



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.04.2019

CORAM:

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

C.M.A (MD) No.154 of 2017

and

C.M.P (MD) No.1517 of 2017

National Insurance Company Limited,
Thanjavur,
represented by its
Branch Manager.

... Appellant/3rd Respondent

Vs.

1.P.Rajalakshmi
2.Minor Abirami
3.Minor Veerappan
4.Seenivasan

... Respondents 1 to 4/Petitioners

***(Minor Respondents 2 and 3 are represented through
their mother and natural guardian, the first
respondent herein.)***

Vs.

5.Tamilselvi

... 5th Respondent/
1st Respondent

6.V.Somasundaram

... 6th Respondent/
2nd Respondent

PRAYER: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 06.01.2009, made in M.C.O.P.No.33 of 2005, by the Motor Accident Claims Tribunal - cum - Principal Sub Court, Kumbakonam.

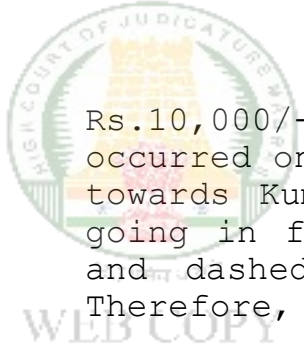
For Appellant : Mr.D.Sivaraman

For Respondents R1 to R4 : No appearance

For Respondents R5 & R6 : Mr.D.Jayapal

JUDGMENT

This Civil Miscellaneous Appeal has been preferred by the appellant-Insurance Company against the award of Rs.4,49,000/- (Rupees Four Lakhs and Forty Nine Thousand only) for the death of one Pitchai @ Subramanian, aged about 39 years, a vehicle broker and a poojari of a temple in Kumbakonam, who is allegedly earning about



Rs.10,000/- (Rupees Ten Thousand only) per month, in the accident occurred on 10.03.2003, when the deceased was riding his two wheeler towards Kumbakonam from west to east, a Tractor-Trailer which was going in front of the two wheeler came reverse without any signal and dashed against the said two wheeler causing the accident. Therefore, the claim petition.

2. On contest, the Tribunal found that the driver of the Tractor-Trailer was negligent and directed the appellant-Insurance Company to pay a sum of Rs.4,49,000/- (Rupees Four Lakhs and Forty Nine Thousand only). The said award is being challenged before this Court.

3. Heard Mr.D.Sivaraman, learned Counsel for the appellant, who would submit that P.W.4, who was the pillion rider when the accident occurred, gave Ex.P.1 - F.I.R, wherein he categorically stated that the deceased dashed while riding his two wheeler dashed against a stationary Tractor-Trailer. Whereas as P.W.4, he reversed his stand and stated that the Tractor-Trailer came in a reverse direction and dashed against the two wheeler. Therefore, reliance placed by the Tribunal on the evidence of P.W.4 - eyewitness, to come to the conclusion that the driver of the Tractor-Trailer was responsible for the accident is erroneous and the same is liable to be set aside.

4. It is a well settled position of law that when there is an inconsistency or contradiction between the F.I.R and the statement on oath, the statement on oath alone should be given evidentiary value as per the judgments of the Honourable Supreme Court in (i) **New India Assurance Company Ltd., Coimbatore v. Manimaran and others** reported in 2008 (2) TN MAC 137; (ii) **New India Assurance Company Limited., Madras v. G.Vijaya Kandiban** reported in 2006 (2) TN MAC 37; (iii) **Oriental Insurance Company Limited v. Kamli and others** reported in 2010 ACJ 1340 and (iv) **Sabitri Mallick and others v. Haladhar Bhuyan and another** reported in 2001 ACJ 2002.

5. Even then, the F.I.R is only a weak piece of evidence and that has to be corroborated.

6. Apart from the evidence of P.W.4, there are other witnesses and P.W.2 is an eyewitness, who also adduced evidence in consonance with P.W.4. Though Ex.P.1 - F.I.R was registered against the deceased, after completion of the investigation, Ex.P.10 - final report was filed against the driver of the Tractor-Trailer. Apart from that, the pillion rider already filed M.C.O.P.No.32 of 2015 for compensation and the judgment in M.C.O.P.No.32 of 2015 was marked as Ex.P.12, wherein the Tribunal held that the driver of the Tractor-Trailer alone was responsible for the accident and taking note of the same, the Tribunal rightly found that the accident occurred because of the driver of the Tractor-Trailer and therefore, the same cannot be set aside.

7. Though there is no appeal by the respondents 1 to

4/claimants, a perusal of the records would show that the Tribunal did not accept the evidence of P.W.3, an officer from the temple wherein the deceased was said to have been working as a priest and earning about Rs.10,000/- (Rupees Ten Thousand only) per month, as no books of accounts were filed. The said rejection of the evidence of P.W.3 is correct.

