Rose Thangam by doing wholesale business of Fish, was earning about Rs.20,000/- per month. However, no evidence was adduced to that effect. In the absence of any documentary evidence to that effect, this Court, based on the decision of the Hon'ble Supreme Court in the judgment reported in **2014 (1) TN MAC 459 (SC)** in the case of **Syed Sidiq etc., v. Divisional Manager, United India Insurance Company Ltd.**, where a sum of Rs.6,500/- was fixed as monthly income for a vegetable vendor without any proof, is inclined to fix the monthly income of the deceased as Rs.6,500/-.

13. Since the age of the deceased, at the time of the accident was 49 years, as per postmortem certificate, the relevant multiplier, according to the age of the deceased, as per the principle laid down in the judgment of the Hon'ble Supreme Court in **Sarla Verma v. Delhi Transport Corporation**, would be 13. Following the latest verdict of the Hon'ble Supreme Court in the case of **National Insurance Company Ltd., v. Pranay Sethi and others, decided on 31.10.2017**, future prospectus is fixed at 25% and compensation under conventional heads is fixed at Rs.70,000/-. Considering the number of dependents, it is appropriate to deduct 1/4th towards personal expenses of the deceased.

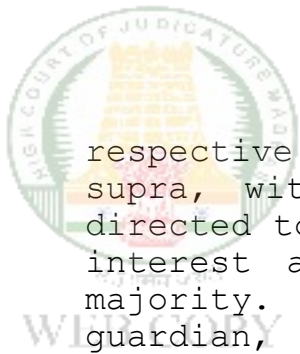
➤ Therefore, the compensation towards dependency is fixed as under:

- ((Income of the deceased + future prospects) - personal expenses) is ((Rs.6,500/- + Rs.1,625/- (25%)) - Rs.2,031/- (1/4)) amounts to Rs.6,094/-.
- By applying the multiplier method, the loss towards dependency would be (Rs.6,094/- * 12 * 13) amounting to Rs.9,50,664/-.

➤ Loss towards conventional heads would be Rs.70,000/-.

In total, a sum of Rs.10,20,664/- is arrived as compensation. The sum of Rs.50,000/- awarded by the Tribunal under "no fault liability" stands deleted. Since negligence is fixed equally, ie., 50:50, the appellants are entitled for a sum of Rs.5,10,330/- (~Rs.5,10,332/-) as compensation, of which, the first appellant / wife of the deceased is entitled for Rs.1,60,330/-; appellants 2 to 5, who are the children of the deceased, are entitled for Rs.75,000/- each and the sixth appellant / mother of the deceased is entitled for Rs.50,000/-.

14. The respondent Corporation is directed to deposit the enhanced compensation of Rs.5,10,330/-, with interest @ 7.5% per annum, from the date of claim petition till realization, excluding the default period and less the amount already deposited, if any, to the credit of the claim petition, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the major claimants are permitted to withdraw their



respective shares with accrued interest and costs, as apportioned supra, without filing any formal application. The Tribunal is directed to deposit the shares of the minor children, with accrued interest and costs, in a nationalized bank until they attain majority. The first appellant herein, who is the mother / guardian, is permitted to withdraw the interest amount once in three months.

15. During the course of arguments, it is brought to the knowledge of this Court by the learned Counsel for the appellants / claimants that the minor appellants / claimants have attained majority. Therefore, it is open to the appellants / claimants to file appropriate application before the Tribunal to declare that they are majors and to withdraw their respective shares, as apportioned supra.

16. This civil miscellaneous appeal stands allowed in the above terms. However, there shall be no order as to costs.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar (CS-IV)

To

1. The Judge,
Motor Accident Claims Tribunal,
Fast Tract Court No.2,
Tirunelveli.

COPY TO

The Record Keeper,
ER / VR Section,
Madurai Bench of Madras High Court,
Madurai. (2 COPIES)

+1 CC To MR.T.SELVAKUMARAN, Advocate SR. NO.77854

+1 CC To MR.P.PRABHAKARAN, Advocate SR. NO.77748

C.M.A. (MD) No.1144 of 2013
09.08.2018

GK

TR/RP/SAR-IV(28.09.2018) 5P 6C