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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.10.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3241 of 2014

1.Kannammal  
2.Minor Priyanga  
3.Minor Manimekalai  
4.Palanal  
5.Rayan  
(Minors 2 and 3 are rep. By guardian  
and natural friend mother Kannammal) .. Appellants

Vs.

1.Nachimuthu  
2.V.K.Rajagopal  
3.Iffco - Tokio General Insurance Co. Ltd.,  
Tulsi Chambers, 3<sup>rd</sup> Floor,  
No.195, T.V.Samy Road,  
West R.S.Puram,  
Coimbatore - 22. .. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 10.02.2011, made in M.C.O.P. No.287 of 2008, on the file of the Additional District Court, Fast Track Court No. II, (Motor Accident Claims Tribunal) Gobichettipalayam.

For Appellants : Mr. P. Parthikannan  
for M/s.S. Kaithamalai Kumaran

For Respondents : No appearance (For R1)

Mr.E.Rajadurai (For R3)  
for M/s. M.Gopalan



## J U D G M E N T

The matter is heard through "Video Conferencing".

This appeal has been filed against the judgment and decree dated 10.02.2011, made in M.C.O.P. No.287 of 2008, on the file of the Additional District Court, Fast Track Court No. II, (Motor Accident Claims Tribunal) Gobichettipalayam.

2.The appellants - claimants filed M.C.O.P. No.287 of 2008, on the file of the Additional District Court, Fast Track Court No. II, (Motor Accident Claims Tribunal) Gobichettipalayam, claiming a sum of Rs.10,00,000/- as compensation for the death of one Vellingiri, who died in the accident that took place on 26.08.2007.

3.According to the appellants, on the date of accident, at about 3.45 p.m, when the deceased was riding his Motorcycle bearing Registration No.TN-33-R-9529 from Sadayamathi to Athiyur road on the extreme left side of the road, the 1<sup>st</sup> respondent drove the Motorcycle bearing Registration No.TN-36-K-7553 belonging to the 2<sup>nd</sup> respondent in a rash and negligent manner, without blowing horn and suddenly dashed against the Motorcycle of the deceased and caused accident. In the accident, the deceased sustained fatal injuries and died on 09.09.2007. The accident occurred due to rash and negligent driving by the 1<sup>st</sup> respondent, driver of the Motorcycle belonging to the 2<sup>nd</sup> respondent. The respondents as driver, owner and insurer of the offending vehicle are liable to pay compensation.

4.The 1<sup>st</sup> respondent filed counter statement and denied all the averments made by the appellants. According to the 1<sup>st</sup> respondent, the accident occurred when the 1<sup>st</sup> respondent was riding the Motorcycle belonging to the 2<sup>nd</sup> respondent along with his wife as pillion rider, following all the traffic rules. The deceased drove his Motorcycle in a rash and negligent manner, without following the traffic rules and dashed against the Motorcycle driven by the 1<sup>st</sup> respondent. In the accident, the 1<sup>st</sup> respondent and his wife sustained grievous and multiple injuries all over the body. The 1<sup>st</sup> respondent has also lodged a complaint against the deceased. The legal heirs of the deceased, who are the appellants have included the 1<sup>st</sup> respondent as accused in the connected Police records, though he is not cited as accused in the FIR filed. The appellants have to prove the age, avocation, income and treatment taken by the deceased to claim compensation. In any event, the total compensation claimed by the appellants are excessive and exorbitant and prayed for dismissal of the claim petition.



5.The 3<sup>rd</sup> respondent-Insurance Company filed separate counter affidavit and reiterated all the averments made by the 1<sup>st</sup> respondent. They further contended that the claim petition is bad for non-joinder of insurer of the Motorcycle bearing Registration No.TN-33-R-9529, in which the deceased travelled and prayed for dismissal of the claim petition.