8. However, in the absence of any evidence with regard to the monthly income of Rs.10,000/- (Rupees Ten Thousand only), the Tribunal took a sum of Rs.3,000/- (Rupees Three Thousand only) which is on the lower side.

9. The Honourable Supreme Court in **New India Assurance Company Limited v. Smt. Kalpana and others** reported in **2007 (1) TN MAC 1 (SC)**, determined the monthly income of a driver, who died in the accident occurred on 07.06.1999, at Rs.4,500/- (Rupees Four Thousand and Five Hundred only) in the absence of any material evidence to prove the income and after deducting 1/3rd amount towards his personal expenses, arrived at the monthly income of the deceased at Rs.3,000/- (Rupees Three Thousand only) per month.

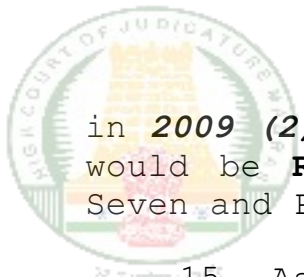
10. Whereas in this case, the accident occurred on 10.03.2003, after a period of four years and therefore, this Court determines the monthly income of the deceased at Rs.5,500/- (Rupees Five Thousand and Five Hundred only) per month.

11. Even though 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 and added 50% towards future prospects, for a vegetable vendor, who sustained amputation of his right leg, in the accident occurred on 14.07.2008.

12. Therefore, considering both the aforesaid judgments of the Honourable Supreme Court, this Court determines the monthly income of the deceased only at Rs.5,500/- (Rupees Five Thousand and Five Hundred only).

13. No amount towards future prospects was awarded by the Tribunal as per the judgment of the Honourable Supreme Court in **Rajesh and others v. Rajbir Singh and others** reported in **(2013) 9 Supreme Court Cases 54** and therefore, 50% has to be added as the deceased was aged about 39 years as per Ex.P.9 - post-mortem certificate and accordingly, the monthly income of the deceased would be **Rs.8,250/-** (Rupees Eight Thousand Two Hundred and Fifty only) [Rs.5,500/- + Rs.2,750/-].

14. Since the size of the family is more than 3, 1/4th amount has to be deducted, whereas the Tribunal has deducted 1/3rd amount only. Accordingly, after deducting 1/4th amount towards personal expenses of the deceased as per the judgment of the Honourable Supreme Court in **Sarla Verma v. Delhi Transport Corporation** reported



in **2009 (2) TN MAC 1 (SC)**, the monthly contribution of the deceased would be **Rs.6,187.50** (Rupees Six Thousand One Hundred and Eighty Seven and Paise Fifty only) [Rs.8,250/- - Rs.2,062.50].

15. As the deceased was aged 39 years as per Ex.P.9 - post-mortem certificate, the appropriate multiplier to be adopted is 15 and accordingly, the loss of income would be **Rs.11,13,750/-** (Rupees Eleven Lakhs Thirteen Thousand Seven Hundred and Fifty only) [Rs.6,187.50 X 12 X 15].

16. The first respondent/wife was hardly 29 years at the time of the accident. Losing the husband is painful and that too, at the age of 29 years is very cruel. She will be put to untold misery and mental agony psychologically, physically and emotionally apart from the social stigma. Even a cite of a widowed lady is not considered to be auspicious in our conservative society, for which, we should hang our face in shame. Even after so many decades of social advancements and in spite of works of many leaders, like, Rajaram Mohan Roy, Mahatma Gandhi, still women are not equally treated and that too, a widowed lady has to face discrimination in social functions as well as auspicious occasions. Rejection of her presence in the auspicious functions and non-recognition would still further add agony and frustration in the mind of the lady and she has to live with that for the rest of her life. Agony, pain, grief and sorrow being undergone by the women cannot be underestimated in terms of money and therefore, as an endeavour to do complete justice, this Court awards a sum of **Rs.2,00,000/-** (Rupees Two Lakhs only) towards loss of consortium as she would be deprived of the marital pleasure and companionship of her husband throughout her life.

17. A sum of Rs.15,000/- (Rupees Fifteen Thousand only) awarded to the respondents 2 and 3 who are minor children towards loss of love and affection is too low as they were deprived of their father's love and affection and guidance throughout their life and therefore, a sum of **Rs.1,00,000/-** (Rupees One Lakh only) **each** is awarded to the minor respondents 2 and 3 and totally, they are entitled to a sum of Rs.2,00,000/- (Rupees Two Lakhs only) towards loss of love and affection.

18. The father of the deceased lost his son at the evening of his life who would have belief and trust that his son would have looked after him at his ripen age and that has been shattered and hence, a sum of **Rs.50,000/-** (Rupees Fifty Thousand only) is awarded to the fourth respondent/father of the deceased towards loss of love and affection.

