



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 11.09.2017
PRONOUNCED ON: 18.01.2018

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A(MD)No.1269 of 2011

and

M.P.(MD).No.1 of 2011 and CMP(MD)No.10893 of 2016

The Branch Manager,
The New India Assurance Company Limited,
Pudukkottai ... Appellant/2nd Respondent

Vs

1.Mariyayee
2.Minor Iyyappan
3.Minor Veerakumar ... 1 to 3 respondents/Petitioners
4.A.R.Swaminathan ... 4th Respondent/1st Respondent
(Minor 2nd and 3rd Respondents are represented through their
Guardian and Mother 1st Respondent)

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree award and decree dated 21.07.2011 made in M.C.O.P.No.981 of 2009 on the file of the Motor Accidents Claims Tribunal, Additional District and Sessions Court, Pudukkottai.

For Appellant	:Mr.J.S.Murali
For R-1 to 3	:Mr.N.Rahamadullah
For R-4	:Mr.K.Balasundaram

J U D G M E N T

This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree award and decree dated 21.07.2011 made in M.C.O.P.No.981 of 2009 on the file of the Motor Accidents Claims Tribunal, Additional District and Sessions Court, Pudukkottai.

2. It is a case of fatal accident, which took place on 29.05.2008 at about 2.00 p.m. The case of the claimants before the Tribunal is that on the date of accident, when the deceased by name Rajesh was travelling in a tractor sitting adjacent to the driver bearing Registration No.TN 55 M 0063, the driver of the tractor drove the vehicle in a rash and negligent manner by which, the deceased had fallen off from the tractor and caused the accident and in the said accident, the said Rajesh sustained grievous injuries

and thereafter, while he was taking to the hospital, he died on the way.

3. The claimants filed an application in M.C.O.P.No.981 of 2009 on the file of the Motor Accidents Claims Tribunal, Additional District and Sessions court and Special Court, Pudukkottai seeking compensation.

4. Before the Tribunal, the claimants examined one witness as P.W.1 and 2 and marked six documents as Ex.P1 to P6. On the side of the respondents, two witnesses were examined as R.W.1 and 2 and no documents were marked and evidence testimony document was marked.

5. The Tribunal, after considering the pleadings, oral and documentary evidences and the arguments advanced on either side and also appreciating the evidences on record held that the accident occurred only due to the rash and negligent driving of the driver of the tractor belonging to the first respondent insured with the second respondent and held that the owner of the vehicle are jointly and severally are liable to pay compensation of Rs.3,00,000/-.

6. Against which, the insurance company has filed this present appeal challenging the liability as well as quantum of compensation.

7. The learned counsel appearing for the insurance company has made four fold submissions which are as follows:-

a. Firstly, in the case on hand, there is violation of policy condition and therefore, the insurance company is not liable to pay compensation.

b. Secondly, there is an error while arriving at loss of dependency.

c. Thirdly, the tribunal has wrongly adopted the multiplier by taking into account the age of the mother of the deceased which is in the higher side.

d. Fourthly, the tribunal has awarded the total compensation amount along with interest from the date of accident instead of giving it from the date of judgment and

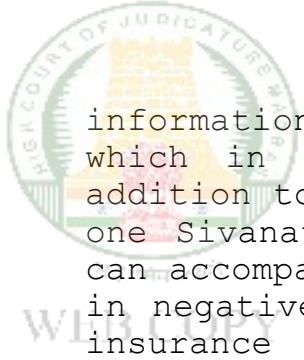
e. The award granted by the tribunal is excessive and needs interference at the hands of this Court.

For the above foregoing reasons, he prays for allowing this appeal.

7. *Per contra*, the learned counsel appearing for the claimants submit that the Court below after appreciating the oral and documentary evidence and other connected documents had granted the award, which need not be interfered at the hands of this court. To sum up, he prays for the dismissal of this appeal.

