

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.09.2019

CORAM

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.3200 of 2013
and

C.M.P.No.1 of 2013

New India Assurance Company Ltd.,
Kannur ... Appellant/3rd Respondent

vs.

1.M.K. Madhavakurup
2.V.K. Santhi
3.V.K. Swapna
4.V.K. Reshma
5.Raghuram Shetty
6.K. Sandeep

(The Claim against 3rd Respondent
is dismissed. 5&6 Respondents set exparte
in the lower court. Hence notice
to them is dispensed with) ... Respondents/Petitioners 1 to 4 /
Respondents 1 & 2

Prayer: Civil Miscellaneous Appeal filed under Section 173 of
the Motor Vehicles Act, 1988, against the common award and
decree dated 12.07.2013 passed in MACTOP.No.10 of 2011 on the
file of the Motor Accident Claims Tribunal, (Sub Judge), Mahe.

For Appellant : Mr.R. Sivakumar

For Respondents : Mr.D. Subramanian
1 to 4 for
M/s Sarvabhuman Associates

JUDGMENT

[Judgment of the Court was made by ABDUL QUDDHOSE, J.]

This appeal has been filed by the Insurance Company
challenging the Award dated 12.07.2013 passed by the Motor
Accident Claims Tribunal, (Sub Judge), Mahe in MACTOP.No.10 of
2011.

Brief facts leading to the filing of the instant appeal:

2.A person by name U.Ramesh died in an Accident, caused by a Bus, bearing Registration No.KA-19-AE-7867, owned by the fifth respondent and insured with the appellant. The accident happened when the deceased was standing by the side of NH 17 near Shri Raghavendra Mutt of Hosebettu Village along with his wife when the bus, bearing Registration No. KA-19-AE-7867, driven by the sixth respondent, dashed against Mr.U. Ramesh and his wife, which resulted in the death of U.Ramesh. The dependents of U.Ramesh are his mother, wife and children. They preferred a claim before the Motor Accidents Claims Tribunal, (Sub Judge), Mahe in M.A.C.T.O.P No.10 of 2011, seeking compensation for a sum of Rs.25,00,000/- for the death of U.Ramesh.

3.The Motor Accidents Claims Tribunal, by its Award dated 12.07.2013 in MACTOP No.10 of 2011, directed the appellant/Insurance Company to pay the claimants 1, 2 and 4 a sum of Rs.21,54,000/- and out of the said amount, the second claimant was entitled for funeral expenses and compensation for love and affection of Rs.30,000/- along with her share in loss of dependency at Rs.7,08,000/- (totally Rs.7,38,000/- with interest). The claimants 1 and 4 are entitled for compensation of Rs.7,08,000/- each with 7% interest per annum from the date of the claim petition. Aggrieved by the Award dated 12.07.2013 passed in MACTOP No.10 of 2011, the present appeal has been filed by the Insurance Company.

4.Heard Mr.R. Sivakumar, learned counsel appearing for the Appellant and Mr.D. Subramanian, learned counsel appearing for the claimants.

Discussion:

5.The Insurance Company has challenged the adverse finding of negligence on the part of the insured vehicle and they have also challenged the assessment of the monthly income of the deceased by the Tribunal. They have also challenged the Award on the ground that the Tribunal has erroneously deducted 1/3rd of the income of the deceased towards personal expenses by adopting 9 years multiplier. It is also their case that the Tribunal ought to have deducted 30% of the income towards income tax at the first instance and only thereafter, the income of the deceased has to be fixed. It is also their case that the quantum of compensation awarded by the Tribunal under various other heads is excessive.

6.The First Information Report (Ex.P.1) was registered only against the driver of the bus, which dashed against the deceased. The driver of the bus has not been examined as witness by the appellant Insurance Company.

7. Before the Tribunal, the claimants have filed 21 documents, which were marked as Exs.P.1 to P.21, and three witnesses were examined namely, PW1 - the wife of the deceased, PW2 - the Doctor and PW3 - the employer of the deceased. Whereas, on the side of the appellant/Insurance Company, neither any witness was examined nor any document filed. The Tribunal, in the impugned order, has extracted the contents of the First Information Report, which clearly reveals that only due to rash and negligent driving by the driver of the bus, the accident had happened, which resulted in the death of the deceased.

8. The evidence of P.W.1 also corroborates the contents of the First Information Report. Ex.P.2 is the Spot Mahazar dated 30.04.2010, which also reveals that the accident was due to the rash and negligent driving by the driver of the insured bus. The Tribunal has also considered the oral and documentary evidence available on record and only thereafter has come to the right conclusion that the accident had occurred only due to rash and negligent driving by the driver of the bus (insured vehicle). We therefore, confirm the said finding.

9. Insofar as the quantum of compensation awarded by the Tribunal is concerned, the deceased was aged about 56 years at the time of accident and he was working as Piping Supervisor in Tech-Sharp Engineers (P) Ltd, Chennai and his monthly income was Rs.29,500/-. His monthly income is proved through Ex.P.9, Salary Certificate. Ex.P.8 is the Transfer Certificate of the deceased and as per the School Certificate, the date of birth of the deceased was 21.11.1954 and the date of accident as per Ex.P.1 is 30.04.2010. The Tribunal has rightly fixed the age of the deceased as 56 years at the time of accident. Based on Ex.P.9 Salary Certificate, the Tribunal has also rightly assessed the monthly income of the deceased as Rs.29,500/-.

