IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 09.03.2021
Judgment Delivered on : 13.08.2021

CORAM

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

C.M.A.Nos.81 and 82 of 2006 and 803 of 2007

C.M.A. No.81 of 2006

M/s.National Insurance Company Limited,
Branch Office No.7,
62-A, J.N. St. Pondicherry. ... Appellant/2nd Respondent

Vs.

1. G.Suchitra Sudhakar

2. Varun Sudhakar (Minor) ..1st & 2nd Respondent/Petitioner

3. Jahan Travels,
38/8, Burkit Road,
T. Nagar, Chennai - 17.
(Ex parte in the lower Court)

4. The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
Central Depot,
Kancheepuram Division,
Kancheepuram. ...3 & 4 Respondents/
1 & 2 Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 r/w Section 170 of the Motor Vehicles Act, 1988, against the judgment and decree in M.C.O.P.No.2757 of 1999 dated 18.04.2005 on the file of the Motor Accidents Claims Tribunal (Additional District Judge [FTC No.1]), Chennai.

For Appellant : Mr.D.Bhaskaran.

For Respondents : Mr.K.S.Narasimhan

C.M.A. No.82 of 2006

M/s.National Insurance Company Limited,
Branch Office No.7,
62-A, J.N. St. Pondicherry. ... Appellant/2nd Respondent

Vs.

1. S.Goldwern ...Respondent/Petitioner
(set exparte before the Tribunal)

2. Dr.S.Shanthi ...Respondent/petitioner

3. B.Ramalingam
(Ex parte in the lower Court) .. Respondent/3rd Respondent

4. The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
Central Depot,
Kancheepuram Division,
Kancheepuram. ... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 r/w Section 170 of the Motor Vehicles Act, 1988, against the judgment and decree in M.C.O.P.No.4722 of 2000 dated 18.04.2005 on the file of the Motor Accidents Claims Tribunal (Additional District Judge [FTC No.1]), Chennai.

For Appellant : Mr.D.Bhaskaran.

For Respondents : Mr.K.S.Narasimhan

C.M.A. No.803 of 2007

1. G.Suchitra Sudhakar
2. Varun Sudhakar ... Appellants/Petitioners

Vs.

1. Jahan Travels,
38/8, Burkit Road,
T. Nagar, Chennai - 17.
(Set exparte before the Tribunal)

2. The National Insurance Company Limited,
By Divisional Manager, Pondicherry.

3. The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
Villupuram Division III,
Kancheepuram. ... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree in M.C.O.P.No.2757 of 1999 dated 18.04.2005 on the file of the Motor Accidents Claims Tribunal (Additional District and Sessions Judge, Fast Track Court No.I, Chennai), Chennai.

For Appellant : Mr.A.N.Viswanatha Rao

For Respondent 2 : Mr.D.Bhaskaran

COMMON JUDGMENT

(This case has been heard through video conference)

The Civil Miscellaneous Appeals in C.M.A.Nos.81 and 82 of 2006 have been filed by the Insurance Company challenging liability awarded in the judgment and decree dated 18.04.2005 passed in MCOP.Nos.2757 and 4722 of 1999 by the Motor Accidents Claims Tribunal (Additional District Judge [FTC No.1]), Chennai.

2. The Civil Miscellaneous Appeals in C.M.A.No.803 of 2007 has been filed by the claimants for enhancement of compensation awarded on 18.04.2005 passed in MCOP.Nos.2757 of 1999 by the Motor Accidents Claims Tribunal (Additional District Judge [FTC No.1]), Chennai.