6.Before the Tribunal, the 1<sup>st</sup> appellant examined herself as P.W.1 and two others were examined as P.W.2 and P.W.3 and 4 documents were marked as Exs.P1 to P4. On behalf of the respondents, the Branch Manager of the 3<sup>rd</sup> respondent-Insurance Company was examined as R.W.1 and 1<sup>st</sup> respondent was examined as R.W.2 and 4 documents were marked as Exs.R1 to R4.

7.The Tribunal considering the pleadings, oral and documentary evidence, holding that the accident occurred due to rash and negligent driving by the deceased, came to a conclusion that the appellants are entitled to "No Fault Claim" and directed the 3<sup>rd</sup> respondent as insurer of the offending vehicle to pay a sum of Rs.55,000/- as compensation to the appellants.

8.Challenging the liability fixed on the deceased as well as not being satisfied with the quantum of compensation granted by the Tribunal in the said award dated 10.02.2011, made in M.C.O.P. No.287 of 2008, the appellants have come out with the present appeal.

9.The learned counsel appearing for the appellants contended that the Tribunal erroneously awarded compensation under Section 140 of the Motor Vehicles Act, 1988, for "No Fault Liability", without considering the manner of accident. Taking advantage of the fact that the deceased sustained multiple injuries and was taken to Hospital, the 1<sup>st</sup> respondent filed complaint against the deceased. The Tribunal erred in relying on the FIR and fixed negligence on the part of the deceased. The Tribunal failed to see that the criminal proceedings will not be basis for fixing negligence. The Tribunal has to independently decide the negligence based on the materials placed before it. The Tribunal failed to see that the respondents 1 and 2 did not examine any independent witness and 1<sup>st</sup> respondent who was examined as R.W.2 is an interested witness. The learned Judge instead of fixing liability entirely on the deceased, ought to have considered Ex.R1-Rough Sketch and fixed the liability equally on the deceased and 1<sup>st</sup> respondent, especially when both had contributed to the accident and accident might have been avoided if the 1<sup>st</sup> respondent would have been more vigilant in driving the Motorcycle by following rules and regulations. The Motor Vehicles Act is a beneficial legislation enacted for the welfare of the persons or family of the persons injured in the road accident. Hyper technicalities need not be adopted while



dealing with the claim petition and prayed for setting aside the award of the Tribunal granting compensation for 'No Fault Liability' and for a direction to the respondents to pay the compensation as claimed by the appellants.

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10. Per contra, Mr. E. Rajadurai, learned counsel appearing for the 3<sup>rd</sup> respondent-Insurance Company contended that the accident has occurred only due to rash and negligent riding by the deceased who dashed against the Motorcycle driven by the 1<sup>st</sup> respondent and caused the accident. The FIR was registered only against the deceased. The Police after investigation, referred the case and filed final report. The 1<sup>st</sup> respondent who is an eye-witness was examined as R.W.2 and he deposed the manner of the accident. The Tribunal considering the pleadings, oral and documentary evidence, rightly held that the accident has occurred due to rash and negligent driving by the deceased and granted compensation for 'No Fault Liability' and prayed for dismissal of the appeal.

11. Heard the learned counsel appearing for the appellants as well as the 3<sup>rd</sup> respondent and perused the materials available on record.

12. Though notice has been served on the 1<sup>st</sup> respondent and his name is printed in the cause list, there is no representation for him either in person or through counsel.

13. From the materials on record, it is seen that it is the contention of the appellants that while the deceased was riding his Motorcycle, the 1<sup>st</sup> respondent drove his Motorcycle in a rash and negligent manner and dashed against the Motorcycle driven by the deceased and caused the accident. The deceased sustained grievous injuries and was taken to Hospital and subsequently, he died. To substantiate this contention, the 1<sup>st</sup> appellant was examined as P.W.1 and one M. Ponnusamy was examined as P.W.2. P.W.2 deposed that the accident has occurred due to rash and negligent driving by the 1<sup>st</sup> respondent. According to the respondents, the accident has occurred only due to rash and negligent driving by the deceased. To substantiate this contention, the 1<sup>st</sup> respondent, rider of the Motorcycle bearing Registration No. TN-36-K-7553 was examined as R.W.1, who deposed that the deceased drove the Motorcycle in a rash and negligent manner, dashed against the Motorcycle driven by the 1<sup>st</sup> respondent and caused the accident. The respondents also relied on the Rough Sketch and complaint given by the 1<sup>st</sup> respondent, which were marked as Exs. R1 and P1 respectively. The Tribunal, erroneously stating that P.W.2 admitted in cross-examination that he did not see the accident, the appellants have not examined any eye-witness and R.W.2 is the only eye-witness, held



