

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 20.02.2020

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.Nos.1624 and 1625 of 2014

1. Arukkani

2. Ganesan

3. Sabitha ... Appellant in C.M.A.No.1624
of 2014/Claimants

Seeranga Mudaliar (died)
(amended in I.A.No.94/2012 dated 20.03.2012)

1. Arukkani ... Appellant in C.M.A.No.1625
of 2013/Claimant

Vs.

1. M.Kabasker

2. P. Senthilkumar

3. P.Anbuselvan

4.The National Insurance Co. Ltd.,
Having Branch Office at,
1, PB, No,41, Govindasamy pillai Street,
Near Old Bus stand,
Salem - 638 001.

5. The IFFCO-TOKIO General
Insurance Company Ltd.,
Having Office at Ponmai Towers,
No. 73, Avarampalayam Road,
New Sidhapudur, Coimbatore.

...Respondents in both the
appeals/Respondents

Common Prayer: Civil Miscellaneous Appeals filed under Section
173 of Motor Vehicles Act 1988, against the Judgment and award
of the Motor Accident Clams Tribunal (Special District Court),
Erode in M.C.O.P.Nos.151 and 152 of 2006 dated 04.12.2013.

(For both appeals)

For Appellants : Mr.S.KaithaiMalai Kumaran

For Respondent-4 : Mr.S. Vadivel

For RR1,2,3 & 5 : No appearance

COMMON JUDGMENT

Since, both the appeals are interlinked, they are taken up together and a common order is passed.

2.These Civil Miscellaneous Appeals have been filed against the Judgment and Decree dated 04.12.2013 made in M.A.C.T.O.P.Nos. 151 and 152 of 2006 on the file of the Motor Accident Clams Tribunal Special District Court, Erode.

3.The first appellant in both the appeals are one and same, who is the wife of the deceased. The second and third appellant are son and daughter of the deceased/Shanmuga Sundaram respectively. In both the appeals, the first respondent is the driver of the auto. The first and second respondents are the previous owner and present owner of the auto respectively. The 4th respondent and 5th respondent are the insurer of auto and two wheeler respectively.

4.The brief facts of the case is as follows:

On 24.10.2005 when the deceased was riding his motor cycle bearing Registration No.TN-33-AX-3147 at Thannerpanthalpalayam to Valrajapalayam main road near Modamangalam a minidoor auto bearing Registration No.TN-28-S-9293, driven by the 1st respondent came in a rash and negligent manner and caused the accident. The deceased was riding the motor cycle and the first appellant and her brother was proceeding as pillion riders. The accident occurred due to the rash and negligent driving of the driver of the auto. Due to the accident the rider of the motorcycle died and the pillion riders sustained injuries. Hence, the wife of the deceased/first appellant in both the appeals filed M.C.O.P.No.151 of 2006 seeking Rs.2,00,000/- as compensation for the injuries sustained by her in the accident and the legal heirs of the deceased including the wife of the deceased/first appellant filed M.C.O.P.No.152 of 2006 seeking Rs.8,00,000/-for the death of the sole bread winner who died in the road accident that took place on 24.10.2005.

5.Considering the pleadings, counter pleadings and the evidences & witnesses produced on either side, the Tribunal has awarded a sum of Rs.6,33,750/- and Rs.54,900/- in both the appeals respectively.

6.Not being satisfied with the award passed by the Tribunal, the appellants have come up with this present appeal before this Court.

7.The learned counsel for the appellants contended that at the time of accident the first appellant, who is the wife of the deceased sustained fracture over the right shoulder and right thigh. He would further contend that due to the sudden demise of the sole bread winner of the family the other family members are put to very indigent circumstances. In any event the amount awarded by the Tribunal is very low for a death of a person and prays to enhance the amount in both the appeals.

8.The learned counsel for the 4th respondent/National Insurance Company contend that that rider of the two wheeler does not posses valid driving licence at the time of accident. He would further contend that he denies the averments in the claim petitions. In any event, in the absence of any valid documents the amount awarded by the Tribunal is very high.

9.Despite ordering notice to the second and third respondents and their names printed in the cause list they have not engaged any counsel or appeared in person. Despite ordering notice on the 5th respondent through Court, privately, they are not served till now. Hence considering the paucity of time, the appeals are taken up for final disposal, since the disposal of these cases will not affect the respondents in any manner.

10.Before the Tribunal, on the side of the appellants two witnesses were examined viz., P.W.1 and P.W.2 and marked twelve documents viz., Ex.P1 to Ex.P12. The respondents have not neither examined any witness nor marked any documents.

