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For Appellants : Mr.Ma.P.Thangavel

For Respondents : No appearance for R1 and R4
Mr.C.Kasirajan for R2
Mr.S.Arunkumar for R3
Mr.T.Thiyagarajan for R5
Mr.R.Shivakumar for R6

C.M.A.No.3993 of 2019

United India Insurance Company Ltd.,
Christo Building Bank Road,
Ooty, Nilgiris District - 643 001.

... Appellant/3rd Respondent

Vs.

1.Prashanthini
2.Minor.Sharvin,
Son of Arun Mohan,
3.Chinnaponnu

...1 to 3rd Respondents/Petitioners

4.R.Prabhu ... 4th Respondent/1st Respondent
5.Sathappan ...5th Respondent/2nd Respondent
6.Anthony Xavier ...6th Respondent/4th Respondent
7.Managing Director,
Karnataka State Transport Corporation Ltd.,
Central Office, K.H.Rapd, Shanthi Nagar,
Bangalore, Karnataka State. ...7th Respondent/5th Respondent

8.The New India Assurance Company Ltd.,
Divisional Office, IX-672100,
4th Floor, Tower Block, Unity Building J.C.Road,
Bangalore, Karnataka State - 560 002.
...8th Respondent/6th Respondent

For Appellant : Mr.S.Arunkumar

For Respondents : Mr.Ma.P.Thangavel for R1 to R3
Mr.C.Kasirajan for R5
No appearance for R4, R6
Mr.T.Thiyagarajan for R7
Mr.R.Sivakumar for R8



C.M.A.No.2100 of 2021

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Sathappan

... Appellant/2nd Respondent

Vs.

1.Prashanthini

2.Minor.Sharvin,

Son of Arun Mohan,

(Minor Rep. by Mother / Natural Guardian

Prashanthini,

3.Chinnaponnu

... 1 to 3 Respondents/Petitioners

4.R.Prabhu

...4th Respondent/1st Respondent

5. United India Insurance Company Ltd.,

Christo Building Bank Road,

Ooty, Nilgiris District - 643 001.

...5th Respondent/3rd Respondent

6.Anthony Xavier

... 6th Respondent/4th Respondent

7.Managing Director,

Karnataka State Transport Corporation Ltd.,

Central Office, K.H.Rapd, Shanthi Nagar,

Bangalore, Karnataka State. ...

7th Respondent/5th Respondent

8.The New India Assurance Company Ltd.,

Divisional Office, IX-672100,

4th Floor, Tower Block, Unity Building J.C.Road,

Bangalore, Karnataka State - 560 002.

...8th Respondent/6th Respondent

For Appellant

: Mr.C.Kasirajan

For Respondents

: Mr.Ma.P.Thangavel for R1 to R3

No appearance for R4, R6

Mr.S.Arunkumar for R5

Mr.T.Thiyagarajan for R7

Mr.R.Sivakumar for R8

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

Judgment of the Court was delivered by K.KALYANASUNDARAM, J.

These Appeals arises out of the Judgment and Award passed by the Motor Accidents Claims Tribunal, Sub Court, Sathyamangalam, Erode District in M.C.O.P.No.370 of 2014.



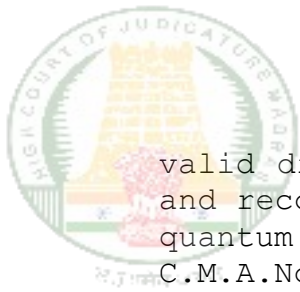
2. The facts in brief are that the wife, minor child and mother of the deceased Arun Mohan, who died in a motor vehicle accident on 31.08.2014 filed the claim petition, seeking compensation of Rs.3 Crores. The case of the claimants is that on the fateful day, the deceased Arun Mohan was travelling as a passenger in KSRTC bus bearing Registration No.KA-09-F-4668 from Ooty to Bangalore. When the bus was proceeding near Karyamanthu curve, the driver of the bus drove it in a rash and negligent manner. At the same time, the lorry bearing registration No.TMD-8511, which was coming from opposite direction with high speed dashed against the bus, in which, the deceased sustained fatal injuries. Immediately, he was carried to Government Hospital, Ooty, from where, he was referred to CMC, Coimbatore. But, unfortunately, he died on the way to the Hospital.