3. The brief facts which are relevant for consideration of the appeal are as follows:-

3.1. On 02.10.1998 at about 11.00 hrs on the East-coast Road near Selliamman Kovil, Thirukazhukundram within Sadras Police Station limit within Kancheepuram District, the tourist bus bearing Registration No. KA-01-A-3663 belonging to Jahan Travels, 38/8, Burkit Road, T.Nagar, Chennai - 17 was driven by the driver in a rash and negligent manner while proceeding from Chennai to Pondicherry and collided head on with the Tamil Nadu State Transport Corporation bus bearing Registration No. TN-21-N-0460 whereby a passenger - Usha Sudhakar in the tourist bus sustained multiple injuries and later succumbed to the same at Apollo Hospitals, Chennai and other passengers were also injured. The E-3 Sadras Police Station, Thirukazhukundram, Kancheepuram District, registered a case in Crime No.545/1998 under Sections

337 and 304-A of Indian Penal Code against the driver of the Tamil Nadu State Transport Corporation bus. The deceased Usha Sudhakar, wife of Vijaya Sudhakar was running a school under the name of Cambridge Preparatory School at Chennai - 33 and she was earning not less than Rs.6,000/- per month from her self-employment from the school. The claimants in M.C.O.P.No.2757 of 1999 are the daughter, son and parents of Usha Sudhakar.

3.2. M.C.O.P.No.4722 of 2000 was filed by the parents of the deceased Ms.G.Ceilia Preethithi, aged about 12 years, who also succumbed to injury in the same accident. Therefore, the claim petition in M.C.O.P. No.2757 of 1999 and 4722 of 2000 were taken up together for enquiry and disposed of by a common order on 18.04.2005 by the Learned Motor Accident Claims Tribunal, Chennai.

3.3. The son of deceased Usha Sudhakar, the second claimant in M.C.O.P.No.2757 of 1999 had examined himself as P.W.1. One Latha who was a passenger in the ill-fated bus on the date of accident was examined as P.W.2. Dr.Santhi, the mother of the deceased Ms.G.Ceilia Preethi, who was the second claimant in M.C.O.P.No.4722 of 2000 had examined herself as P.W.3. Documents were marked as Exs.P1 to P11. Ex.P1 is the First Information Report. Ex.P2 is the rough sketch. Ex.P3 is the medical bills from Apollo Hospitals for the treatment given to injured Usha Sudhakar who subsequently died. Ex.P4 is the Post-mortem Certificate of Usha Sudhakar. Ex.P5 is the School Certificate of Usha Sudhakar with regard to her age and date of birth. Ex.P6 is the building approval for the school run by the deceased Usha Sudhakar. Ex.P7 is the Legal-heir Certificate of the legal heirs of Usha Sudhakar, the claimants in M.C.O.P. No.2757 of 1999. Ex.P8 is the Income-Tax receipt for the Assessment Year 1997-1998 issued in the name of Usha Sudhakar. Ex.P9 is the Post-Mortem Certificate of the deceased G.Ceilia Preethi regarding claim petition in M.C.O.P.No.4722 of 2000. Ex.P10 is the Legal-heirs Certificate of the deceased G.Ceilia Preethi. Ex.P11 is the Birth Certificate of deceased G.Ceilia Preethi.

3.4. On appreciation of evidence, the learned Fast Track Judge-I, Motor Accident Claims Tribunal, Chennai, had passed a common order in M.C.O.P.Nos.2757 of 1999 and 4722 of 2000 awarding a sum of Rs.5,78,232/- as compensation to the legal-heirs of Usha Sudhakar and fixed liability of 50% on the private bus bearing registration No.KA-01-A-3663 belongs to Jahans Travels which was insured with the National Insurance Company Limited, No.62-A, JN Street, Pondicherry and 50% on the bus bearing registration No.TN-21-N-0460 belongs to Tamil Nadu State

Transport Corporation.

4. Aggrieved by the fastening of liability on the Insurance Company, the second respondent Insurance Company before the Motor Accident Claims Tribunal, Chennai, had filed C.M.A.No.81 of 2006 against the claimants in M.C.O.P.No.2757 of 1999 and C.M.A.No.82 of 2006 against the claimants in M.C.O.P.No.4722 of 2000.

5. Aggrieved by the quantum of award, the claimants in M.C.O.P.No.2757 of 1999 had filed C.M.A.No.803 of 2007 seeking enhancement of compensation.

