



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.02.2021

CORAM:

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

and

THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

WEB COPY

C.M.A(MD)No.706 of 2020

and

C.M.P(MD)No.7183 of 2020

The Branch Manager,
M/s. Iffco-Tokio General Insurance Company Limited,
19/1, Ramalinga Nagar,
Woraiyur,
Trichy - 620 017.

: Appellant / 2nd Respondent

Vs.

1.Rabiyathul Basariya
2.Mohammed Rafiyath
3.Minor Mohammed Jaffar
4.Minor Afiya

(Respondent Nos.3 & 4 were represented by
their guardian and mother, the 1st respondent
herein)

: Respondent Nos.1 to 4/Petitioners

5.K.Kumaravel

: 5th respondent / 1st respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree dated 16.10.2019 made in M.C.O.P.No.1145 of 2016 on the file of the Motor Accident Claims Tribunal/Special District Judge (MACT), Tiruchirappalli.

For Appellant	: Mr.V.Sakthivel
For R-1 to R-4	: Mr.B.Saravanan
Fro R5	: Mr.T.Lenni Kumar

JUDGMENT

(Judgment of the Court was delivered by PUSHPA SATHYANARAYANA, J.)

Being aggrieved by the Award and Decree dated 16.10.2019 passed by the Motor Accidents Claims Tribunal/Special District Judge, Tiruchirappalli in M.C.O.P.No.1145 of 2016 in respect of the quantum of compensation awarded to the claimants for the injuries sustained by the deceased in a road traffic accident occurred on 04.07.2016, Appellant, M/s. Iffco-Tokio General Insurance Company Limited, has

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preferred this appeal.

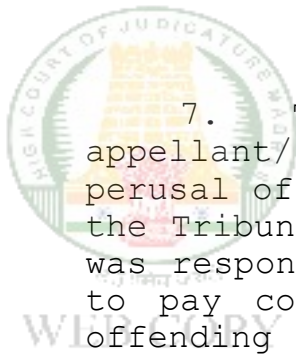
2. Brief facts are that on 04.07.2016 at about 3.15 p.m., when the deceased Abdul Jabbar was riding his Motor Cycle bearing Registration No.TN 55 AX 0091 in Trichy-Senthanneerpuram main road, a Bolero Truck bearing Registration No.TN 48 U 7004 belonging to the fifth respondent and insured with the appellant came from the opposite direction in a rash and negligent manner and dashed against the motorcycle and caused the accident. In the said accident, the deceased sustained grievous injuries all over the body and he died on 09.07.2016 at Madurai Government Hospital. At the time of accident, the deceased was aged 48 years and was a fish vendor of whole sale and retail and having a fish stall in Alwarthope Market at Tennur. Regarding the accident, a Criminal Case was registered against the driver of the Bolero Truck and subsequently, charge sheet was filed for the offences under Sections 279, 337 and 304(A) of I.P.C. Alleging that the accident was due to rash and negligent driving of the Bolero Truck, the Claimants, who are wife, children of Abdul Jabbar, have filed the Claim Petition claiming compensation of Rs.25,00,000/-.

3. Resisting the Claim Petition, Appellant - Insurance Company has filed counter contending that the accident occurred only due to the reckless act of the deceased and the quantum of compensation claimed by Claimants is highly excessive and without any basis.

4. Before the Tribunal, Son of the deceased - Mohammed Rafiyath was examined himself as P.W.1 besides examining Eye-witness Mohammed Ali as P.W.2 and Exs. P.1 to P.14 were marked on the side of Claimants. On the side of the Insurance Company, one K.Muthukrishnan was examined as R.W.1 and no document was filed on their side. On the side of witness, two third party documents were marked as Ex.X1 and Ex.X2.

5. Upon consideration of the evidence of P.W.2 eye-witness and referring to Ex.P.1 - FIR registered against the driver of the Bolero Truck, Tribunal held that the accident was due to rash and negligent driving of the Bolero Truck and the deceased subsequently died of the injuries sustained in the accident. The Tribunal further held that the Insurance Company is liable to pay compensation to Claimants and recover the same from the fifth respondent owner of the Bolero Truck. Accordingly, the Tribunal had awarded a total compensation of Rs.20,46,800/- under various heads.

