



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.02.2021

CORAM :

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.Nos.2321 of 2019 & 323 of 2021
and
C.M.P.No.2223 of 2021

C.M.A.No.2321 of 2019:

1.Jayamani

2.Singaram

...Appellants / Petitioner

Vs.

1.Jeyanthi

2.The New India Assurance Company Limited,
87, M.G. Road, Fort, Mumbai,
Divisional Office : 29,
Paramathi Road,
Namakkal.

...Respondents / Respondents

C.M.A.No.323 of 2021:

The New India Assurance Company Limited,
87, M.G. Road, Fort, Mumbai,
Divisional Office : 29,
Paramathi Road,
Namakkal.

...Appellant / Respondent 2

Vs.

1.Jayamani

2.Singaram

...Respondents 1 & 2 / Petitioner 1 & 2

3.Jeyanthi

...3rd Respondent / 1st Respondent

(R3 remained exparte before Tribunal.
Hence, notice to R3 dispensed with)

Common Prayer : These Civil Miscellaneous Appeals are filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 16.11.2018 made in M.C.O.P.No.62 of



2017 on the file of the Motor Accident Claims Tribunal, The Principal District Court, Namakkal.

In C.M.A.No.2321 of 2019:

For Appellants : Mr.T.S.Arthanareeswaran
for Mr.C.Paraneedharan

For R1 : Steps not taken

For R2 : Mr.M.Krishnamoorthy

In C.M.A.No.323 of 2021:

For Appellant : Mr.M.Krishnamoorthy

For RR 1 & 2 : Mr.T.S.Arthanareeswaran
for Mr.C.Paraneedharan

C O M M O N J U D G M E N T

These Civil Miscellaneous Appeals have been filed against the award dated 16.11.2018 made in M.C.O.P.No.62 of 2017 on the file of the Motor Accident Claims Tribunal, Principal District Court, Namakkal.

2.Both the appeals arise out of the same accident and same award and hence, they are disposed of by this common judgment. The parties are referred to as per their respective ranks in the claim petition for the sake of convenience.

3.The claimants filed the above said claim petition claiming a sum of Rs.25,00,000/- as compensation for the death of their son Viz., Arthanareeswaran, who died in the accident that took place on 13.08.2016 against the respondents, being the owner and insurer of the lorry respectively.

4.According to the claimants, on 13.08.2016 at about 11.30 P.M., while the said Arthanareeswaran was riding his motorcycle bearing Registration No.TN 34 X 0043 from West to East on the Erode - Tiruchengode Main Road near Rajagoundampalayam Bus Stop and Muniyappan Temple, the driver of the lorry bearing Registration No.TN 28 W 6161, stopped the lorry negligently at the Rajagoundampalayam Bus Stop where there was no light, without any signal or precaution due to which the said Arthanareeswaran lost his balance and dashed on the lorry and thus the accident occurred. In the accident, the said Arthanareeswaran sustained severe injuries all over the body and died. Immediately after the accident, the said Arthanareeswaran



was taken to Government Hospital, Tiruchengode. The Doctors who examined the said Arthanareeswaran has informed that he was brought dead. Therefore, the claimants filed the above said claim petition claiming a sum of Rs.25,00,000/- as compensation for the death of their son against the respondents, being the owner and insurer of the lorry respectively.

5.The 1st respondent-owner of the lorry remained exparte before the Tribunal.

6.The 2nd respondent-Insurance Company filed counter statement and denied all the averments made by the claimants. According to 2nd respondent, the lorry bearing Registration No.TN 28 W 6161 was parked on the left side of the road and the deceased who rode the motorcycle bearing Registration No.TN 34 X 0043 without noticing the lorry which was parked on the left side of the road, came in a rash and negligent manner and dashed against the parked lorry. Therefore, the accident has occurred only due to negligence on the part of the deceased and there is no negligence on the part of the driver of the lorry belonging to 1st respondent. Hence, the 2nd respondent is not liable to pay any compensation to the claimants. The 2nd respondent denied the age, avocation and income of the deceased. In any event, the quantum of compensation claimed by the claimants is highly excessive and prayed for dismissal of the claim petition.

7.Before the Tribunal, the 2nd claimant examined himself as P.W.1, one Singaravel, eyewitness to the accident was examined as P.W.2 and one Ganesan was examined as P.W.3 and 8 documents were marked as Exs.P1 to P8. The 2nd respondent-Insurance Company did not let in any oral and documentary evidence.