6. Thiru.D.Bhaskaran, learned Counsel for the appellant/Insurance Company in C.M.A.Nos.81 and 82 of 2006 submitted that the Motor Accident Claims Tribunal (Fast Track Judge-I), Chennai, had failed to appreciate the evidence available before it. The place of occurrence is in a curve portion of the road and the vehicle proceeding from Chennai towards Pondicherry bearing registration No.KA-01-A-3663 belonging to the first respondent/Jahans Travels and insured with the appellant, who was the second respondent before the Tribunal, was moving on the Eastern portion of the North-South road proceeding South direction towards Pondicherry. The impact of the accident took place on the middle of the road. If the driver of the Tamil Nadu State Transport Corporation bus had been cautious, this accident would not have taken place. The sketch under Ex.P2 is clear. The bus moving on the North-South direction on the Eastern portion of the road moved due to the impact caused by the bus from Pondicherry hitting the bus head on as it had crossed its portion and entered the path of the bus proceeding towards South direction on the Eastern portion of the road. The impact of collision took place on the path of the bus that was proceeding towards its South direction from the North direction on the Eastern part of the road. The police had registered a case only against the driver of the Tamil Nadu State Transport Corporation Bus, as per the FIR under Ex.P1. Those circumstances were not considered by the learned Tribunal. He further submitted that on seeing the vehicle approaching from the opposite side, the driver of the bus belonging to first respondent/Jahans Travels, moved the bus towards extreme left side of the road but still the bus from the opposite side collided thereby pushing the first respondent bus to the extreme left and this fact was not considered by the learned Tribunal and mechanically, the learned Tribunal had fixed 50% liability on both the buses. The said argument of the learned Counsel for the appellant Thiru.D. Bhaskaran is found justified.

7. The learned Counsel for the first and second respondents relied on a decision of the Hon'ble Supreme Court in the case of Kishan Gopal and another -vs- Lala and others reported in (2014) 1 SCC 244 regarding compensation granted to the parents of the deceased child. This ruling was cited in support of the award passed by the Tribunal to the parents of Ms.G.Ceilia Preethi, the claimants in M.C.O.P.No.4722 of 2000. Considering the decision relied by the learned Counsel for the first and second respondents, the arguments of the learned counsel for the appellants regarding quantum is rejected and the award passed by the Tribunal is upheld and confirmed.

8. The learned Counsel for the Tamil Nadu State Transport Corporation claimed that this case itself is not maintainable as it is hit by res judicata. He was unable to furnish any ruling of the High Court regarding the earlier decision in this case and therefore, the same is rejected.

9. Point for consideration in C.M.A.Nos.81 and 82 of 2006 is as follows:

Whether the appeals filed by the Insurance Company are to be allowed?

10. As rightly pointed out by the learned Counsel for the appellant/Insurance Company, the passenger who was inside the bus would not have seen what had happened outside the bus, especially, when it was raining at that point of time. P.W.2 - Latha, was the sister of the deceased Usha Sudhakar who travelled inside the bus. Therefore, as rightly pointed out by the learned Counsel for the appellant Insurance Company, that part of evidence is considered in the light of Ex.P1-FIR and Ex.P2-Rough Sketch. Therefore, the liability of 60% is fastened on the Tamil Nadu State Transport Corporation bus and 40% on the driver of the Jahan Travels which was insured with the appellant herein. The other contention of the learned Counsel for the appellant regarding quantum is rejected. Accordingly, the point for consideration in C.M.A.Nos.81 and 82 of 2006 is answered in favour of the appellant.

C.M.A. No.803 of 2007

11. The learned Counsel for the claimants Mrs.Ramya Viswanathan submitted that that deceased Usha Sudhakar was an income tax assessee and while calculating the compensation, the learned Tribunal had failed to consider the evidence of the first claimant. As per the then prevailing rule of the Hon'ble Supreme Court in U.P. State Road Transport Corporation and others -vs- Trilok Chandra reported in 1996 ACJ 831 (SC) the units were

considered for calculating pecuniary loss and by that calculation, every adult has to be treated as two units and every minor has to be treated as one unit. In this case, there were four claimants viz., the children and parents of Usha Sudhakar. As per the above ruling, two units for the adult claimant viz., 3 x 2 units = 6 units and for one minor claimant, one units is to be given thereby totally 7 units are to be taken into consideration for calculating personal expenses. He further submitted that on the date of filing the claim petition, the parents of the deceased Usha Sudhakar was alive and therefore, 1/4th amount in Rs.49,990/- had to be deducted for personal expenses instead of 1/3.