11.With regard to negligence aspect, it is seen that P.W.1/wife of the deceased, who is the only eyewitness to the occurrence deposed that negligence on the part of the driver of the auto is the cause for the accident. Ex.P.1/F.I.R corroborates with the deposition of P.W.1. The driver of the auto was charge-sheeted and it is evidenced from Ex.P.6 Moreover, the driver of the offending vehicle failed to appear before the Tribunal. In any case the deposition of the eye witness to the occurrence will be given paramount importance. As such considering the deposition of P.W.1 and other relevant

materials, the Tribunal concluded that the accident occurred due to the rash and negligent driving of the driver of the auto. The Tribunal even though held negligence is on the part of the driver of the auto, but, observed the vital fact that 3 persons simultaneously travelled in a two wheeler at the time of the accident, which is very well against the provisions of Section 128 of Motor Vehicles Act, 1988. In 2012(1) TNMAC 713 it is held by the Hon'ble Court in para 8 is as follows:

'A two wheeler is meant for a driver and a pillion rider along and no more passengers, Therefore, it is very clear that there is a violation of Rule by the Claimant and also by virtue of number of people travelling in the vehicle, there was a wobbling in the vehicle and ultimately resulted in the accident. Definitely, the contribution of the injured person should be taken note of''

12. Therefore the Tribunal held as there is a contributory negligence to some extent on the part of the deceased, who has driven the ill-fated motor cycle and it becomes just and necessary to ascertain the quantum of contributory negligence on the part of the deceased and accordingly fixed contributory negligence on the part of the deceased at 25%. Hence, the claimants are entitled to receive only 75% of the compensation amount. In the present case there was a issue that who is the owner of the alleged vehicle involved in the accident. At the time of accident the third respondent is the owner of the auto and the second respondent is the previous owner of the auto. Eventhough the second respondent sold the auto, the policy for the offending vehicle still stands in his name, transfer of the owner-ship is not yet effected in the policy. As per Section 157(1), the policy runs with the vehicle. Hence, the non transfer of the policy will not eschew the Insurance company from paying the liability. So the Insurance company is liable to pay the compensation to the claimants.

13. This Court is of the view that the findings of the Tribunal with regard to negligence aspect are based on weightage of evidence, probabilities of case and settled principles of law and hence the same is confirmed.

14. With regard to quantum in C.M.A.No.1624 of 2014 it is seen in the claim petition that the deceased was 44 years at the time of accident and he is working as a supervisor in the power loom and earning a sum of Rs.5,000/- per month. But, there was no documents to substantiate the said claim. Hence, notional income alone is taken and determined Rs.4,500/- as the monthly income of the injured and by adding 50%(Rs.2,250/-) towards future prospectus, the total monthly income would be

Rs.6,750/-. Considering the age of the deceased $1/3^{\text{rd}}$ (Rs.2,250/-) was deducted towards his personal expenses and arrived Rs.4,500/- as monthly contribution. Hence, the monthly contribution would be Rs.4,500/- to the family and quantified the annual contribution at Rs.54,000/- (Rs.4,500 x 12). Considering the age of the deceased '15' multiplier is being applied and arrived Rs.8,10,000/- (Rs.54,000 x 15) towards the head loss of dependency. The first appellant/wife of the deceased lost her companion hence Rs.10,000/- was awarded under the head loss of consortium. Apart from this Rs.10,000/- each was awarded towards the head loss of estate and funeral expenses and Rs.5,000/- was awarded towards the head transportation. Thus, the total compensation was arrived at Rs.8,45,000/- which is hereby tabulated:

S.No.	Particulars	Amount awarded by the Tribunal
1	For the loss of estate	Rs.10,000/-
2	For the loss of consortium to the wife of the deceased/1 st appellant	Rs.10,000/-
3	For funeral expenditure	Rs.10,000/-
4	For transportation	Rs.5,000/-
5	For loss of dependency	Rs.8,10,000/-
	Total	Rs.8,45,000/-

After deducting 25% (Rs.2,11,250) towards Contributory negligence, the claimants are entitled for 75% (Rs.6,33,750/-) of the award amount. The 1st appellant alone is entitled for the amount awarded under the head loss of consortium.

