



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE ON WHICH RESERVED : 23.12.2020

DATE ON WHICH PRONOUNCED : 20.01.2021

WEB COPY

CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VAN

C.M.A. (MD) .No.482 of 2010

1.Annalakshmi

2.Mathan Kumar

3.Minor Rajkumar : Appellants /Petitioners
(Minor is represented by his mother
and natural guardian the 1st appellant)

Vs.

Tamil Nadu State Transport Corporation Limited,
Vannarpettai,
Tirunelveli. : Respondent/Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 07.08.2009, in M.C.O.P.No.1829 of 2006, on the file of the Motor Accidents Claims Tribunal cum 1st Additional District Court, Tirunelveli and thereby enhance the award amount.

For Appellants : Mr.R.T.Arivukumar
For Respondent : No Appearance

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the judgment and decree, dated 07.08.2009, in M.C.O.P. No.1829 of 2006, on the file of the Motor Accidents Claims Tribunal cum 1st Additional District Court, Tirunelveli and thereby enhance the award amount.

2.The case of the claimants before the Tribunal is that on 19.10.2006, at about 01.00 p.m., the victim namely, Aravinthan was riding his two wheeler, bearing Registration No.TN-69-F-5910 to Muthunagar in the Harbour Express road from West to East direction. At that time, the bus, bearing Registration No.TN-72-N-0847 came in the opposite direction driven, by its driver in a rash and negligent manner and dashed against the deceased. As a result of which, he sustained injuries and later died.



3.The first petitioner is the wife and the other petitioners are the children. At the time of the accident, the deceased was working as a Senior Lascar in the Marine Department, Tuticorin and drawing salary of Rs.20,792.95 paise. Claiming compensation amount of Rs.40,00,000/- (Rupees Fourty Lakhs only), the claimants have approached the Tribunal.

4.The case of the respondent before the Tribunal is that the manner of the accident as mentioned in the petition is denied. The deceased, who came from West to East direction, suddenly, crossed the road and hit on the left side of the bus and sustained injuries. Moreover, he was also under the influence of alcohol. So, the respondent's driver was not responsible for the accident.

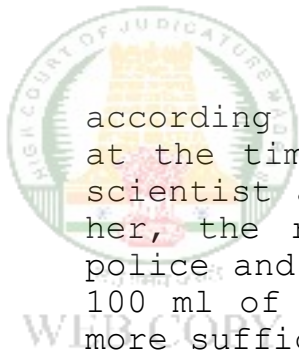
5.During enquiry before the Tribunal, on the side of the petitioners/claimants, three witnesses were examined and seven documents marked. On the side of the respondent, three witnesses were examined and one document marked.

6.At the conclusion of the enquiry, the Tribunal came to the conclusion that it is a case of contributory negligence and fixed the liability at 50:50 % on the deceased as well as the respondent's bus driver.

7.Regarding the compensation, on the basis of the evidence, fixed the same at Rs.6,67,500/-, which is 50% of the total compensation of Rs.13,35,000/-. So, challenging the quantum and fixation of the contributory negligence, the claimants filed this appeal mainly on the ground that the contributory negligence fixed by the Tribunal is not correct and the deceased was not under the influence of alcohol and considering the age, quantum ought to have fixed by the Tribunal.

8.The learned counsel for the appellants, relied upon the judgment of **2013 (1) TNMAC 854** and argued that from mere consumption of alcohol and smell of alcohol in breath cannot be concluded that a person lost control of his mind and body.

