



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.03.2019

CORAM:

THE HONOURABLE Mr. JUSTICE K.KALYANASUNDARAM
AND
THE HONOURABLE Mrs. JUSTICE R.THARANI

C.M.A. (MD) .No.1033 of 2017
and
C.M.P. (MD) No.10682 of 2017

M/s.National Insurance Company Limited,
Rep. Through its Divisional Manager,
7, North Veli Street,
Madurai-625 001

... Appellant/Respondent No.2

Vs.

1.Gunasundari	...Respondent No.1/Petitioner No.1
2.Umamaheshwari	... Respondent No.2/Petitioner No.2
3.Abinayasundari	... Respondent No.3/Petitioner No.3
4.Pottayammal	... Respondent No.4/Petitioner No.4
5.J.Kadhija Begam	... Respondent No.5/Respondent No.1

PRAYER: This appeal has been filed under Section 173 of M.V. Act, 1988, to set aside the judgment and decree passed by the Special District Court for MCOP Cases, Madurai in MCOP No.230 of 2014 dated 28.04.2016.

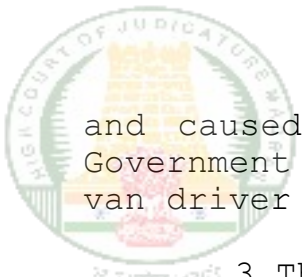
For Appellant	: Mr.D.Sivaraman
For Respondents 1 to 4	: Mr.Rajan
For 5 th Respondent	: No Appearance

JUDGMENT

(Judgment of the Court was delivered by **R. THARANI, J**)

This appeal has been preferred against the judgment and decree passed in M.C.O.P.No.230 of 2014 dated 28.04.2016 on the file of the Special District Court for MCOP Cases, Madurai.

2.The case of the claimants is that on 25.11.2003 at about 19.15 hours, the deceased was riding a motor cycle bearing Registration No.TN-59-AY-2455 from west to east keeping extreme west on Dindigul- Madurai four ways road. While going near Andipatti Bungalow, the deceased was standing on the left side of the road to cross the four way road to reach Sholavandan road, the fifth respondent driver drove the vehicle TATA 407 van bearing Registration No.TN-59-BB-1863 from west to east in a rash and negligent manner without giving horn, dashed against the deceased



and caused the accident. The deceased died on 09.12.2013 in the Government Rajaji Hospital, Madurai. According to the claimants, the van driver is responsible for the accident.

3. The respondents 1 to 4 who are the dependants of the deceased, filed M.C.O.P.No.230 of 2014 claiming compensation of Rs.40,00,000/- (Rupees Forty Lakhs only).

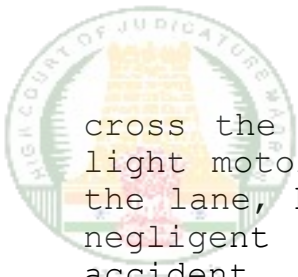
4. The appellant filed a detailed counter disputing the age, avocation and income of the deceased. It is also stated that the compensations claimed under several heads in the claim petition are baseless, imaginary and unsustainable and prayed for dismissal of the claim petition.

5. Before the trial Court, P.W.1 to P.W.3 were examined on the side of the respondents and 10 documents were marked as Exs.P1 to P10. On the side of the appellant, only one witness, R.W.1 was examined and two documents, Exs.R1 and R2 were marked. The Tribunal after taking into consideration the oral and documentary evidence, came to a conclusion that the appellant and the fifth respondent are liable to pay compensation to the claimants and awarded a sum of Rs.33,07,000/- (Rupees Thirty three Lakhs and Seven Thousand only) as compensation along with interest at the rate of 7.5 % per annum. Against the award, the appellant Insurance Company has preferred this appeal.

6. The learned counsel appearing for the appellant submitted that the accident had occurred only due to the negligence of the deceased, who tried to cross the west-east road from north to south direction without seeing the oncoming vehicle and therefore, the Tribunal ought to have fixed the entire negligence on the part of the deceased. It is further added that the proceedings before the Tribunal is summary in nature and strict rule of evidence is not applicable, hence the rejection of the rough sketch produced by the respondents on the ground that it is not marked through the author of the document is liable to be set aside.

7. The learned counsel for the appellant by citing a decision of the Hon'ble Supreme Court reported in **(2013) 9 Supreme Court Cases 65 [Reshma Kumari and Others v. Madan Mohan and another]** submitted that the burden of proof lies with the claimants, but in the case on hand, the claimants failed to discharge their burden of proving the negligence on the driver of the van.