12. The learned Counsel also submitted that the learned Tribunal had not granted medical expenses, transportation to hospital and other non-pecuniary expenses. The Tribunal granted only Rs.5000/- towards funeral expenses and Rs.20,000/- towards loss of love and affection. The learned Tribunal has also not granted any amount for future prospects. Therefore, the learned Counsel for the appellants/claimants seeks enhancement.

13. Point for consideration in C.M.A.No.803 of 2006 is as follows:

Whether the claimants in M.C.O.P.No.2757 of 1999 are entitled to enhancement?

14. Perused the records in M.C.O.P.No.2757 of 1999 and award passed by the Tribunal. On perusal of the award, it is found that the contention raised by the appellant/claimants is justified. The learned counsel for the appellants relied on the decision of the Hon'ble Supreme Court in U.P. State Road Transport Corporation and others -vs- Trilok Chandra reported in 1996 ACJ 831 (SC) for calculating pecuniary loss and by that calculation, every adult has to be treated as two units and every minor has to be treated as one unit. As per his submission, on the date of filing of the claim petition, there were four claimants viz., one daughter and two parents totally three adults and one minor son of Usha Sudhakar. As per the above ruling, two units for the adult claimant viz., 3 x 2 units = 6 units and for one minor claimant, 1 unit is to be given thereby totally 7 units are to be taken into consideration for calculating deduction personal expenses. If that principle is adopted, the deduction for personal expenses would be Rs.7,141/- (Rs.49,990 x 1/7 = Rs.7141/-) and after deducting the personal expenses, the contribution to the family of the deceased Usha Sudhakar would be Rs.42,849/- (Rs.49,990 - Rs.7141/-). However, having considered several subsequent decisions of the Hon'ble

Supreme Court, the deduction to be made towards personal and living expenses of the deceased would be 1/3rd and accordingly, this Court arrives at a conclusion that the personal expenses of the deceased would be Rs.16,663/- (Rs.49,990 x 1/3 = Rs.16,663/-) and after deducting the personal expenses, the contribution to the family of the deceased Usha Sudhakar would be Rs.33,327/- (Rs.49,990 - Rs.16,663/-).

15. As per the ratio laid down by the Hon'ble Supreme Court in Sarla Verma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121, the highest multiplier 18 is for the age groups 15 to 20 and 21 to 25, the multiplier 17 is for the age 26 to 30, the multiplier 16 is for the age 31 to 35 years, the multiplier 15 is for the age 36 to 40 years. Therefore, in this case the age of the deceased Usha Sudhakar was 40 at the time of death and hence, the correct multiplier to be adopted is 15. The learned Tribunal had not considered the future prospects of the deceased Usha Sudhakar. Had the deceased been in any Government Job, he would have earned regular income and only then future prospects had to be taken up. As per the ruling of the Hon'ble Supreme Court reported in National Insurance Co. Ltd., Vs. Pranay Sethi and others reported in 2017 (2) TNMAC 609 (SC), for those in private jobs, future prospects of 40% increase in the salary could be added, upto the age of 40 and 25% for more than 50 years. Therefore, this Court awards a sum of Rs.19,996/- towards future prospects to be added with the annual income of Rs.49,990/-. Therefore, this Court enhanced a sum of Rs.7,99,845/-(33327+19996=53323X15=799845) towards Loss of Dependency.

