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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 27.03.2019

Delivered On : 08.05.2019

CORAM

THE HONOURABLE MR.JUSTICE **K.KALYANASUNDARAM**

AND

THE HONOURABLE MRS.JUSTICE **R.THARANI**

C.M.A.(MD)No.1005 of 2016

and

C.M.P(MD)No.9041 of 2016

National Insurance Company Limited,
through its Branch Manager,
813, Chandigarh, Kalka Road,
Chandigarh
through the Branch Manager,
Nagercoil.

.. Appellant/5th Respondent

Vs.

1.Nepalraj
2.Valli Nayagi
3.Shri Dharamvir Singh

...Respondents 1&2/Petitioners

4.United India Insurance Company
through its Branch Manager,
5, Circular Road,
Bhiwani,
Haryana.

5.Mohinder Singh

6.Chandigarh Transport Undertaking,
through its General Manager,
Depot No.1, Chandigarh.

..Respondents 3 to 6/Respondents 1 to 4

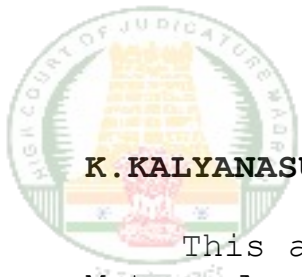
[R3 to R6 dispensed with vide in E.B]

PRAYER: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree in MCOP No.125 of 2013, dated 04.12.2014 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Nagercoil.

For Appellant : Mr.J.S.Murali

For Respondents : Mr.T.Selvakumaran
(for R1 and R2)

<https://hcservices.ecourts.gov.in/hcservices/> For R3 to R6 :Dispensed with

**JUDGMENT****K. KALYANASUNDARAM. , J.**

This appeal is directed against the judgment and decree of the Motor Accident Claims Tribunal-cum-Chief Judicial Magistrate, Nagercoil, passed in M.C.O.P.No.125 of 2013.

2.The case in nutshell.

The parents of the deceased Prajith filed M.C.O.P. No.125 of 2013, seeking compensation of Rs.1,00,00,000/-. According to them, on 12.05.2005, their son along with his friends were travelling in a Quallis Car bearing Registration No.HR-61-2733 from Bhiwani in Haryana to Manali. When the car was proceeding towards Ropar City, a bus belonging to the Chandigarh Transport undertaking bearing Registration No.CH-01-G-8197, which was coming from the opposite direction and driven by its driver in a rash and negligent manner, rammed the car. Immediately, after the accident, their son and the other injured in the car were taken to Ropar Hospital, where his son was declared dead. The claimants alleged that the accident occurred due to the negligent of the driver of the bus.

3. The claimants have further stated that the deceased Prajith was studying final year in the Business Management at Bishop Appasamy College of Arts and Science, Coimbatore and he was also a partner in Lavanya Sanitary Centre, Nagercoil and one of the Directors for Valli Steel Industries Private Limited and thereby he was earning Rs.40,000/- per month. It is further stated that more than 100 employees are working in the Lavanya Sanitary Centre and the turn over of Valli Steel Industries Private Limited is more than Rs.100 crores per annum and the deceased was taking active part in the said business and had an ambition to develop the said concern to a bigger level. There was a proposal for the deceased to go to New Zealand for technical know how, so as to develop the business in a very great manner.

4. The appellant, who is the insurer of the bus, filed a counter opposing the claim contending that the car was driven by a person, who was not qualified to drive the vehicle and he drove it in a rash and negligent manner and if the driver of the car driven the vehicle in a careful manner, then the accident could have been averted. It is further stated that the deceased was a student and studied at Coimbatore Bishop Appasamy College of Arts and Science, hence, the contention that the deceased was earning Rs.40,000/- is not correct and in order to evade the payment of income tax, the claimants have shown the deceased as one of the partners and directors in their business and prayed for the dismissal of the claim.



5. In order to fortify the case, the claimants examined five witnesses and marked Exs.P.1 to P.44. On the side of the respondent - appellant, no witness was examined and no document was marked.

6. The tribunal, upon consideration of the oral and documentary evidence, found that the driver of the bus was negligent and has awarded a compensation of Rs.40,54,000/- together with interest at the rate of 7.5% per annum. Challenging the same, the present appeal.

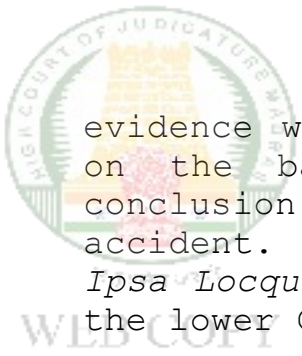
7. Heard Mr.J.S.Murali, learned counsel for the appellant and Mr.T.Selvakumaran, learned counsel for the claimants and perused the materials available on record.

