



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

C.M.A.No.2164 of 2017

and

C.M.P.No.11472 of 2017

The Regional Manager,
M/s.Reliance General Insurance Company Limited,
No.6, 6th Floor, Hadows Road, Nungambakkam,
Chennai - 600 006.

... Appellant/2nd Respondent

Vs.

1.N.Elumalai
Amirthammal (deceased)
2.Thirupathy

3.Sampath @ Sampathkumar

... Respondents 1 to 3/ Petitioners 1,3,&4
(Respondent 2 &3 are brought
on record as LR of deceased)

4.S.Sudhakar

5.T.S.Sachithanandam

6.M/s.United India Insurance Co. Ltd.,
No.53, North Raja Street,
Tiruvallur.

... 4 to 6 Respondents/
Respondents 1,3, &4

Prayer: Civil Miscellaneous Appeal filed under Section 173 of
the Motor Vehicles Act, 1988, against the judgment and decree
Passed in M.C.O.P.No.4365 of 2010 dated 07.11.2016 in the Court
of the Chief Judge, Motor Accident Claims Tribunal, Chennai.

For Appellant : Mr.Suresh for Mr.K.Moorthy

For Respondents : Mr.S.G.Emberumanar

for R1 to R3

Mr.A.Dhiraviyanathan for R6

R4, R5 - Exparte



J U D G M E N T

The 2nd respondent in M.C.O.P.No.4365 of 2010 on the file of the Motor Accident Claims Tribunal / Chief Judge, Court of Small Causes, Chennai is the appellant herein.

2.The said petition in M.C.O.P.No.4365 of 2010 had been filed by the legal representatives of one Thombarai, who died in an accident which occurred on 19.05.2009. The deceased Thombarai, was qualified as a conductor and he had also obtained a Conductor's Training Certificate, which had been marked as Ex.P5. He was working as a Conductor in Sundaram Transports.

3.On 19.05.2009, when he was travelling in a bus as a Conductor, which bus was insured with the 4th respondent Insurance Company, a tipper lorry came across and when the bus driver applied breaks suddenly, the deceased fell down, suffered head injuries and died. Claiming compensation, the legal representatives had preferred M.C.O.P.No.4365 of 2010.

4.The 2nd respondent was the insurer of the lorry and the 4th respondent was the insurer of the bus in which the deceased was working as a Conductor.

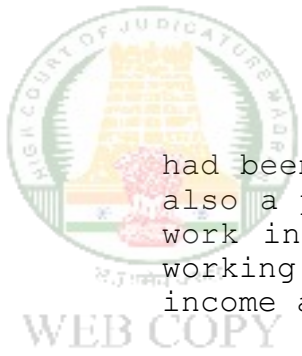
5.The facts are not in dispute.

6.The 2nd respondent had preferred the present appeal primarily on the apportionment of the quantum of compensation granted. The Tribunal had determined that the lorry was responsible for the accident but granted an apportionment of 75% of the compensation to be paid by the insurer of the lorry and 25% to be paid by the insurer of the bus. The appeal had been filed questioning such apportionment.

7.Arguments have also advanced with respect to the actual compensation granted.

8.Before deciding on the apportionment, let me examine the compensation, which had been granted to the claimants before the Tribunal.

9.The Tribunal, had determined that the age of the deceased was 26 years and in this regard had relied on Ex.P5, which gave the date of his birth as 05.01.1983. The accident had taken place on 19.05.2009. In view of that age document, the age being taken as 26 years. The multiplier was taken at 17. Thereafter, the Tribunal determined the income of the deceased for which, there was not much evidence available except Ex.P5, which again was a certificate to work as a Conductor. The said certificate



had been given after the training had been conducted. There was also a possibility that the deceased could have been absorbed to work in a Government bus, to work as a Conductor. He had been working in Sundaram Transports. The Tribunal had determined his income at Rs.10,000/- per month.