8. On the side of the respondents 1 to 4, it is stated that the accident took place on the left side of the road and the Motor Vehicle inspection report reveals that there was damages on the left side of the TATA 407 van. If the deceased was crossing the road at the time of accident, there might be damages on the right side of the TATA Van and not on the left side. The deceased was waiting to



cross the road on the left hand side of the road. Tata sumo is a light motor vehicle which is suppose to come on the right track of the lane, but the TATA Sumo came along the left track in a rash and negligent manner dashed against the deceased and caused the accident.

WEB COPY

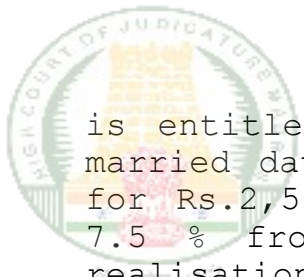
9. From the aforesaid submissions and on perusal of materials, it is seen that there are damages on the right side of the two wheeler. It is clear that the accident took place on the left side of the road. Hence, the contention of the respondents that the deceased was standing at that time of accident is not acceptable. In an attempt to cross the road, the two wheeler must have met with an accident. So in our considered opinion, both the deceased and the driver of the van are responsible for the accident and the negligence of the deceased and driver of the van is fixed at the ratio of 25:75 respectively.

10. With regard to quantum, Exs.P7, P8 and P9 / pay slips would establish that the deceased was earning Rs.49,323/- per month and he is entitled for 15% addition towards future prospects and hence, the income is fixed as Rs.56,721/-. After deducting 1/4th for his personal and living expenses, he might have contributed Rs.42,541/- to his family. It is not in dispute that the deceased died at the age of 56 years and 7 months and he was having remaining 17 months of his service as a Revenue Supervisor, TNEB. Proper multiplier is '9'.

11. On perusal of the claim petition and evidence, it is seen that neither there is any pleading nor evidence adduced by the claimants to establish that the deceased could be earning the same income after his retirement and on the other hand, it is an admitted fact that he would be receiving 50% of his salary as pension. So, following the decisions of this Court reported in **2013 (2) TNMAC 113 (DB) (R.Leelavathy v. Sheik Dawood)** and **2014 (1) TNMAC 334 (DB) (Branch Manager, National Insurance Company Limited v. M.Arulmozhi)**, we applied the theory of split multiplier. So, for the left over services, the claimants are entitled for Rs.7,23,197/- (Rs.42,541 x 17). 20% is to be deducted towards income tax and after deduction, the amount comes to Rs.5,78,558/- and for the remaining period, the loss of income comes to Rs.19,35,570/- (Rs.21,270/- x 91). In total the loss of dependency is arrived at Rs.25,14,128/-.

12. In addition, this Court awards Rs.70,000/- towards incidental charges and therefore, the total compensation would be Rs.25,84,128/-. After deducting 25% towards the contributory negligence, the claimants are entitled for Rs.19,38,096/- which is rounded off to Rs.20,00,000/-. The interest awarded by the Tribunal is maintained.

13. In the result, this Civil Miscellenaous Appeal is partly allowed. Out of Rs.20,00,000/-, the first respondent is entitled for Rs.10,00,000/-, the third respondent who is the unmarried daughter



is entitled for Rs.5,00,000/- . The respondents 2 and 4 are the married daughter and mother of the deceased who they are entitled for Rs.2,50,000/- each with proportionate interest at the rate of 7.5 % from the date of the claim petition till the date of realisation.

WEB COPY

14.The appellant is directed to deposit the above said amount if not deposited earlier, within a period of 8 weeks from the date of receipt of copy of this order. On such deposit, the claimants are permitted to withdraw their respective shares without filing any formal petition before the Tribunal and after deducting any amount received by them earlier. The excess amount shall be refunded to the appellant Insurance Company. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS II)

// True Copy //

Sub Assistant Registrar(CS)

To

1.The Special District Judge for MCOP Cases, Madurai.

2.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.(2 copies)

+1cc to Mr.D.Sivaraman, Advocate, SR.No. 57482

+1cc to Mr.G.Rajan, Advocate, SR.No. 57625

C.M.A. (MD) .No.1033 of 2017

28.03.2019

mrn

KK/SAR/17.06.2019/4P-6C