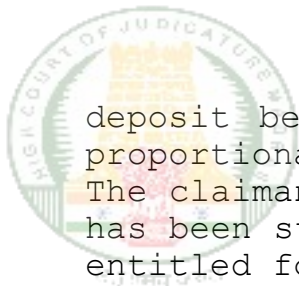
9. So, for the purpose of deciding this issue, let us, straightaway go through the evidence and records. As per the information in the First Information Report under Ex.P.1, it is seen that the deceased was brought dead to the hospital. R.W.1, who was the driver of the offending vehicle, would say that after the occurrence, when he saw the deceased, he was in a drunken state of mind and so, he has admitted him in the hospital. This is the first version about the drunken state of the deceased. R.W.3 is the Doctor, attached to the the Tuticorin Medical College Hospital, would say that blood samples were taken from the deceased for finding out whether he was in a drunken state of mind. The analysis shows that 178 mg of Ethyl Alcohol was found in his blood. So,



according to him, the deceased was under the influence of alcohol, at the time of the occurrence. Ex.R.1 is the report. R.W.2 is the scientist attached to Regional Forensic Lab, Madurai. According to her, the request for blood sample analysis was received from the police and on analysis, they found that 178 mg of Ethyl Alcohol in 100 ml of blood. So, according to the respondent, this evidence is more sufficient to suggest that the deceased was under the influence of alcohol at the time of the accident and so, the findings of the Tribunal that he has also contributed to the accident, requires no interference.

10.But, as mentioned earlier, it is the contention on the part of the appellant that even though, alcohol trace was found in the blood, there is no scientific evidence, to suggest that he was under the influence of alcohol, which means that, the consumption of alcohol was not too high to influence his brain and body functions. But, permitted limitation of alcohol, as per the Section 185 of Motor Vehicles Act, is that not more than 30 mg alcohol in the 100 ml of blood. So, from the analysis of the blood sample, the deceased was under the influence of alcohol, more than the permitted limit. So, the contention, on the part of the petitioner, that the consumption of alcohol did not influence his mental and physical condition cannot be accepted. So, the contributory negligence fixed at 50:50 % by the Tribunal, requires no interference.

11.The next point is the quantum. The Tribunal fixed the total compensation amount at Rs.13,35,000/-. The Tribunal did not take into account the future prospects of the deceased. From the salary certificate, it is seen that he had drawn a sum of Rs.12,000/- per month. Since, the age of the deceased was 46. Multiplier '13' was taken into account. So, under the head of loss of income, it was assessed at Rs.13 lakhs. As per the judgment of the Hon'ble Supreme Court reported in **National Insurance Company Limited Vs Pranay Sethi and others (2017) 16 SCC**, for the age group between 45 to 50, a permanent employee is entitled to be added with 30% as Future Prospects. So, the total monthly income can be taken as Rs.16,250/-. After deducting 1/3 towards personal expenses, it will come to Rs.10,833/- per month. Multiplier '13' is taken into account. So, the total loss of income can be estimated at Rs.16,89,948/-. So, with this amount loss of consortium to the first petitioner Rs.40,000/-, Funeral Expenses Rs.15,000/-, loss of estate Rs.15,000/- and loss of parental consortium to the second and third petitioner can be fixed at 40,000/- each. So, the total compensation is Rs.18,39,948/-. From this total compensation, 50% is deducted towards contributory negligence Rs.9,19,974/-. So, the appeal is partly allowed. The compensation payable to the claimants by the respondent is enhanced to **Rs.9,19,974/- (Rupees Nine Lakhs Nineteen Thousand Nine Hundred and Seventy Four Only)** with interest at the rate of 7.5% per annum and cost. The respondent is directed to deposit the entire amount with costs and interest and on such



deposit being made, the claimants are permitted to withdraw their proportionate share, except minors, as apportioned by the Tribunal. The claimants wants interest at the rate of 9% per annum and now, it has been standardised to 7.5% per annum. So, the petitioners are not entitled for interest at the rate of 9% per annum. No costs.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

dss

Note:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

1.The Motor Accidents Claims Tribunal
cum 1st Additional District Court, Tirunelveli

2.The Record Keeper, (2 copies)
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.R.MANIMARAN, Advocate (SR-1508[F] dated 21/01/2021)

Judgment made in
C.M.A. (MD) .No.482 of 2010
20.01.2021

VB (15.02.2021) 4P 5C