



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.02.2021

CORAM:

**THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA
AND**

THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

C.M.A (MD) No.119 of 2017

and

C.M.P (MD) No.1347 of 2017

United India Insurance Company Limited,
The Branch Manager,
Seethalakshmi Complex,
Thirunagar,
Madurai - 625 006.

... Appellant/2nd Respondent

Vs.

1.Thilagavathi

... 1st Respondent/
Claimant

2.M/s.Jayalakshmi Textiles Private Limited,
Puliyuraan Road, Sempatti Village,
Aruppukottai Taluk,
Virudhunagar District.

3.Sethuraj

4.Saroja

... Respondents 2 to 4/
Respondents 1, 3 & 4

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree made in M.C.O.P.No.5 of 2013, dated 17.03.2016, on the file of the Motor Accident Claims Tribunal (Subordinate Court), Aruppukottai.

For Appellant

: Mr.N.Dilip Kumar

For R - 1

: Mr.G.Mariappan

For R-2

: No Appearance

For RR 3 & 4

: Mr.M.Mohammed Sherbudeen



JUDGMENT

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

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Challenging the award, dated 17.03.2016 passed in M.C.O.P.No.5 of 2013, on the file of the Motor Accidents Claims Tribunal/Subordinate Court, Aruppukottai, the appellant/United India Insurance Company Limited has preferred this Civil Miscellaneous Appeal.

2.In the said M.C.O.P, the first respondent/claimant is the wife of the deceased-Sivakumar and the respondents 3 and 4 are the father and mother of the deceased.

3.The brief facts relevant for the consideration of the above case are that on 20.12.2012, while the deceased-Sivakumar was riding his two wheeler bearing Registration No.TN-67-AC-7435 along with his friend, at that time a bus bearing Registration No.TN-67-D-3929 belonging to the first respondent, which was driven from East to West, dashed against the two wheeler of the deceased and due to the sudden impact, the deceased and his friend died on the spot. It was alleged that the accident had occurred due to the rash and negligent act of the driving of the bus belonging to the second respondent/first respondent. The said bus was insured with the appellant/second respondent. Hence the first respondent/claimant as legal heirs of the deceased, has filed this claim petition claiming a compensation of Rs.50,00,000/-.

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 claimant 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, one Kannan was examined as P.W.2 and Karuppiyah was examined as P.W.3 and Exs.P1 to Ex.P.8 were marked. On the side of the appellant, Sethuraj was examined as R.W.1, Ravi was examined as R.W.2 and Kannan was examined as R.W.3 and Exs.R1 and R2 were marked and also Exs.X1 to X4 were 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 second respondent/first



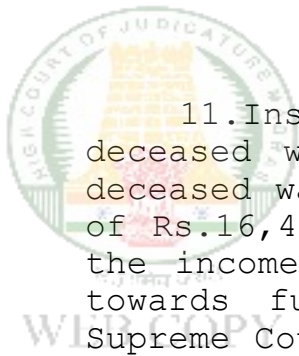
respondent and that the deceased along with his friend died on the spot. The Tribunal further held that the appellant/Insurance Company is liable to pay compensation to the claimant and the respondents 3 and 4, who are the parents of the deceased and had awarded a total compensation of Rs.31,40,000/- under various heads. Out of the said compensation amount, the Tribunal had awarded a sum of Rs.26,40,000/- to the first respondent/claimant, a sum of Rs.2,00,000/- to the third respondent/father of the deceased and a sum of Rs.3,00,000/- to the fourth respondent/mother of the deceased.

7.The learned counsel appearing for the appellant/Insurance Company would submit that there was a head on collision involving two-wheeler and a bus. Admittedly, the rider of the two-wheeler was riding with two pillion riders and was attempting to overtake a lorry, which was going in-front of him and in such process, had come under the wheels of the bus, which was coming in the opposite direction. The learned counsel would further submit that the quantum awarded by the Tribunal is on the higher side.

8.The learned counsel appearing for the first respondent/claimant would submit 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.On a perusal of the materials available on record, it is seen that even in the counter-affidavit in the said M.C.O.P in paragraph No.6, it has been specifically stated that the deceased, who was riding the two-wheeler, had taken two of his friends as pillion riders, which is not permissible in law and that was discussed by the Tribunal in issue No.4 in paragraph No.15. However, it has been held by this Court repeatedly that a two-wheeler rider is mandated to wear a helmet to save their life. If the helmet is not worn by any of the riders/deceased, it would amount to contributory negligence. In this case, admittedly, the deceased had taken two pillion riders, which is not permissible in law and it is also known to them that they have to wear helmet while driving vehicles. That apart, it is proved beyond doubt that they were trying to overtake a vehicle without noticing the on-coming offending vehicle and colluded with head on collision, which resulted in instantaneous death of all the three persons. Therefore, we are of the view that the rider of the two-wheeler, who is said to be a police constable, has contributed to the negligence. Though we may fix the contributory negligence at a higher rate, considering the fact that the deceased had left behind a widow of 30 years old and his old aged parents and he being the sole bread winner of the family, we feel it appropriate to fix the negligence at 15%.