8. This Court heard the submissions on either side and perused the materials available on record.

9. As far as the first contention is concerned, the Court below at paragraph No.7 has come to the conclusion that the accident had happened due to the negligence of the tractor of the driver and for arriving at such conclusion, it has relied on the first

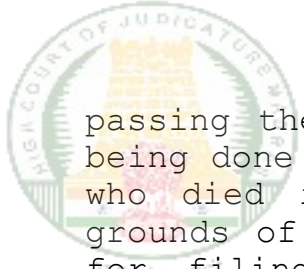


information report, P.W.2 an eye witness and other relevant factors, which in the considered opinion of this Court, holds good. In addition to which, during the cross examination of the staff by name one Sivanathanm attached to the RTO office, as to whether, anyone can accompany in the tractor while carrying the goods, he replied it in negative. Above all, the tribunal further found that though the insurance company pleaded that the driver of the tractor is not responsible for the accident in question, it has not chosen to mark any documents on their side to rebut the claim of the claimants. Therefore, the tribunal has rightly fastened the liability on the offending vehicle and the same is confirmed. Hence, the first contention fails.

9.1. As far as the second contention is concerned, as per *Sarla Varma Vs. Delhi Transport Corporation*, reported in 2009 SC 3104, where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. In regard to bachelors, normally, 50% is deducted as personal and living expenses, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parents and siblings is likely to be cut drastically. However, in the present case, the Court below has wrongly deducted 1/3rd amount towards personal expenses instead of deducting 50%. Therefore, the argument of the insurance company in this regard has substance. However, in the present case multiplier is wrongly adopted and if correct multiplier of 18 is adopted, it will be much more than the award granted by the tribunal. Since no cross appeal is filed, this Court deems it appropriate to confirm the award granted by the tribunal. Hence, the second contention also fails.

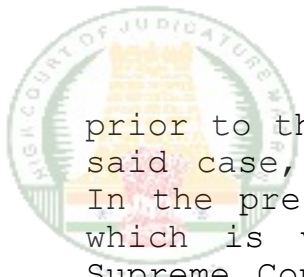
9.2. As regards the third contention of the insurance company that the Court below at the time of arriving at the compensation, has wrongly taken the age of the deceased for applying multiplier has also got substance. As per the judgment reported in *Reshma Kumari Vs Madan Mohan*, reported in 2013 ACJ 1253 (SC), it has been held that in the case of death of unmarried son/daughter, multiplier should be applied on the basis of age of the deceased and not on the basis of average age of the parents of the deceased. Therefore, the correct multiplier in this case is 18 and not 15 as calculated by the tribunal. As discussed at paragraph No.9.1, since there is no cross-appeal, this Court does not want to go into aspect but to confirm the order of the tribunal. Hence, the third contention also fail.

9.3. As far as the fourth contention is concerned, it is to mention that limitation for filing claiming before tribunal in respect of any accident, sub-section (3) of Section 166 of the Motor Vehicles Act, 1988 has been omitted by the Motor Vehicles (Amendment) Act, 1988 which came in force with effect from 14.11.1994. After the amendment, there is no time limitation for filing claims before tribunal in respect of any accident. While