10. It is a fact that some skill and training is required to actually work as a Conductor. Without that particular certificate, nobody can be appointed as a Conductor or recognised to work as a Conductor officially, even in a private transport bus. Therefore, the certificate, which was obtained by the deceased has some value and I would not interfere with the income determined by the Tribunal at Rs.10,000/- per month. The Tribunal then, added 50% towards future prospects and then proceeded to determine the actual income at Rs.15,000/-. Thereafter, from that amount, 50% was deducted towards his personal expenses and the Tribunal fixed to salary contributed at Rs.7,500/- per month. The compensation after applying the multiplier of 17 was $(Rs.7,500 \times 12 \times 17) = Rs.15,30,000/-$. Towards the love and affection to the 1st petitioner, the Tribunal had granted a sum of Rs.25,000/- and towards the 3rd and 4th petitioner a sum of Rs.10,000/-. The Tribunal, further granted a sum of Rs.25,000/- towards funeral expenses. In total, the Tribunal had arrived at a total compensation of Rs.16,00,000/- payable to the claimants.

11. As aforesaid, I am not interfering with that particular compensation granted.

12. Now, the apportionment between the insurer of the lorry and the insurer of the bus has to be examined. The facts are as follows:-

The deceased was working as a Conductor of a bus in Sundaram Transports. He was standing on the foot board. We can take that it is normal for a Conductor to stand in the foot board to ensure that the other passengers enter into the bus safely and move forward in the bus. At that particular point of time, a tipper lorry came across and the bus driver applied sudden break. Since he was standing in the foot board, the deceased felt down and suffered head injuries.

13. The accident had occurred owing to two factors. The lorry had come across the bus and the bus driver had applied sudden breaks. I have to point out that the lorry came across from a side road. It is only natural that the bus driver should have been aware of any vehicle which would cut across a road which bisects the main road. If he had applied sudden breaks and the deceased felt down and suffered head injuries causing death, it can also be reasonably presumed that the bus was also going at some speed. That cannot be faulted. The lorry driver



had an obligation to ensure there are no vehicles in perceivable distance, before he drives the lorry to the main road. He had not done so.

14. Therefore, it is only appropriate that there is equal apportionment between the insurer of the lorry and insurer of the bus with respect to the compensation that was granted. I would therefore, revise that particular apportionment of 75% to the insurer of the lorry and 25% to the insurer of the bus and set aside the said finding. I would rather equally apportion the liability at 50% to each of the two insurers.

15. No other grounds have been urged and I would therefore, allow the appeal only to that particular extent by revising the liability on by the insurer of the lorry and on insurer of the bus an equal apportionment of 50% each.

16. It is informed that the Appellant had deposited a sum of Rs.10,00,000/- pursuant to an earlier order of this Court. The apportionment being 50% to be borne by the appellant and by the 6th respondent herein, if any additional amount had been deposited by the appellant, they are entitled to withdraw the same. The 6th respondent is directed to deposit their 50% of the compensation within a period of eight weeks from the receipt of a copy of this order. That deposit should carry interest at 7.5% p.a. and the same apportionment among the claimants are retained. The 1st petitioner / 1st respondent herein is entitled to a sum of Rs.12,00,000/- and the petitioners 2 and 3 are entitled to Rs.2,00,000/- each. It is made clear that the amount should be deposited in any one of the nationalised banks for a period of 3 years in fixed deposit and the petitioners 1, 2 and 3 are entitled to receive the accrued interest once in three months from the bank directly.

17. With the above observations, this Civil Miscellaneous Appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

kkn



To

1. The Motor Accident Claims Tribunal,
Chief Judge, Chennai.

2. COPY TO
The Section Officer,
VR Section,
High Court, Madras-104.

+1cc to Mr.K.Moorthy, Advocate, S.R.No.13846

+2cc to Mr.S.G.Emberumanar, Advocate, S.R.No.13275

C.M.A.No.2164 of 2017 and
C.M.P.No.11472 of 2017

AK-II (CO)
CT 16/06/2022