10. P.W.3 had deposed that the deceased was not a permanent employee and considering the same, the Tribunal has rejected the claim for loss of future prospects. Since the deceased was 56 years at the time of accident, the Tribunal has rightly applied the multiplier of 9, following the judgment of the Hon'ble Supreme Court in the case of Sarla Verma and Others vs. Delhi Transport Corporation and another reported in 2009 (2) TNMAC 1 (SC).

11. The third claimant is the eldest daughter of the deceased and she is married. Therefore, she cannot be considered as a dependent of the deceased. The Tribunal has rightly considered this factor and only thereafter, has deducted 1/3rd towards personal expenses of the deceased as there are only 3 dependants.

12.The loss of dependency, assessed by the Tribunal at Rs.21,54,000/- is a just and reasonable amount and is in accordance with the judgment of the Hon'ble Supreme Court in the case of Sarla Verma and Others vs. Delhi Transport Corporation and another reported in 2009 (2) TNMAC 1 (SC).

13.The Tribunal has rightly awarded a sum of Rs.5,000/- towards funeral expenses for the second claimant, who is the wife of the deceased. The Tribunal has also rightly awarded exclusively a sum of Rs.25,000/- to the second claimant/second respondent as compensation towards loss of love and affection. We confirm the said assessment.

14.The claimants have also not filed any appeal, seeking enhancement of compensation awarded by the Tribunal under the impugned Award.

15.We are also satisfied with the compensation awarded by the Tribunal to the claimants under the impugned Award, which is a just and reasonable compensation. Therefore, the total compensation of Rs.21,54,000/- awarded by the Tribunal together with interest is just and reasonable and we do not find any infirmity in the Award passed by the Motor Accidents Claims Tribunal in MACTOP No.10 of 2011 dated 12.07.2013.

Conclusion:

16.In the result, there is no merit in this appeal and accordingly, the appeal shall stand dismissed. The Appellant Insurance Company is directed to deposit the entire award amount as awarded by the Tribunal along with interest and costs after deducting the amount, if any already deposited, to the credit of MCOP.No.10 of 2011 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 amount lying to the credit of MCOP.No.10 of 2011 to the claimants through RTGS within a period of four weeks thereafter and the claimants are permitted to withdraw their shares as apportioned by the Tribunal. No costs. Consequently, connected miscellaneous petition is closed.

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Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

To

1.The Subordinate Judge,
Motor Accident Claims Tribunal, Mahe.

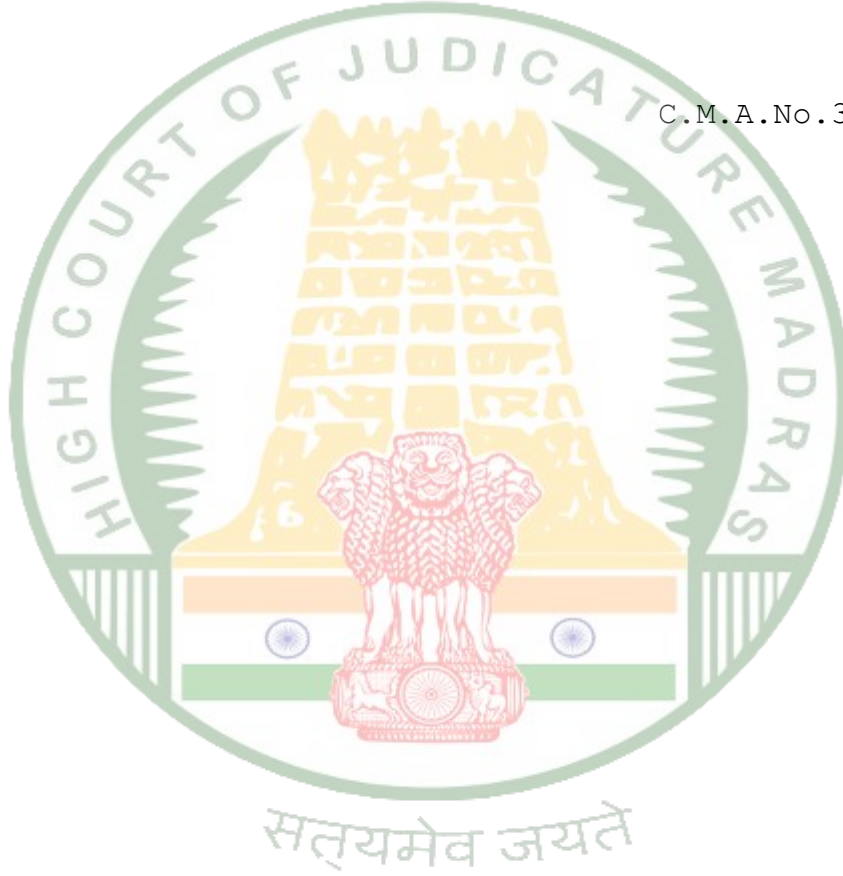
2.The Section Officer,
VR Section, High Court,
Chennai.

+1 cc to Mr.R.Sivakumar, Advocate, Sr.81771

+1 cc to M/s.Sarvabhauman Associates, sr.82158.

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