16. The learned Tribunal had not considered the medical expenses spent by the family of Usha Sudhakar for her treatment at Apollo Hospital for the reason that the body of Usha Sudhakar was handed over to the Apollo Hospital for organ donations. In Ex.P3 it is stated by the Apollo Hospital that "This patient was brain dead. The multiple organs were donated to various patients. Therefore, in appreciation of this gesture, the Management waived the bill amount." Even though as a gesture the medical expenses were waived by the Apollo Hospital, the learned Tribunal while considering the compensation for the victim can calculate this amount so that the claimants are benefited. As per Ex.P3, the bill for treatment of the deceased Usha Sudhakar comes to Rs.72,251/-. Even though the hospital waived, the claimants have to be compensated for the same. Therefore, as per the reported Ruling of the Hon'ble Supreme Court in National Insurance Co. Ltd., Vs. Pranay Sethi and others reported in 2017 (2) TNMAC 609 (SC) various non pecuniary heads

such as “loss of consortium, loss of love and affection” had to be considered in the light of the present day cost of living. Applying the said ratio to this case, both the claimants are entitled to Rs.40,000/- each towards loss of love and affection.

17. The point for consideration is answered in favour of the appellants appellants/claimants in C.M.A. No.803 of 2007. Accordingly, a sum of Rs.5,000/- awarded by the Tribunal towards Funeral Expenses is enhanced to Rs.15,000/- and for loss of love and affection is enhanced from Rs.20,000/- to Rs.40,000/- each as per the ruling of the Hon'ble Supreme Court in National Insurance Co. Ltd., Vs. Pranay Sethi and others reported in 2017 (2) TNMAC 609 (SC). This Court awards a sum of Rs.15,000/- and 10,000/- towards loss of estate and Transport to Hospital respectively.

18. The break-up details of the amounts awarded under various heads are as follows:

Sl. No	Head under which the compensation is awarded	Amounts awarded by the Tribunal	Amounts awarded by this Court
1	Loss of Dependency	5,33,232	7,99,845
2	Funeral Expenses	5,000	15,000
3	Loss of Love and Affection As per Pranay Sethi's case Rs.40,000/- each	40,000	80,000
4	Loss of estate	-	15,000
5	Transport to Hospital	-	10,000
	Total	5,78,232	9,19,845

Rounded off to Rs.9,20,000/-

19. In the result, Civil Miscellaneous Appeals filed by the National Insurance Company in C.M.A.Nos.81 and 82 of 2006 are partly allowed. The liability fastened on the Insurance Company as 50% is reduced to 40% and the liability fastened on the State Transport Corporation as 50% is enhanced to 60%.

20. The Civil Miscellaneous Petition filed by the claimants in C.M.A.No.803 of 2007 is allowed and the compensation of Rs.5,78,232/- (Rupees Five Lakhs Thirty Three Thousand Two Hundred and Thirty Two only) awarded by the Tribunal is enhanced to Rs.9,20,000/- (Rupees Nine Lakhs and Twenty Thousand only) which shall be apportioned equally between the claimants 1 and 2 as Rs.4,60,000/- (Rupees Four Lakhs and Sixty Thousand only). The second respondent/Insurance Company and the third

respondent/Tamil Nadu State Transport Corporation Ltd., are directed to deposit the amount in the ratio of 40% by the Insurance Company and 60% by Tamil Nadu State Transport Corporation respectively, which this Court had determined in the light of the appeals in C.M.A.Nos. 81 and 82 of 2006, to the credit of M.C.O.P.No. 2757 of 1999 on the file of the Motor Accidents Claims Tribunal (Additional District and Sessions Judge, Fast Track Court No.I, Chennai), Chennai with accrued interest at the rate of 7.5% per annum from the date the appeal was numbered (the claimant/appellants are not entitled to claim the interest for the period in which the memorandum of Appeal were returned for compliance of defects) till the date of deposit along with costs, through RTGS or NEFT method as held by this Court in (The Oriental Insurance Company Limited, Kannur Vs. Rajesh and two others) 2016 (1) TN MAC 433, after adjusting the amount, if any, already deposited, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the claimants are entitled to withdraw the amount as apportioned by this Court. No costs.

Sd/-
Assistant Registrar(I)

// True Copy //

Sub Assistant Registrar

SRM

To

1. The Additional District Judge [FTC No.1],
(Motor Accidents Claims Tribunal),
Chennai.

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

+1cc to Mr.D.Bhaskaran, Advocate SR.No.40913
+2cc to M/s.Ramya V.Rao, Advocate SR.No.40196

C.M.A.Nos.81 and 82 of 2006 and 803 of 2007

CB(08/12/2021)