



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.02.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. Nos.1947 of 2020 & 206 of 2021

C.M.A.No.1947 of 2020

1.Selvi

2.Dharmaraj

3.Tamilselvan

4.Arutselvan

.. Appellants/Claimants

Vs.

1.V.Sumathy

2.The Manager,

M/s. United India Insurance Co. Ltd.,

1st Floor, Usman Building,

Main road, Kallakudi, Lalkudi Taluk,

Thiruchirapalli District.

.. Respondents/Respondents

C.M.A.No.206 of 2021

The Manager,

M/s. United India Insurance Co. Ltd.,

1st Floor, Usman Building,

Main road, Kallakudi, Lalkudi Taluk,

Thiruchirapalli District.

.. Appellant/Respondent II

Vs.

1.Selvi

2.Dharmaraj

3.Tamilselvan

4.Arutselvan

... Respondents 1 to 4/Claimants 1 to 4

5.V.Sumathi

... 5th Respondent/Respondent I



Common Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 07.12.2019, made in M.C.O.P. No.104 of 2019, on the file of the Additional District Judge, (Motor Accident Claims Tribunal), Ariyalur.

(In C.M.A.No.1947/2020)

For Appellants : Mr.T.Gobinath

For Respondents : Mr.J.Chandran (For R2)

(In C.M.A.No.206/2021)

For Appellant : Mr.J.Chandran

For Respondent : Mr.T.Gobinath (For R1 to R4)

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

The matter is heard through "Video Conferencing".

These Civil Miscellaneous Appeals are filed against the award dated 07.12.2019, made in M.C.O.P. No.104 of 2019, on the file of the Additional District Judge, Small Causes Court, (Motor Accident Claims Tribunal), Ariyalur.

2.Both the appeals arise out of the same accident and same award and hence, they are disposed of by this common judgment.

3.The parties are referred to as per their rank in the claim petition, for the sake of convenience.

4.The claimants filed M.C.O.P. No.104 of 2019, on the file of the Additional District Judge, (Motor Accident Claims Tribunal), Ariyalur, claiming a sum of Rs.50,00,000/- as compensation for the death of one Anbuselvan, who died in the accident that took place on 05.04.2017.

5.According to the claimants, on the date of accident viz., 05.04.2017, the deceased rode his Motorcycle bearing Registration No.TN-61-F-9207 in T.Palur to Suthamalli main roan on the left side from East to West direction, dashed behind the Ashok Leyland Tractor Lorry bearing No.TN-28-AK-3328 belonging



to the 1st respondent which was parked by its driver in the road without indicators, reflectors and fell down. In the accident, the deceased succumbed to fatal injuries. The accident occurred only due to negligent parking of the Lorry by its driver and hence, the claimants filed the claim petition, claiming compensation against the respondents as owner and insurer of the said Lorry.

6.The 2nd respondent-Insurance Company filed counter statement and denied all the averments made by the claimants in the claim petition. According to the 2nd respondent, driver of the Lorry parked the vehicle on the extreme left side of the road with reflector lights on and the deceased who rode the Motorcycle in an inebriated condition, dashed behind the Lorry, sustained injuries and succumbed to death. The deceased rode the vehicle without valid driving license and without wearing helmet and thus, breached the policy conditions. The claimants filed the FIR against the driver of the Lorry, based on false averments. The claim petition is bad for non-joinder of owner and insurer of the Motorcycle rode by the deceased. The claimants have to prove the age, avocation and income of the deceased to claim compensation. In any event, the total compensation claimed by the claimants are excessive and prayed for dismissal of the claim petition.

7.Before the Tribunal, the 1st claimant examined herself as P.W.1, examined eye-witness as P.W.2 and marked 5 documents as Exs.P1 to P5. The 2nd respondent examined the driver of the Lorry as R.W.1, their Official as R.W.2 and marked 2 documents as Exs.R1 and R2.

8.The Tribunal considering the pleadings, oral and documentary evidence, held that accident occurred due to negligence of both the deceased as well as the driver of the Lorry and apportioned 10:90 negligence on both of them respectively and directed the 2nd respondent-Insurance Company to pay a sum of Rs.16,00,900/- as compensation to the claimants.