3. The claimants have further stated that the deceased was 33 years old on the date of accident. He has studied M.E. and was working as a Software Engineer in A.O.N. I.T. Company, at Bangalore and his annual salary was Rs.8,50,000/-. He was also paid yearly bonus of Rs.1,00,000/-. The second respondent was the owner of the lorry, while the third respondent was his insurer. The bus belongs to the fifth respondent and it was insured with the sixth respondent. It is the case of the claimants that since both the drivers of the vehicles are negligent, their owners as well as their insurers are jointly liable to pay compensation.

4. The claim petition was resisted by the respondents by filing counter statement. It was the contention of the owner of the lorry that the accident occurred due to the negligence of the driver of the bus, which no permit to ply on the roads at the alleged time and place of accident. The Managing Director of the bus filed a counter alleging that the lorry driver was responsible for the accident and also contended that there are violations of policy conditions and the vehicle was not driven by the driver, who was not having valid driving license.

5. Before the Tribunal, the parties have let in oral and documentary evidence. Upon consideration of the evidence adduced by the parties, the Tribunal held that the driver of the lorry was negligent and awarded compensation of Rs.1,64,40,974/-. Assailing the said findings, the Insurance Company has come up with an Appeal C.M.A.No.3993 of 2019.

6. Being dissatisfied with the quantum, the claimants have preferred Appeal No.2621 of 2019. The Tribunal having found that the lorry was driven by its cleaner, who was not holding



valid driving license, directed the insurer to satisfy the award and recover from the owner. Challenging the said finding and also quantum of compensation, the owner of the lorry has preferred C.M.A.No.2100 of 2021.

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7. Since the appeals are interlinked and arise out of the Judgment and Award passed in M.C.O.P.No.370 of 2014, all the three Appeals are heard together and disposed of by this common judgment.

8. In order to prove the negligence, the claimants examined P.W.2, an eyewitness to the incident and also produced Ex.P1-First Information Report, Exs.P3 and P4-Reports of the Motor Vehicle Inspector of both the vehicles, Ex.P5-Sketch, Ex.P6-Observation Mahazar and Ex.P7-Charge Sheet. The cleaner of the lorry gave evidence as R.W.1. The owner of the lorry was examined as R.W.2 and its driver was examined as R.W.3. R.W.4 is the individual eyewitness. The driver of the bus was gave evidence as R.W.6. Ex.P1-F.I.R. was registered based on the statement of one Radhika. She deposed that she travelled in the bus as one of the passengers and the accident happened due to the negligence of the driver of the lorry. As aforementioned in the claim petition, it has been stated that the accident occurred due to the negligence of the drivers of both the vehicles. P.W.2 deposed that the accident happened due to the negligence of the driver of the bus. Though in the F.I.R. (Ex.P1), the name of the driver was not mentioned, but subsequently, during investigation, it was found that at the relevant point of time, the vehicle was driven by the cleaner, who did not have a valid driving license. Hence, charge sheet (Ex.P7) was filed against him. In order to get over the liability, R.W.1-Prabhu has given evidence stating that the vehicle was driven by the driver Ravikuttan. The said Ravikuttan was also gave evidence to the same effect, when he was examined as R.W.3. R.W.2 and R.W.4 have stated that the vehicle was driven by the driver Ravikuttan. The Tribunal decided the issue on negligence mainly on the basis that the criminal case was registered against the driver of the lorry and Exs.P3 and P4 show that there was heavy damage to the lorry in the front side and damage was caused to the middle of the bus. Sketch also shows that the accident had taken place in the middle of the road. It is an admitted fact that the criminal case filed against the said cleaner Prabhu is still pending and no finding has been given by the criminal Court. The learned Judge has taken note of the fact that no complaint was given against the driver of the bus and even if there is any complaint, it was not pursued thereafter.