passing the amendment, the parliament realised the grave injustice being done to the heirs/injured/legal representatives of the victims who died in accident by rejecting their claim petition only on grounds of time limitation. Thus, now there is no time limitation for filing claims before tribunals. Moreover, the Parliament thought that prescribing a period of limitation and restricting the power of Tribunal to entertain any claim petition beyond the period of twelve months from the date of accident was too harsh (Ref. *Dhanapal Vs. D.P. Vijayavargiya*, AIR 1996 SC 2155). According to Sub-Section (4) of Section 166 that the claims tribunal shall also treat any report of accidents forwarded to it under sub-Section (6) of Section 158 as an application for compensation under this Act. Such is the position in the Motor Vehicles Act. It is a beneficial legislation to help the distressed family who lost their beloved ones. It is a common knowledge that when somebody loses their beloved ones in the accident, one cannot expect to go and file a complaint and get FIR copy, death certificate, legal heir certificate, driving license, copy of the insurance copy, accident register report, investigation report, charge sheet, M.V. Report, approaching an advocate and so on and so forth. Usually, it takes some time to file a petition before the Court concerned for want of necessary certificates to be issued by the competent authority. When the accident is not disputed in the manner known to law, on technicalities, this court cannot brush aside the rightful claim of the victim. In other words, the aggrieved party is entitled to claim compensation from the date of claim petition. Let us keep in mind that the provisions relating to the award of compensation are benevolent provisions in nature. Therefore, this Court is of the considered view that the aggrieved family is entitled to claim compensation from the date of claim petition. In other words, the contention of the appellant that the compensation should be awarded from the date of judgment is misconceived. If the Court consumes time to dispose of the matter, the delay cannot be attributed against the aggrieved family. In the case on hand, the accident had occurred on 29.05.2008, for which, the judgment was delivered on 21.07.2011. It is not fair on the part of this Court the three year delay cannot be shifted on the aggrieved family. It is not the intention of the deceased family to drag on the matter endlessly and it is due to the inbuilt system which the Tribunal has to dispose of the matter the time is consumed. Since the wisdom of the Parliament is to safeguard the distressed family from the mental agony and untold sufferings due to the accident, this Court to meet the ends of justice, holds that the deceased family is entitled to draw interest from the date of the claim petition and not on the date of the judgment. Hence, the fourth contention also fail.

9.4. Lastly, the Honourable Supreme Court in *Syed Sadiq v. Divisional Manager, United India Insurance Co. Ltd.* reported in 2014 (1) TNMAC 459 (SC), determined the monthly income at Rs.6,500/- (Rupees Six Thousand and Five Hundred only) per month for a vegetable vendor, who sustained injury in the accident occurred on 14.07.2008. In this case, he died on 29.05.2008. Hardly two months



prior to the Apex Court judgment, the accident had occurred. In the said case, Rs.6,500/- is taken as monthly income of the deceased. In the present case, the Court below has taken a sum of Rs.2,400/- which is very meagre compared to the income arrived at by the Supreme Court. Therefore, the contention of the insurance company that the award amount is on the higherside is nothing but a farce and it has no legs to stand. Hence, the last contention also fail.

10. In the considered opinion of this Court, the award of the tribunal is wholly justifiable and reasonable and there is no warranting circumstances to interfere with the award of the Tribunal. Hence, the appeal is dismissed by confirming the award of the Tribunal. The appellant -insurance company is directed to deposit compensation, as awarded by the Tribunal, after deducting the amount, if any, already paid to the claimants, within a period of four weeks from the date of receipt of a copy of this judgment. The claimants are entitled to withdraw their share as apportioned by the Tribunal without filing any formal application in the Tribunal.

11. The Insurance Company is directed to deposit the entire enhanced award amount along with accrued interest and costs, less the amount deposited, if any, to the credit of M.C.O.P.No.981 of 2009 on the file of the Motor Accidents Claims Tribunal, Additional District and Sessions Court, Pudukkottai, within a period of four weeks from the date of receipt of a copy of this judgment;

12. The Tribunal is directed to transfer the entire award amount, as apportioned by this Court in this Civil Miscellaneous Appeal, along with accrued interest and costs directly to the respective Personal Savings Bank Account Numbers of the claimants, through RTGS/NEFT system, after getting their Account Details, within a period of four weeks, thereafter; and in the facts and circumstances of the case, there shall be no order as to costs.

13. Accordingly, this civil miscellaneous appeal is dismissed. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar(ADII)

/True Copy/

Sub-Assistant Registrar

To,
The Motor Accidents Claims Tribunal,
Additional District and Sessions Court, Pudukkottai.

Copy to:-

The Record Keeper, Vernacular Section, (2 copies)

Madurai Bench of Madras High Court, Madurai.

+One cc to Mr.J.S.Murali, Advocate, SR.No.42640

+One cc to Mr.K.Baalasundaram, Advocate, SR.No.42617

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<https://hcservices.ecourts.gov.in/hcservices/>

Order made in
C.M.A(MD)No.1269 of 2011
18.01.2018