



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.02.2021

CORAM:

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA
AND
THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

C.M.A(MD)No.23 of 2018
and
C.M.P(MD)No.287 of 2018

The Branch Manager,
Reliance General Insurance,
15-A, PLA, Kanagu Towers,
Thillai Nagar,
11th Cross,
Trichy - 18.

... Appellant/2nd Respondent

Vs.

1.Balamani
2.Minor Murugesh
3.Minor Akash
4.Karuppiyah Thevar
5.Vasantha

... Respondents 1 to 5/
Petitioners

6.Arumugam

... 5th Respondent/1st Respondent
(Minor RR 2 & 3 rep. by their
mother-1st respondent)

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the fair and decreetal order dated 28.03.2017 made in M.C.O.P.No.213 of 2013 on the file of the Motor Accident Claims Tribunal (Additional District Court), Pudukkottai.

For Appellant : Mr.S.Srinivasa Raghavan

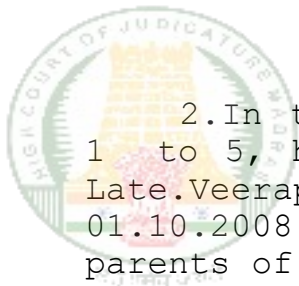
For RR 1, 4 & 5 : Mr.K.Balasundaram

For R - 6 : No appearance

JUDGMENT

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

The Insurance Company is the appellant. Challenging the award, dated 28.03.2017 made in M.C.O.P.No.213 of 2013, on the file of the Motor Accidents Claims Tribunal (Additional District Court), Pudukkottai, the present Civil Miscellaneous Appeal is filed.



2.In the said M.C.O.P, the claimants, who are the respondents 1 to 5, have made the claim as compensation for the death of one Late.Veerapandian, who died in the accident that occurred on 01.10.2008. The respondents 1 to 5 are the wife, children and parents of the deceased.

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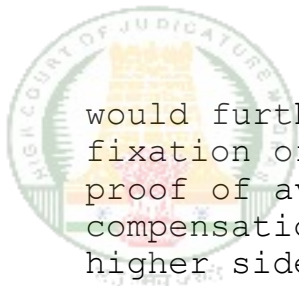
3.The brief facts relevant for the consideration of the above case is that on 01.10.2008, when the deceased-Veerapandian was driving his Auto bearing Registration No.TN-55-B-3231 along with some passengers, a tipper lorry bearing Registration No.TN-04-C-4162 belonging to the sixth respondent/first respondent, insured with the appellant/second respondent, dashed against the Auto. As a result of which, the deceased along with other passengers sustained grievous injuries all over the body and immediately, they were taken to Aranthangi Government Hospital for treatment, where the deceased was reported dead. Hence, the respondents 1 to 5/claimants, as legal heirs of the deceased, has filed this claim petition claiming a compensation of Rs.15,00,000/-.

4.Resisting the claim petition, the appellant-Insurance Company has filed a counter affidavit contending that the accident had occurred only due to the reckless act of the deceased and the quantum of compensation claimed by the claimants is highly excessive and without any basis.

5.Before the Tribunal, the wife of the deceased, the first respondent herein was examined as P.W.1 and one Karnan was examined as P.W.2 and Exs.P1 to Ex.P7 were marked. On the side of the appellant, one Velayutham was examined as R.W.1 and Ex.R1 was marked.

6.The Tribunal, after considering the oral and documentary evidences, held that the accident had occurred due to the rash and negligent driving of the driver of the sixth respondent/first respondent and that the deceased sustained injuries and due to the impact, he died. The Tribunal further held that the appellant/Insurance Company and the sixth respondent are liable to pay compensation to the claimants jointly or severally and had awarded a total compensation of Rs.17,10,000/- under various heads.

7.The learned counsel appearing for the appellant/Insurance Company would argue that the accident had occurred only on account of the contributory negligence of the deceased, since the deceased had driven the Auto in a rash and negligent manner and the deceased was not in possession of permit, fitness certificate, due, valid and effective driving licence to drive the Auto at the time of accident. The learned counsel for the appellant/Insurance Company



would further argue that as regards the quantum of compensation, the fixation of Rs.10,000/- per month as notional monthly income without proof of avocation and income, is untenable and unacceptable and the compensation awarded by the Tribunal under various heads are on the higher side.

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8.The learned counsel appearing for the respondents 1 to 5/claimants would argue that the Tribunal had correctly awarded the compensation under various heads and the same need not be interfered with.

9.Heard the learned counsel appearing on either side and perused the materials available on record.