6. Heard the learned counsels appearing on either side and perused the materials available on record.



7. Though the learned counsel appearing for the appellant/Insurance Company argued on the point of negligence, a perusal of the award would show that after considering the evidence, the Tribunal came to the conclusion that driver of the Bolero Truck was responsible for the accident and directed the appellant/insurer to pay compensation and recover the same from the owner of the offending vehicle. Therefore, we find no reason to interfere with the findings on the negligence aspect.

8. With regard to quantum, the learned counsel appearing for the Appellant/Insurance Company contended that the award passed by the Tribunal is in disproportionate with the evidence adduced by the Claimants and the quantum is huge as the same is not falling in lines with the decisions of the Hon'ble Supreme Court. He further contended that especially under the head of Consortium, the Tribunal awarded excess amount and the same has to be reduced.

9. In support of his contention, the learned counsel placed reliance on the decision of the Honourable Supreme Court in **United India Insurance Company Limited vs. Satinder Kaur @ Satwinder Kaur & Ors.** Reported in **2020 (2) TN MAC 1 (SC)**, wherein the decision in **National Insurance Company Limited v. Pranay Sethi and Others** reported in **2017(2) TN MAC 609(SC)** and **Magma General Insurance Co. Ltd., v. Nanu Ram & Others.**, reported in **2018 (1) TN MAC 452 (SC)**, were referred to and the relevant portion of the above decision in **Satinder Kaur's** case(cited supra), is extracted hereunder:

"8..... At this stage, we consider it necessary to provide uniformity with respect to the grant of Consortium, and Loss of Love and Affection. Several Tribunal and High Courts have been awarding Compensation for both Loss of Consortium and Loss of Love and Affection. The Constitution Bench in Pranay Sethi (supra), has recognized only three conventional heads under which compensation can be awarded viz., Loss of Estate, Loss of Consortium and Funeral Expenses.

In Magma General(supra), this Court gave a comprehensive interpretation to consortium to include spousal consortium, parental consortium, as well as filial consortium. Loss of Love and Affection is comprehended in Loss of Consortium.

9.7. Insofar as the Conventional Heads are concerned, the deceased Satpal Singh left behind a widow and three children as his dependants. On the basis of the judgments in Pranay Sethi (supra) and Magma General (supra), the following amounts are awarded under the Conventional Heads:

(i) Loss of Estate :Rs.15,000

(ii) Loss of Consortium:



12. In the result, the Civil Miscellaneous Appeal is allowed in part as follows:-

(i) The Award of the Tribunal is reduced to Rs.19,56,800/- from Rs.20,46,800/-.

(ii) The interest granted by the Tribunal at 7.5% per annum is confirmed.

(iii) The Award amount is apportioned as per the award of the Tribunal.

(iv) This Court vide order dated 04.01.2021 directed the appellant/Insurance Company to deposit the entire award amount on or before 01.02.2021. Hence, the Insurance Company is permitted to withdraw the excess amount deposited by them.

(v) The respondents 1 and 2/claimants 1 and 2 are permitted to withdraw their respective share with proportionate interest and cost. The share of the minor claimants/ Respondents 3 and 4 are permitted to be kept in any of the Nationalised Bank till they attain majority and the guardian / first respondent is permitted to withdraw the interest amount once in three months.

(vi) The appellant/Insurance Company is permitted to recover the amount from the fifth respondent by filing necessary application.

No Costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (Cs-III)

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/ /2021

Sub Assistant Registrar(CS)

pm

To

1.Special District Judge,
The Motor Accident Claims Tribunal
Tiruchirappalli.

Copy to
The Section Officer, (2C)
VR Section, Madurai Bench of Madras High Court,
Madurai.

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+1 CC to M/s.B.SARAVANAN, Advocate (SR-2734[F] dated 02/02/2021)

+1 CC to M/s.V.SAKTHIVEL, Advocate (SR-2737[F] dated 02/02/2021)

+1 CC to M/s.T.LENIN KUMAR, Advocate (SR-2714[F] dated 02/02/2021)

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