9. The learned counsels appearing for the owner as well as insurer of the lorry vehemently contended that the finding on negligence requires interference of this Court. It is their contention that admittedly, the lorry was proceeding from downwards to upwards in a hill area and the accident had taken place in a curve. R.W.6 has also admitted in his evidence that the vehicle coming from upwards to downwards has to stop to give way to the vehicle coming from downwards to upwards and the sketch shows the accident had taken place in the middle of the road and hence, the entire negligence cannot be fixed on the driver of the lorry.

10. Per contra the learned counsel appearing for the owner of the bus and its insurer Mr.Shivakumar would urge that it has been categorically proved before the Tribunal that the lorry was driven by the person, who was not having valid license and it was driven in a rash and negligent manner. The learned counsel has drawn the attention of this Court to the reports of the Motor Vehicle Inspector (Exs.P3 and P4) to contend that unless the lorry was driven in a high speed, the damage to the bus would not have happened. The learned counsel made submissions in support of the conclusion reached by the Tribunal.

11. In the matter on hand, as aforementioned, both the parties have given evidence to substantiate their case. It is true that the lorry hit in the middle portion of the bus, which caused damage to the vehicle. It must be pointed out that the lorry was proceeding from downwards to upwards and the accident had taken place in the turning of the road. From Ex.P5 site map, it is clearly seen that in the middle of the road, the accident had taken place. It is common knowledge that a heavy vehicle, which goes upwards in a hill area, it cannot be driven in a high speed. As mentioned above, this fact is clearly admitted by R.W.6, the driver of the bus. . If R.W.6 had stopped the vehicle on seeing the lorry, this accident could have been avoided. So, we are of the opinion that the entire negligence fixed on the driver of the lorry cannot be sustained. We are of the view that both the vehicles are equally responsible for the accident and the negligence is fixed at 50:50.

12. Mr.C.Kasirajan, learned counsel appearing for the appellant in C.M.A.No.2100 of 2021 /owner of the lorry vehemently contended that there is no evidence to show that the lorry involved in the accident was driven by the cleaner viz., Prabhu. According to the learned counsel, even in the F.I.R. his name is not mentioned. But, merely a charge sheet has been filed against him, it cannot be held that he drove the vehicle, without valid



driving license.

13. We are unable to agree with the submission of the learned counsel for the reason that the First Information Report was registered on the basis of the complaint given by one of the passengers of the bus, who may not know the name of the driver of the vehicle. That apart, when the vehicle was taken to the Motor Vehicle Inspector, the name of driver of the vehicle was shown as Prabhu and that he was having only license to ply light motor vehicle. Further, admittedly, neither the said Ravikuttan nor Prabhu lodged any complaint against the driver of the bus. Even though the driver R.W.3 has stated that he gave a complaint against the driver of the bus, no material was produced to substantiate the same. Hence, the finding of the Tribunal that the vehicle was driven by the said Prabhu is confirmed and the order of pay and recovery is also affirmed.

14. Insofar as quantum is concerned, the wife of the deceased gave evidence as P.W.1 and she has stated that her deceased husband was working as a Senior Software Engineer in I.T. Company and his monthly salary was Rs.62,149/-. Further, he was paid Rs.98,438/- as bonus per every year. P.W.3, Executive Director in HR Department in A.O.N. Consultancy Service Company gave evidence that the deceased joined in the Company on 30.08.2012 and he worked till his death. He marked salary certificate (Ex.P18) and also stated that the deceased was paid Rs.71,532/- in the month of April 2014. He further deposed that the deceased's performance was very good. In addition, the claimants produced Exs.P11 to P15 to prove his educational qualification. Ex.P.18 is the salary certificate, Ex.P33 is the bank statement. The Tribunal has taken the income of the deceased at Rs.71,532/- to arrive at loss of income, but failed to deduct Rs.2,900/-, which was paid for his personal expenses. So, the income of the deceased is taken as Rs.68,632/-. It is not in dispute that the deceased received bonus of Rs.98,438/-, which has been credited in his bank account.