8.The Tribunal considering the pleadings, oral and documentary evidence, held that both the deceased as well as the driver of the lorry belonging to 1st respondent are equally responsible for the accident, fixed negligence in the ratio 50% : 50%, awarded a sum of Rs.9,37,200/- as compensation and directed the 2nd respondent-Insurance Company to pay 50% of the award amount, i.e., Rs.4,68,600/- as compensation to the claimants.

9.To set aside the portion of the award fixing 50% contributory negligence on the part of the deceased and for enhancement of compensation, the claimants have come out with an appeal in C.M.A.No.2321 of 2019. To set aside the award dated 16.11.2018 made in M.C.O.P.No.62 of 2017 fixing 50% negligence on the part of the driver of the lorry and 50% liability on the part of the 2nd respondent, the 2nd respondent-Insurance Company has come out with appeal in C.M.A.No.323 of 2021.



10.The learned counsel appearing for the claimants contended that the driver of the lorry belonging to 1st respondent parked the lorry in a negligent manner without any indicator. The accident occurred at 11.30 P.M. Due to darkness, the deceased could not see the parked lorry and dashed on the lorry. The accident occurred only due to negligent parking by the driver of the lorry belonging to 1st respondent, insured with 2nd respondent. The Tribunal ought to have fixed entire negligence on the part of the driver of the lorry. The deceased was aged 24 years, working as Worker in Printed White Rice Gunny Bags Shop, Koottappalli, Tiruchengode, Namakkal and was earning a sum of Rs.15,000/- per month. The Tribunal erroneously fixed meagre sum of Rs.6,000/- per month as notional income of the deceased and prayed for setting aside the portion of the award fixing 50% contributory negligence on the part of the deceased as well as for enhancement of compensation and for dismissal of C.M.A.No.323 of 2021, filed by the 2nd respondent-Insurance Company.

11.Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that accident has occurred only due to rash and negligent riding by the deceased. The deceased suddenly applied brake and dashed on the backside of the parked lorry and caused the accident. F.I.R. was registered based on the complaint given by the 2nd claimant, father of the deceased. The Tribunal without properly appreciating the F.I.R., Rough Sketch and final report, erroneously fixed 50% negligence on the part of the driver of the lorry belonging to 1st respondent. The claimants failed to prove the avocation and income of the deceased. In the absence of materials with regard to avocation and income, the Tribunal rightly fixed a sum of Rs.6,000/- per month as notional income of the deceased. The claimants are not entitled for any enhancement and prayed for setting aside the portion of the award fixing 50% negligence fixed on the part of the driver of the lorry, 50% liability on the part of the 2nd respondent-Insurance Company and for dismissal of C.M.A.No.2321 of 2019, filed by the claimants.

12.Heard the learned counsel appearing for the claimants as well as the learned counsel appearing for the 2nd respondent and perused the entire materials on record.

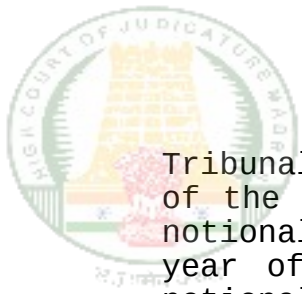
13.It is the case of the claimants in the claim petition that driver of the lorry belonging to 1st respondent going in front of the motorcycle ridden by their son, suddenly stopped the lorry without any indication in a place where there was no light. Due to the same, their son lost control and dashed on the lorry, fell down from the motorcycle and sustained injuries and died. To substantiate their contention, they examined the 2nd claimant as P.W.1, one Singaravel, eyewitness to the accident as



P.W.2. Both P.W.1 & P.W.2 deposed as that of the averments in the claim petition. They marked F.I.R., Rough Sketch and Final Report as Exs.P1, P3 & P4 respectively. F.I.R. was registered against the driver of the lorry belonging to 1st respondent. In the F.I.R., it was stated that lorry was parked on the left hand side of the road, deceased applied brake, lost his control and dashed on the backside of the lorry. Contrary to the F.I.R., the 2nd claimant and eyewitness as P.W.1 & P.W.2 respectively have deposed that driver of the lorry going in front of the motorcycle rode by the deceased, suddenly applied brake and deceased dashed on the backside of the lorry. The claimants have filed and marked Rough Sketch as Ex.P3, which shows that accident occurred on the left hand side of the road. Police after investigation, closed the F.I.R. as charges abated. The copy of the final report was served on the 2nd claimant. The Police instead of the closing the case as mistake of fact, filed final report as charges abated as if the F.I.R. was registered against the deceased. Considering the above materials placed before it, the Tribunal held that lorry was parked on the left hand side of the road without any indicator and driver of the lorry without following The Rules of the Road Regulations 1989, erroneously parked the lorry and contributed negligence. The Tribunal further held that deceased also contributed negligence to the accident and fixed 50% negligence each on the part of the deceased as well as on the part of the driver of the lorry belonging to 1st respondent.