that the accident has occurred only due to rash and negligent driving by the deceased.

14. From the evidence of P.W.2 filed in the additional typed set of papers, it is seen that in the cross-examination, P.W.2 has stated that he was 10 feet away from the occurrence place and he saw the accident. P.W.2 has deposed that the 1<sup>st</sup> respondent alone drove the Motorcycle in a rash and negligent manner and dashed on the backside of the deceased. He denied the suggestion that he did not see the accident and also denied that accident has occurred due to rash and negligent driving by the deceased. The Tribunal without properly appreciating the evidence of P.W.2, has erroneously held that P.W.2 admitted that he did not see the accident. The Tribunal also failed to take note that the 1<sup>st</sup> respondent is an interested witness and he went to the Police Station within 1½ hrs of the accident, given complaint blaming the deceased, rider of other vehicle, for rash and negligent driving and cause of accident. There is nothing on record to show that the 1<sup>st</sup> respondent suffered grievous injuries and his wife who was pillion rider also sustained injuries. On the other hand, the 1<sup>st</sup> respondent within 1½ hrs of the accident, went to the Police Station and lodged complaint against the deceased. When the 1<sup>st</sup> respondent gave complaint, naturally he will blame the driver of the other vehicle.

15. It is well settled that contents of FIR and criminal proceedings cannot be basis for fixing negligence. The Tribunal has to independently consider the materials placed before it to fix the negligence. As stated above, the Tribunal has failed to properly appreciate the evidence of P.W.2 - eye witness and erroneously, held that P.W.2 has admitted that he did not see the accident while P.W.2 has categorically stated that he saw the accident and he was only 10 feet away from the place of occurrence. In view of the above grave error committed by the Tribunal, the finding of the Tribunal that accident has occurred only due to rash and negligent driving by the deceased is liable to be set aside and is hereby set aside.

16. Considering the evidence of P.W.2 and entire materials on record, this Court holds that the accident has occurred only due to rash and negligent riding of the Motorcycle bearing Registration No.TN-36-K-7553 by the 1<sup>st</sup> respondent. The 2<sup>nd</sup> respondent is the owner of the said vehicle. The 3<sup>rd</sup> respondent has not denied that on the date of accident there was valid insurance for the Motorcycle bearing Registration No.TN-36-K-7553. In view of the same, the 2<sup>nd</sup> respondent, as owner and 3<sup>rd</sup> respondent as insurer of the Motorcycle bearing Registration No.TN-36-K-7553 are jointly and severally liable to pay the compensation. In view of the above, the compensation granted by



the Tribunal under 'No fault liability' and funeral expenses to the appellants 1 to 3 are hereby set aside.

17. As far as the quantum of compensation is concerned, the appellants claimed that the deceased was a Plumber and was earning a sum of Rs.6,000/- per month. The appellants have not filed any document to prove the avocation and income. The accident is of the year 2007. Considering the year of accident, the amount claimed by the appellants is fixed as monthly income of the deceased. Though the appellants claimed that the deceased was aged 36 years at the time of accident, they have not filed any document to prove the age of the deceased. The Tribunal considering Ex.P2, Post-Mortem certificate, fixed the age of the deceased as 36 years. The multiplier applicable is '15'. There are 5 dependants of the deceased. Hence,  $1/4^{\text{th}}$  has to be deducted towards personal expenses of the deceased. The appellants are entitled to 40% enhancement towards future prospects of the deceased. Hence, the appellants are entitled to a sum of Rs.11,34,000/-{[Rs.6,000/- + Rs.2,400/- (40% of Rs.6,000/-)] x 12 x 15 x  $\frac{3}{4}$ } towards loss of dependency. The 1<sup>st</sup> appellant as wife of the deceased is entitled to a sum of Rs.40,000/- towards loss of consortium, the appellants 2 and 3 who are the children are entitled to a sum of Rs.20,000/- each towards loss of love and affection. The appellants 4 and 5 who are the parents of the deceased are entitled to a sum of Rs.10,000/- each towards loss of love and affection. The appellants are entitled to a sum of Rs.15,000/- each towards funeral expenses and loss of estate.