19. A sum of Rs.5,000/- (Rupees Five Thousand only) awarded by the Tribunal towards funeral expenses is enhanced to a sum of **Rs.15,000/-** (Rupees Fifteen Thousand only).

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20. No amount was awarded by the Tribunal towards transportation charges and hence, a sum of **Rs.7,500/-** (Rupees Seven



Thousand and Five Hundred only) is awarded under the head 'transportation charges'.

21. Similarly, no amount was awarded by the Tribunal towards loss of estate and hence, a sum of **Rs.15,000/-** (Rupees Fifteen Thousand only) is awarded towards loss of estate.

22. The rate of interest awarded by the Tribunal at **7.5%** per annum remains unaltered.

23. Even though this appeal has been filed by the appellant/Insurance Company against the award of Rs.4,49,000/- (Rupees Four Lakhs and Forty Nine Thousand only), this Court, *suo motu*, enhances the compensation to a sum of Rs.16,01,250/- (Rupees Sixteen Lakhs One Thousand Two Hundred and Fifty only) rounded off to **Rs.16,00,000/-** (Rupees Sixteen Lakhs only) by reappreciating the evidence on record under Order 41 Rule 33 of the Code of Civil Procedure for which this Court has power and jurisdiction as per the judgment of the Honourable Supreme Court in **Nagappa v. Gurudayal Singh and others** reported in **(2003) 2 Supreme Court Cases 274**.

24. Accordingly, the respondents 1 to 4/claimants are entitled to a sum of Rs.16,01,250/- (Rupees Sixteen Lakhs One Thousand Two Hundred and Fifty only) rounded off to **Rs.16,00,000/-** (Rupees Sixteen Lakhs only) along with interest at 7.5% per annum from the date of petition till date of realisation and proportionate costs. Out of the above award amount, the respondents 1 to 4/claimants are entitled to get their respective shares as per the apportionment made hereunder:

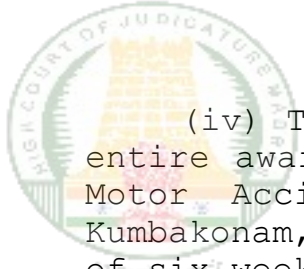
Sl. No.	Claimants	Amount(s) Rs.
1.	1 st Respondent/1 st Claimant/Wife of the deceased	8,00,000.00
2.	2 nd Respondent/2 nd Claimant/Minor Daughter of the deceased	3,50,000.00
3.	3 rd Respondent/3 rd Claimant/Minor Son of the deceased	3,50,000.00
4.	4 th Respondent/4 th Claimant/Father of the deceased	1,00,000.00
Total		16,00,000.00

25. In the result,

(i) This Civil Miscellaneous Appeal is dismissed;

(ii) The respondents 1 to 4/claimants are entitled to a sum of **Rs.16,00,000/-** (Rupees Sixteen Lakhs only) along with interest at 7.5% per annum from the date of petition till date of realisation and proportionate costs;

(iii) The respondents 1 to 4/claimants 1 to 4 are directed to pay the additional Court Fees, if any, within a period of **two weeks** from the date of receipt of a copy of this judgment;



(iv) The appellant-Insurance Company is directed to deposit the entire award amount to the credit of M.C.O.P.No.33 of 2005, by the Motor Accident Claims Tribunal - cum - Principal Sub Court, Kumbakonam, along with accrued interest and costs, within a period of six weeks from the date of receipt of a copy of this judgment;

(v) On such deposit, the Tribunal is directed to transfer the respective share amounts of the respondents 1 and 4/claimants 1 and 4 directly to their Personal Savings Bank Account Numbers, through RTGS/NEFT system, after getting their Account Details within a period of **two weeks thereafter**;

(vi) The respondents 1 and 4/claimants 1 and 4 are directed to furnish the details of their Personal Savings Bank Account Numbers to the Tribunal **forthwith**;

(vii) Insofar as the respective shares of the minor respondents 2 and 3/claimants 2 and 3 are concerned, the Tribunal shall deposit the same in an interest bearing Fixed Deposit in any one of the nationalised banks under the renewable scheme, till they attain majority and the first respondent/first claimant is permitted to withdraw the accrued interest once in three months for the welfare of the minor claimants 2 and 3;

(viii) In the facts and circumstances of the case, there shall be no order as to costs. Consequently, the connected miscellaneous petition is dismissed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

To

1.The Motor Accident Claims Tribunal - cum -
Principal Sub Court, Kumbakonam.

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

3.Mrs.P.Rajalakshmi, W/o.Pitchai @ Subramanian,
Singara Thoppu, Kumbakonam.

4.Mr.Seenivasan S/o.Govindasamy
Singara Thoppu, Kumbakonam.

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