9.Against the said award dated 07.12.2019, made in M.C.O.P. No.104 of 2019 claimants have filed C.M.A.No.1947 of 2020 and the 2nd respondent-Insurance Company has filed C.M.A. No.206 of 2021.

10.The learned counsel appearing for the 2nd respondent-Insurance Company contended that P.W.2 is not an eye witness. He has admitted in the cross examination that only after hearing the sound, he reached the scene of occurrence. The Tribunal



WEB C

failed to consider the evidence of driver of the Lorry as R.W.1, who deposed that he parked the Lorry at the edge of the road with indicator and there was place for two vehicles to go at a time on the right hand side of the Lorry. The deceased, in an inebriated condition, rode the Motorcycle and dashed on the backside of the Lorry and caused the accident. The deceased driving the Motorcycle without seeing the indicator light and the wooden log kept on the road 10 feet away from the Lorry, invited the accident by hitting himself. The Tribunal instead of fixing entire negligence on the deceased, erroneously fixed only 10% negligence holding that, had the deceased was diligent and cautious, he could have seen the Lorry and avoided the accident. The Tribunal failed to consider the evidence of R.W.1 and R.W.2 and documents marked by the 2nd respondent-Insurance Company. The claimants 1 to 4 failed to prove the avocation and income of the deceased. The Tribunal erroneously fixed a sum of Rs.7,500/- per month as notional income of the deceased and granted 40% enhancement towards future prospects. The deceased was a bachelor. The Tribunal ought to have deducted 50% towards personal expenses, instead of deducting 1/4th towards the same and prayed for setting aside the award of the Tribunal and dismissing C.M.A.No.1947 of 2020 filed by the claimants.

11.Mr.T.Gobinath, learned counsel appearing for the claimants contended that the driver of the Lorry belonging to the 1st respondent parked the Lorry without any indicator and he was responsible for the accident. P.W.2 eye witness has categorically deposed that Lorry was parked without indicator. The 2nd respondent-Insurance Company has not examined any independent eye witness to corroborate the evidence of R.W.1, the driver of the Lorry. The accident occurred only due to negligent parking of the driver of the Lorry without any indicator. The Tribunal erroneously fixed 10% negligence on the deceased. The learned counsel appearing for the claimants further contended that the deceased was a Loadman and owner of Victor Arogyam Oil Mill, Jeyankondam and was getting Rs.18,000/- per month as salary. The Tribunal erroneously fixed a sum of Rs.7,500/- as monthly income and granted meagre amount towards loss of dependency and prayed for setting aside 10% negligence fixed on the deceased, enhancement of the compensation and dismissal of C.M.A.No.206 of 2021 filed by the 2nd respondent-Insurance Company.

12.Heard the learned counsel appearing for the claimants as well as the 2nd respondent-Insurance Company and perused the materials available on record.



13. It is the case of the claimants that while the deceased/son of the claimants 1 and 2 and brother of the claimants 3 and 4, was riding the Motorcycle, the driver of the Lorry belonging to the 1st respondent parked the Lorry without any indicator or signal in the road. Due to the same, the son of the claimants 1 and 2 dashed on the backside of the Lorry and due to the injuries sustained, he died on the spot. In support of their case, they examined the 1st claimant as P.W.1 and one Suresh, eye-witness as P.W.2 and marked FIR as Ex.P1, which was registered against the driver of the Lorry. On the other hand, it is the case of the 2nd respondent that driver of the Lorry parked the Lorry with indicator and signal. The deceased, in an inebriated condition, drove the Motorcycle in a rash and negligent manner without noticing the signal and indicator and dashed on the Lorry and invited the accident. In support of their case, they examined the driver of the Lorry as R.W.1, their Official as R.W.2 and marked the rough sketch and copy of the policy as Exs.R1 and R2 respectively.