15. At this juncture, the learned counsel appearing for the claimants Mr.Ma.P.Thangavelu by placing reliance on the decisions of the Hon'ble Supreme Court in the case of Sureshchandra Bagmal Doshi Vs. New India Assurance Co. Ltd., [2018 (1) TNMAC 75 (SC)] and Hem Raj Vs. Oriental Insurance Co. Ltd., and others [2017 (2) TN MAC 758 (SC)] argued that the claimants are entitled for 100% additional future prospectus. It is apposite to mention in Pranay Sethi case, the Constitutional Bench of Apex Court framed guidelines for additions towards future prospectus and only in exceptional cases higher slab can



be applied. In this regard, the Tribunal following the decision in the case of Sarala Verma and others vs. Delhi Transport Corporation [2009 (6) SCC 121], has added 50% towards future prospectus, hence, we find no reason to interfere with the said decision. Therefore, the loss of income of the deceased comes to Rs.13,83,033/- per year. [Rs.68,632/- x 12 + 98,438/- (Bonus) + 50%].

16. The Tribunal has not deducted any amount towards Income Tax, hence, Rs.2,39,909/- is deducted. Further, 1/3 of the income is to be deducted towards personal and living expenses. It is an admitted fact that the deceased died at the age of 33 years and as per the decision of Sarala Verma, proper multiplier would be '16', but the Tribunal has applied multiplier '17' and hence, this Court fixes the multiplier as '16'. Therefore, the loss of income is assessed as Rs.1,23,43,322/- [68,632 x 12 + 98,438 (Bonus) + 50% - Rs.2,39,909 (I.T.) x 16 - 1/3]. In addition, this Court is inclined to modify the award passed by the Tribunal under the conventional heads.

S. No.	Heads under which amounts are awarded by the Tribunal	Amount awarded by the Tribunal in Rs.	Amount awarded by this Court in Rs.
1.	Loss of income	1,62,65,974/-	1,21,93,322/-
2.	Loss of love and affection	1,50,000/-	-
3.	Loss of Consortium	-	1,20,000/-
4.	Loss of Estate	-	15,000/-
5.	Funeral and Transport expenses	25,000/-	15,000/-
	Total	1,64,40,974/-	1,23,43,322/-

The award amount is reduced to Rs.1,23,43,322/- from Rs.1,64,40,974/-. In total, the claimants are entitled to Rs.1,23,43,322/- along with interest at the rate of 7.5% per annum from the date of claim petition till the date of realization.

17. In view of the above finding, both the owners of the vehicles and their insurers are liable to pay the amount equally. They are directed to deposit their respective share, less already deposited, if any, within a period of sixteen weeks from



the date of receipt of a copy of this Judgment. On such deposit, the major claimants are permitted to withdraw their share of the modified award amount along with proportionate interest and costs, as per the ratio of apportionment fixed by the Tribunal, less the amount already withdrawn, if any. The share of the minor claimant shall be deposited in any one of the nationalized banks in a fixed deposit till she attains majority. The interest accruing on the minor deposit is permitted to be withdrawn by the mother of the minor claimant once in three months.

18. For the foregoing reasons, the civil miscellaneous appeals in C.M.A.No.3993 of 2019 and C.M.A.No.2100 of 2021 are partly allowed. The Appeal filed by the claimants C.M.A.No.2621 of 2019 is dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(I)

// True Copy //

Sub Assistant Registrar

r n s

To

1. The Motor Accidents Claims Tribunal, Subordinate Judge,
Sathyamangalam.
2. The Section Officer,
V.R.Section, High Court, Madras.

+lcc to Mr.S.Arun Kumar, Advocate SR.No.49355
+lcc to Mr.Ma.P.Thangavel, Advocate SR.No.49335
+lcc to Mr.R.Sivakumar, Advocate SR.No.49285

C.M.A.Nos.2621 & 3993 of 2019 & 2100 of 2021
C.M.P.Nos.22563 of 2019 & 11566 of 2021

AK-II(CO)
CB(03/01/2022)