11.Insofar as the quantum of compensation is concerned, the deceased was aged 30 years old at the time of accident. As the deceased was a police constable and the deceased had received a sum of Rs.16,429/- per month as monthly salary, the Tribunal had fixed the income of the deceased at Rs.16,429/- per month and added 30% towards future prospectus. As per the decision of the Hon'ble Supreme Court in **National Insurance Company Limited v. Pranay Sethi and Others** reported in **2018(1) LW 3331**, in respect of the person in permanent job, who is aged below 40 years, future prospects can be fixed at 50%. Applying the same, by adding 50% towards future prospectus, loss of earning per month is arrived at Rs.24,644/- (Rs.16429 + Rs.8,215). Out of which, 1/3rd amount to be deducted towards personal expenses and as such, it comes to Rs.16,429/-. The deceased was aged 30 years. Hence, adopting the Multiplier of '17' by placing reliance upon **Smt. Sarla Verma and Other v. Delhi Transport Corporation [2009 (2) TNMAC 1 (SC)]**, the loss of earning is fixed at Rs.33,51,516/- (Rs.16,429/- X 12 X 17).

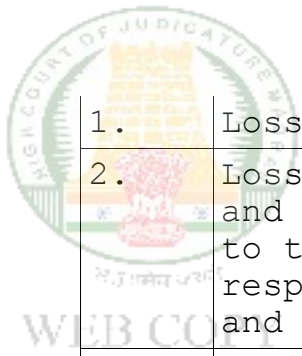
12.As far as the loss of love and affection is concerned, the Tribunal had awarded a sum of Rs.50,000/- each to the respondents 3 and 4 and a sum of Rs.1,00,000/- towards loss of consortium to the first respondent/claimant, which is on the higher side. As per the decision in **Magma General Insurance Co. Ltd., v. Nanu Ram & Others.**, reported in **2018 (1) TN MAC 452 (SC)**, the respondents 1, 3 and 4 each are entitled to Rs.40,000/- which comes to Rs.1,20,000/- (Rs.40,000 x 3=Rs.1,20,000/-).

13.The amounts awarded by the Tribunal under the other heads, viz., a sum of Rs.10,000/- towards transportation charges and a sum of Rs.25,000/- towards funeral expenses, are very reasonable and they are confirmed.

14.Since the Tribunal had not awarded any sum under the head of 'loss of estate', a sum of Rs.15,000/- is awarded towards 'loss of estate'. Accordingly, the total compensation is arrived at a sum of Rs.35,21,516/-. As stated supra, deducting 15% towards contributory negligence, which comes to Rs.29,93,289/- (Rs.35,21,516 - Rs.5,28,227). In total, the respondents 1, 3 and 4 are entitled to a sum of Rs.29,93,289/- as compensation. The rate of interest awarded by the Tribunal at 7.5% per annum remains unaltered.

15.Accordingly, the Award of 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
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1.	Loss of income	29,04,552/-	33,51,516/-	enhanced
2.	Loss of love and affection to the respondents 3 and 4	1,00,000/- (50,000 X 2)	80,000/- (40,000 X 2)	reduced
3.	Loss of consortium of the first respondent	1,00,000/-	40,000/-	reduced
4.	Transportation charges	10,000/-	10,000	confirmed
5.	Funeral expenses	25,000	25,000	confirmed
6.	Loss of estate		15,000	Awarded
	Total	Rs.31,39,552/-	Rs.35,21,516/- Deducting 15% towards contributory negligence, it arrives at Rs.29,93,289/-	Reduced by Rs.1,46,263/-

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

(i) The Award of the Tribunal is reduced to Rs.29,93,289/- from Rs.31,39,552/-

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

(iii) The appellant-Insurance Company is directed to deposit the award amount to the credit of claim petition, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this order.

(iv) The first respondent/claimant is permitted to withdraw her share amount of Rs.24,93,289/- with proportionate accrued interest and costs, less the amount already withdrawn, if any.

(v) As awarded by the Tribunal, the third respondent is entitled to a sum of Rs.2,00,000/- and the third respondent is permitted to withdraw the same along with proportionate accrued interest and costs, less the amount already withdrawn, if any.



(vi) As awarded by the Tribunal, the fourth respondent is entitled to a sum of Rs.3,00,000/- and the fourth respondent is permitted to withdraw the same along with proportionate accrued interest and costs, less the amount already withdrawn, if any.

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No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS II)

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/ /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 Motor Accident Claims Tribunal/
Subordinate Court,
Aruppukottai.

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

+1 CC to M/s.N.DILIP KUMAR, Advocate (SR-7126[F] dated 25/02/2021)

+1 CC to M/s.G.MARIAPPAN, Advocate (SR-7098[F] dated 25/02/2021)

+1 CC to M/s.M.MOHAMED SHERBUDEEN, Advocate (SR-7421[F] dated 25/02/2021)

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