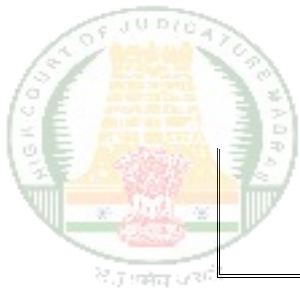
14. P.W.2 eye-witness deposed that Lorry was parked without indicator, but he admitted that only after hearing the sound of impact, he rushed to the spot. The contention of the learned counsel appearing for the 2nd respondent-Insurance Company is that P.W.2 is not an eye-witness, the 2nd respondent has not elicited any favourable answer from P.W.2 in cross-examination, P.W.2 has categorically stated that Lorry was parked without any indicator or signal. The evidence of P.W.2 was not opposed by the 2nd respondent by letting in any independent eye witness. R.W.1, driver of the Lorry is an interested witness. The Tribunal considering the pleadings, evidence of P.W.1, P.W.2 and R.W.1, has held that accident occurred due to negligent parking of Lorry by the driver of 1st respondent. At the same time, the Tribunal has taken note of the fact that accident has occurred when the deceased dashed on the backside of the Lorry. The Tribunal considering the judgment of this Court reported in 2018 (1) TN MAC 663 [Reliance General Insurance Co. Ltd., Vs. Ayyadurai and others] and the judgment of Division Bench of this Court reported in 2017 (1) TN MAC 5 (DB) [S.Manjula Devi and others Vs. Brijpal Sing and others], held that deceased could have avoided the accident, had he been careful while driving the vehicle at night and fixed 10% contributory negligence on the part of the deceased. There is no error in the said finding of the Tribunal warranting interference by this Court.

15. As far as the quantum of compensation is concerned, it is the case of the claimants 1 to 4 that deceased was a Loadman



as well as owner of Oil Mill and was getting a sum of Rs.18,000/- per month as salary. The claimants failed to prove the same. In the absence of any evidence, the Tribunal fixed a sum of Rs.7,500/- per month as notional income of the deceased. The accident is of the year 2017. The notional income fixed by the Tribunal is meagre. Hence, a sum of Rs.14,000/- per month is fixed as notional income of the deceased. The deceased was aged 25 years and was a bachelor at the time of accident. The Tribunal granted 40% enhancement towards future prospects. The Tribunal erroneously deducted 1/4th towards personal expenses of the deceased, instead of deducting 50%. By fixing the monthly income at Rs.14,000/-, granting 40% enhancement towards future prospects, deducting 50% towards personal expenses and applying the multiplier '18', the amounts awarded by the Tribunal towards loss of dependency is modified to Rs.21,16,800/- {[Rs.14,000/- + Rs.5,600/-(40% of Rs.6,500/-)] x 12 x 18 x 50%}. After deducting 10% for the negligence fixed on the deceased, the loss of dependency comes to Rs.19,05,120/- [Rs.21,16,800 - Rs.2,11,680/-]. The Tribunal has awarded a sum of Rs.40,000/- as compensation to the claimants under the head, loss of consortium. The claimants 1 and 2 who are the parents and claimants 3 and 4 who are the siblings of the deceased are only entitled to compensation towards loss of love and affection. Hence, the amount awarded by the Tribunal towards loss of consortium is set aside and a sum of Rs.40,000/- is awarded towards love and affection. The amounts awarded by the Tribunal under other heads are just and reasonable and hence, the same are hereby 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	15,30,900/-	19,05,120/-	Enhanced
2.	Loss of consortium	40,000/-	-	Set aside
3.	Funeral expenses	15,000/-	15,000/-	Confirmed
4.	Loss of estate	15,000/-	15,000/-	Confirmed
5.	Loss of love and affection	-	40,000/-	Granted



Total	16,00,900/-	19,75,120/-	Enhanced by Rs.3,74,220 /-
-------	-------------	-------------	----------------------------------

WEB COPY

16. In the result, both the appeals are partly allowed and the amount awarded by the Tribunal at Rs.16,00,900/- is enhanced to Rs.19,75,120/- along 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 the award amount now determined by this Court along with 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 judgment, to the credit of M.C.O.P.No.104 of 2019. On such deposit, the claimants are permitted to withdraw their share of the award amount, now determined by this Court along with proportionate interest and costs, as per the ratio of apportionment fixed by the Tribunal, after adjusting the amount, if any, already withdrawn, by filing necessary applications before the Tribunal. No costs.

Sd/-

Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

Gsa

To

1.The Additional District Judge,
(Motor Accident Claims Tribunal),
Ariyalur.

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

+1cc to Mr.J.Chandran, Advocate SR.No.5512

C.M.A. Nos.1947 of 2020 & 206 of 2021

LN(CO)
GN(06/12/2021)