14.From the materials on record, contents of F.I.R. and evidence of P.W.1 & P.W.2, it is seen that deceased on seeing the parked lorry in the dark light, suddenly applied brake, lost control and dashed on the backside of the lorry. The accident has occurred on the broad road. The deceased ought to have been careful while riding the vehicle at 11.30 P.M. Hence, the Tribunal fixed 50% contributory negligence on the part of the deceased. The 2nd respondent-Insurance Company has not let in any evidence to show that lorry was parked with indicator. Police by non-application of mind closed the charge sheet as abated. Considering the entire materials on record, 50% negligence fixed on the part of the deceased is excessive and the same is reduced to 25% and 75% negligence is fixed on the part of the driver of the lorry. The 2nd respondent-Insurance Company is liable to pay 75% of the compensation arrived.

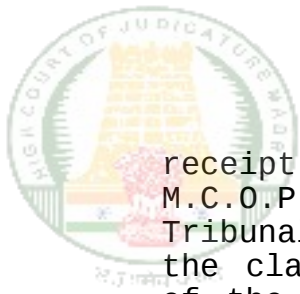
15.As far as quantum of compensation is concerned, the claimants in the claim petition have stated that deceased was aged 24 years, working as Worker in Printed White Rice Gunny Bags Shop, Koottappalli, Tiruchengode, Namakkal and was earning a sum of Rs.15,000/- per month. In the grounds of appeal, the claimants have stated that deceased was earning a sum of Rs.10,000/- per month. They failed to prove the same. In the absence of materials with regard to avocation and income, the



Tribunal fixed a sum of Rs.6,000/- per month as notional income of the deceased. The accident occurred in the year 2016 and the notional income fixed by the Tribunal is meagre. Considering the year of accident, a sum of Rs.10,000/- per month is fixed as notional income of the deceased as claimed by the claimants in the grounds of appeal. The deceased was aged 24 years at the time of accident, multiplier '18' applied and 40% enhancement granted towards future prospects are proper. The deceased was a bachelor at the time of accident and the Tribunal has rightly deducted 50% towards personal expenses of the deceased. Thus, the compensation awarded by the Tribunal towards loss of dependency is modified to Rs.15,12,000/- {Rs.14,000/- [(Rs.10,000/- + Rs.4,000/- (40% of Rs.10,000/-)] X 12 X 18 X 1/2}. The claimants who are the parents of the deceased have lost their son at young age. Hence, the claimants are entitled to a sum of Rs.40,000/- each towards loss of love and affection. The amounts awarded by the Tribunal towards funeral expenses and loss of estate are just and reasonable and hence, the same are confirmed. 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	9,07,200/-	15,12,000/-	Enhanced
2.	Loss of love and affection	-	80,000/-	Granted
3.	Funeral expenses	15,000/-	15,000/-	Confirmed
4.	Loss of estate	15,000/-	15,000/-	Confirmed
	Total	Rs.9,37,200/-	Rs.16,22,000/-	Enhanced by Rs.7,47,900/- (Rs.12,16,500/- - Rs.4,68,600/-)
	50% of award amount	Rs.4,68,600/-	-	
	75% of award amount	-	Rs.12,16,500/-	

16.The total compensation awarded by the Tribunal at Rs.9,37,200/- is hereby enhanced to Rs.16,22,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 2nd respondent-Insurance Company is directed to deposit 75% of the award amount, (i.e., Rs.12,16,500/-) now determined by this Court, along with proportionate interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of



receipt of a copy of this common judgment, to the credit of M.C.O.P.No.62 of 2017 on the file of the Motor Accident Claims Tribunal, Principal District Court, Namakkal. On such deposit, the claimants are permitted to withdraw their respective share of the award amount, now determined by this Court, as per the ratio of apportionment fixed by the Tribunal, along with proportionate interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. No costs.

17.In the result, C.M.A.No.2321 of 2019, filed by the claimants is partly allowed and in view of the same, C.M.A.No.323 of 2021, filed by the Insurance Company is dismissed. Consequently, the connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar

// True Copy //

Sub Assistant Registrar

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To

The Principal District Judge,
Motor Accident Claims Tribunal,
Namakkal.

Copy To

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

+1cc to Mr.M.Krishnamoorthy, Advocate SR.No.9875

C.M.A.Nos.2321 of 2019 & 323 of 2021

SRA(CO)
RVM(28/10/2021)