18.It is well settled that the Tribunal and the Courts have to award just compensation. Though the claimants have claimed lesser compensation, the Courts have power to grant just compensation more than the amount claimed by the claimants. Thus, the compensation awarded by the Tribunal is modified as follows:

| S. No | Description        | Amount awarded by Tribunal (Rs) | Amount awarded by this Court (Rs) | Award confirmed or enhanced or granted |
|-------|--------------------|---------------------------------|-----------------------------------|----------------------------------------|
| 1.    | Loss of dependency | -                               | 11,34,000/-                       | Granted                                |



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|    |                                                     |          |             |                            |
|----|-----------------------------------------------------|----------|-------------|----------------------------|
| 2. | Loss of consortium to the 1 <sup>st</sup> appellant | -        | 40,000/-    | Granted                    |
| 3. | Loss of love and affection to appellants 2 and 3    | -        | 40,000/-    | Granted                    |
| 4. | Loss of love and affection to appellants 4 and 5    | -        | 20,000/-    | Granted                    |
| 5. | Funeral expenses                                    | -        | 15,000/-    | Granted                    |
| 6. | Loss of estate                                      | -        | 15,000/-    | Granted                    |
| 7. | No fault liability                                  | 50,000/- | -           | Set aside                  |
| 8. | Funeral expenses to appellants 1 to 3               | 5,000/-  | -           | Set aside                  |
|    | Total                                               | 55,000/- | 12,64,000/- | Enhanced by Rs.12,09,000/- |

19. In the result, the appeal is allowed and the amount awarded by the Tribunal at Rs.55,000/- is enhanced to Rs.12,64,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. Out of the award amount, the 1<sup>st</sup> appellant is entitled to a sum of Rs.4,00,000/-, appellants 2 and 3 are entitled to Rs.3,00,000/- each and the appellants 4 and 5 are entitled to a sum of Rs.1,32,000/-. The respondents 2 and 3 are jointly and severally directed to deposit the enhanced award amount, now determined by this Court, along with interest and costs, within a period of six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P. No.287 of 2008. On such deposit, the appellants 1, 4 and 5 are permitted to withdraw their share of the award amount alongwith proportionate interest and costs, as per the ratio of apportionment fixed above, after adjusting the amount, if any, already withdrawn, by filing necessary applications before the Tribunal. The shares of the minor appellants 2 and 3 are directed to be deposited in any one of the Nationalized Banks, till the minors attain majority. The 1<sup>st</sup> appellant, mother of the minor appellants 2 and 3 is



permitted to withdraw the accrued interest, once in three months for the welfare of the minor appellants 2 and 3. The appellants are directed to pay the court fee, if any, on the enhanced amount of Rs.12,09,000/-. No costs.

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Sd/-  
Assistant Registrar(CO-VIII)

//True Copy//

Sub Assistant Registrar

gsa

To

1. The Additional District Judge,  
Fast Track Court No. II,  
(Motor Accident Claims Tribunal),  
Gobichettipalayam.

2. The Section Officer,  
V.R Section,  
High Court, Madras.

+1cc to M/s.S. Kaithamalai Kumaran, Advocate, S.R.No.33542

C.M.A.No.3241 of 2014

SVI (CO)  
CT(16/08/2021)