8. The learned counsel for the appellant would submit that the Tribunal has erred in fixing the notional income of the deceased as Rs.30,000/-, when admittedly the deceased was a student pursuing B.B.A. It is further contended that the Tribunal erred in adding 50% towards the future prospects against the dictum of the Hon'ble Supreme Court and the Tribunal instead of applying multiplier '13' has adopted '18'.

9. Per contra, the learned counsel for the respondents - claimants supported the findings of the tribunal. According to the learned counsel, the award is fair and reasonable.

10. Insofar as the negligence, the first claimant has deposed before the Tribunal in tune with the averments made in the claim petition. Admittedly, he is not an eyewitness to the occurrence. Ex.P.1 is the copy of the First Information Report, which was written in Punjabi language. Ex.P.2 is the translation copy of Ex.P.1, which would show that a criminal case was registered against the driver of the transport corporation bus. Ex.P.3 is the Site Map and Ex.P.4 is the Translated Copy of Ex.P.3 and they show that the accident had taken place on a road, which was running North - South direction. The offending bus was proceeding from North to South direction, however, the accident had taken place on the Western side of the road, which establish that the bus came to the wrong side of the road and has caused the accident. Exs.P.5 and P.6 are the reports of the Motor Vehicles Inspector for the bus. Exs.P.7 and P.8 are the reports of the Motor Vehicles Inspector for the car and they show that there was no mechanical defect and the car was badly damaged and sustained extensive damages. Ex.P.12 is the Chellan (Charge Sheet) filed against the driver of the bus.

11. In the counter, it was contended that the driver of the car was negligent, the third respondent, who was the driver of the bus was not examined to establish the same. Since no contra



evidence was produced on behalf of the respondents, the Tribunal on the basis of the exhibits referred *supra*, came to the conclusion that the driver of the bus was responsible for the accident. The Tribunal also rightly applied the theory of *Res Ipsa Locquitor*. Therefore, we find no infirmity in the finding of the lower Court and the same is confirmed.

12. With regard to the quantum, from the evidence of P.W.1 and Ex.P.9 Pan Card, it is seen that the deceased was born on 02.08.1982 and he died at the age of 22 years. In the claim petition, it is stated that the deceased was earning Rs.40,000/- per month. The Income Tax Return filed for the year 2003 - 2004 shows the income of the deceased as Rs.1,24,000/- and for the year 2004 - 2005, Rs.1,50,000/- and in the Income Tax Return filed for the year 2005 - 2006, it is stated that his income was Rs.3,30,000/-. Since this was filed after the death of the deceased, the Tribunal has taken the income tax filed for the year 2004 - 2005.

13. As rightly contended by the learned counsel for the appellant, as per the recent decision of the Hon'ble Supreme Court (Pranaisethi), the claimants would be entitled for an additional 40% instead of 50% adopted by the Tribunal. Since the deceased is a bachelor and the claimants are his parents, the multiplier has to be decided, taking note of the age of the mother, as per the decision of the Hon'ble Supreme Court in **III (2016) ACC 1 (SC) (Y.P.Shakuntala and another v. Manager, Reliance General Insurance Company Limited)**. Hence, proper multiplier is '13'. So by adding 40% for future prospects, the income would come to Rs.2,10,000/-. From which, 50% is to be deducted for the personal and living expenses of the deceased and hence, the contribution is taken as Rs.1,05,000/-. Applying multiplier '13', this Court awards Rs.13,65,000/-. P.W.1 deposed before the Tribunal that they spent Rs.50,000/- for transportation of the body from Haryana to Nagercoil and the Camera and other articles worth about Rs.42,000/- was damaged at the time of accident. In support of his oral evidence, Ex.P26 - Embalming Certificate, Ex.P27 - Permission granted for transportation of body and Ex.P28 - Flight Ticket were produced. Hence, the claimants would be entitled for Rs.50,000/- towards transportation and Rs.42,000/- towards loss of damages. Ex.P28 is the Flight Ticket. In addition Rs.70,000/- is awarded towards conventional damages.

14. In fine, the claimants would be entitled Rs.15,27,000/- along with interest at the rate of 7.5 % per annum. Accordingly, this appeal is partly allowed and the award amount of Rs.40,54,000/- is reduced to Rs.15,27,000/-. The appellant shall deposit the modified award amount along with interest within a period of eight weeks from the date of receipt of a copy of this judgment, less already deposited. On such deposit, the claimants



are entitled to withdraw the same as apportioned by the Tribunal.
No costs. Consequently, connected Miscellaneous Petition is
Closed.

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Sd/-

Assistant Registrar (VO-CS-III)

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Sub Assistant Registrar (CS)

To

The Motor Accidents Claims Tribunal/
Chief Judicial Magistrate Court, Nagercoil.

Copy to

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

+1 CC to M/s. J.S. MURALI, Advocate (SR-65735[F] dated 10/05/2019)

skn

Order made in
C.M.A. (MD) No. 1005 of 2016
and
C.M.P (MD) No. 9041 of 2016
08.05.2019

KM/ (31.05.2019) 5P 5C