15. With regard to quantum in C.M.A.No.1625 of 2014 it is seen in the claim petition that the injured was 40 years at the time of accident and she is working in the power loom and earning a sum of Rs.2,400/- per month. As per Ex.P.10 she was inpatient from 24.10.2015 to 10.11.2015 i.e., totally 18 days and due to the accident she was not able to go for the job for atleast 3 months. Hence, Rs.7,200/- (Rs.2,400 x 3) was awarded towards loss of income. Considering all the other aspects the Tribunal has awarded Rs.73,200/- as total compensation under different heads which are hereby tabulated:

S.No.	Particulars	Amount
1	For Transportation	Rs.1,000/-
2	For Extra Nourishment	Rs.5,000/-
3	For pain and sufferings	Rs.15,000/-
4	For medical Expenditure	Rs.5,000/-
5	For disability	Rs.40,000/-
6	For loss of income	Rs.7,200/-
	Total	Rs.73,200/-

After deducting 25%(Rs.18,300) towards Contributory negligence, the claimants are entitled for 75%(Rs.54,900/-) of the award amount.

16.This Court is of the view that the findings of the Tribunal with regard to quantum are based on weightage of evidence, probabilities of case and settled principles of law and hence the same are confirmed.

17.In the result, these Civil Miscellaneous Appeals are dismissed. The fourth respondent/Insurance Company shall deposit the 75% of the compensation amount in both the appeals, along with interests and costs, as awarded by the Claims Tribunal, less the amount already deposited, if any, within a period of eight weeks, from the date of receipt of a copy of this judgment. On such deposit being made the appellants/claimants in C.M.A.No.1624 of 2014 and the appellant/Claimant in C.M.A.No.1625 of 2014 are permitted to withdraw and disburse the same as per the directions made by the Tribunal, on making proper application before the Tribunal. No costs.

WEB COPY

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

The Motor Accident Claims Tribunal,
Special District Judge, Erode.

Copy to

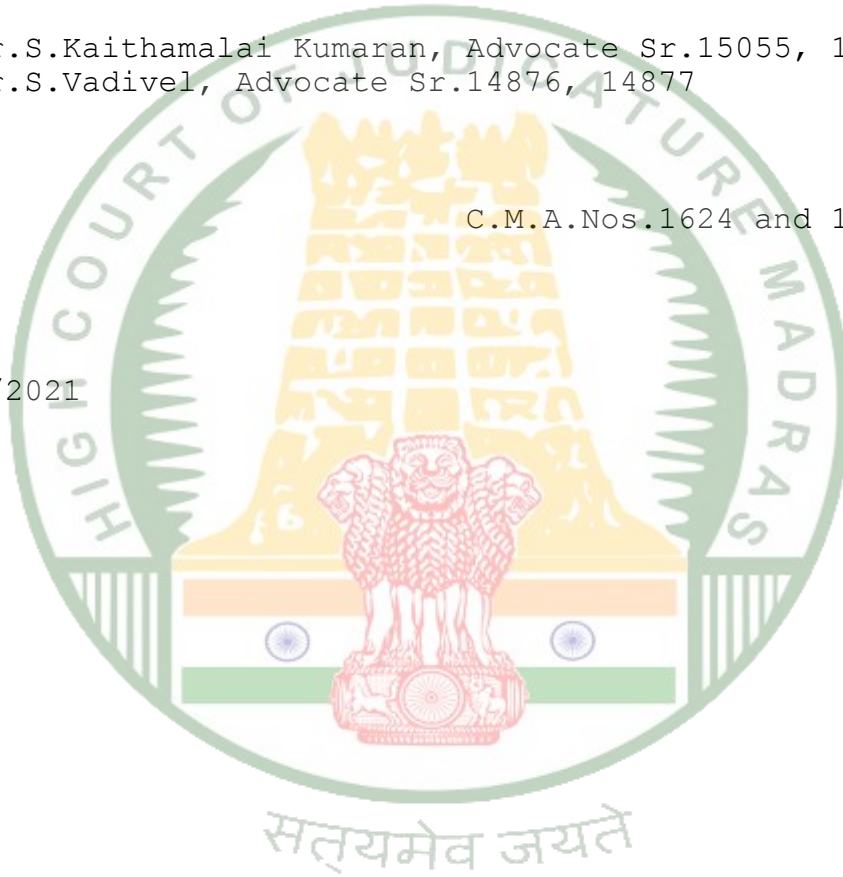
The Section Officer,
VR Section, High Court,
Chennai.

+2cc to Mr.S.Kaithamalai Kumaran, Advocate Sr.15055, 15054

+2cc to Mr.S.Vadivel, Advocate Sr.14876, 14877

C.M.A.Nos.1624 and 1625 of 2014

pvs[col]
srg 06/01/2021



WEB COPY