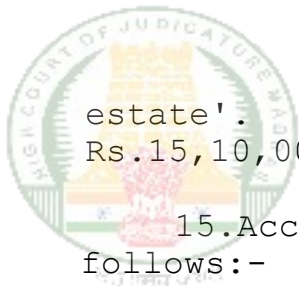
10.The Tribunal had found that the accident had occurred only due to the negligence on the part of the Driver of the Tripper Lorry based on the evidence of P.W.2, who is an eye-witness to the occurrence. Insofar as the quantum of compensation is concerned, the deceased was aged 43 years old at the time of accident. As the deceased was a Auto driver and he possessed R.C. Book, the Tribunal had fixed the income of the deceased at Rs.10,000/- per month and after deducting 1/3rd amount for his personal expenses, fixed the monthly contribution to the family at Rs.7,500/- and adopted multiplier of '14' and arrived at a sum of Rs.12,60,000/- (Rs.7,500X12X14) as loss of income, the same need not be interfered with.

11.The Tribunal had awarded a sum of Rs.1,00,000/-, towards loss of consortium to the first respondent/wife; a sum of Rs.2,00,000/- towards loss of love and affection to the respondents 2 and 3/minor children and a sum of Rs.1,00,000/- (Rs.50,000 X 2) towards loss of love and affection to the respondents 4 and 5/parents, which are on the higher side and the same needs interference. So far as the loss of love and affection as per the decision in *Magma General Insurance Co. Ltd., v. Nanu Ram & Others.*, reported in 2018 (1) TN MAC 452 (SC), the claimants 1 to 5 each are entitled to Rs.40,000/-, which comes to Rs.2,00,000/- (Rs.40,000x5= Rs.2,00,000/-).

12.Insofar as funeral expenses is concerned, the Tribunal had awarded a sum of Rs.25,000/-, which is not disputed and the same stands confirmed.

13.Though the Tribunal had awarded a sum of Rs.20,000/- towards loss on account of damage to the clothes, article and jewels etc., which is not permissible and the same has to be deducted.

14.Since the Tribunal had not awarded any sum under the head of <https://hcservices.com/govt/cases/>, a sum of Rs.15,000/- is awarded towards 'loss of



estate'. In total, the claimants are entitled to a sum of Rs.15,10,000/-as compensation.

15. Accordingly, the Award of the Tribunal is modified as follows:-

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S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of income	12,60,000/-	12,60,000/-	confirmed
2.	Loss of consortium to the first respondent	1,00,000/-	40,000/-	reduced
3.	Loss of love and affection to the minor respondents 2 and 3	2,00,000/-	80,000/- (Rs.40,000 X 2)	reduced
4.	Loss of love and affection to the respondents 4 and 5	1,00,000/-	80,000/- (Rs.40,000 X 2)	reduced
5.	Funeral expenses	25,000/-	25,000/-	confirmed
6.	Transportation charges	5,000/-	10,000/-	enhanced
7.	Loss of estate	--	15,000/-	awarded
8.	Damages to the article and jewels etc.	20,000/-	---	No amount awarded
	Total	Rs.17,10,000/-	Rs.15,10,000/-	Reduced by Rs.2,00,000/-

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

(i) The Award of the Tribunal is reduced to Rs.15,10,000/- from Rs.17,10,000/-.

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



(iii) The Award amount is apportioned as per the ratio of apportionment made by the Tribunal.

(iv) The learned counsel appearing for the appellant-Insurance Company submitted that the entire award amount has been deposited before the Tribunal. Further the claimants 1, 4 and 5 have also withdrawn a portion of their share in the award amount as per the apportionment made by the Tribunal.

(v) The Tribunal is directed to refund the excess award amount, if any, to the appellant-Insurance Company together with interest at the rate 7.5% from the date of the claim petition.

(vi) The respondents 1, 4 & 5/claimants 1, 4 & 5 are permitted to withdraw their share in the award amount with proportionate accrued interest and costs, less the award amount withdrawn already. The share of the minor claimants/respondents 2 and 3 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 and utilize the same for the welfare of the minor children.

No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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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 Additional District Judge,
The Motor Accident Claims Tribunal,
Pudukkottai.

2.The V.R Section (Records),
Madurai Bench of Madras High Court,
Madurai. (2c)

<https://hcservices.ecourts.gov.in/hcservices/>



+1 CC to M/s.S.SRINIVASA RAGHAVAN, Advocate (SR-6746[F] dated 23/02/2021)

+1 CC to M/s.K.BAALASUNDHARAM, Advocate (SR-7071[F] dated 24/02/2021)

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