

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Order	Date of Pronouncing the Order
02.03.2022	22.03.2022

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CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN
C.M.A(MD)No.819 of 2021

1.Pavithra

2.Minor Rithanyasree
(Rep by her natural guardian & mother
The 1st appellant herein)

3.Muthupetchiammal

4.Muthukaamu ... Appellants/Claimants
vs

1.Palanisamy

2.The Branch Manager,
New India Assurance Co.Ltd.,
No.722201, Anusham Complex,
D.No.1/1, 1/2, 1/3 Basement,
Palani Main Road, Udumalaipettai,
Tiruppur District. ... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act praying this Court to set aside the judgment and decree made in M.C.O.P.No.247 of 2017 by the Additional District and Sessions Court (Fast Track Court), Palani, dated 03.07.2021 and enhance the award amount and fix the liability upon the 2nd respondent to pay the compensation to the appellants.

For Appellants : Mr.D.Venkatesh

For R2 : Mr.J.S.Murali

For R1 : No appearance

JUDGMENT

The claimants are the appellants herein. The claim petitioners have preferred MCOP No.247 of 2017 before the learned Additional District & Sessions Court (Fast Track Court), Palani, claiming compensation for the death of the Thavaselvean on the road accident that taken place on 28.07.2017.



2.The brief case of the appellants/claimants is as follows:-

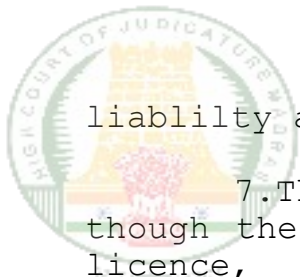
On 28.07.2017, when the deceased was riding a two wheeler, the Tractor having registration No.TN 41-U-2644 came from the opposite direction driven by his driver in a rash and negligent manner, dashed against the motor cycle in which the deceased traveled and caused the accident. In the accident, the deceased sustained severe injuries and subsequently, succumbed to the injury sustained in the road transport accident. Hence, the claim petition.

3.The first appellant is examined as P.W.1 and the documents Ex.P1 to Ex.P7 were marked through her. The eye witness is examined as P.W2 on the appellants side. On the side of the second respondent, two witnesses were examined as R.W.1 and R.W.2 and two documents were marked as Ex.R1 and Ex.R2. The first respondent has not contested the case and remained ex parte.

4.When the deceased Thavaselvevan was proceeding in an Apache Motor cycle bearing Registration No.TN-57-AT-7096 towards north on Palani-Neikarapatty road near Karikaranputhoor Vannanduraimedu, the driver of the first respondent who drove the Tractor bearing Registration No.TN-41-U-2644 from opposite direction in a rash and negligent manner, dashed on the two wheeler in which the deceased traveled and caused the accident. According to the appellants, the accident was solely caused due to the rash and negligent driving of Tractor by the driver of the first respondent. The driver of the first respondent has not been impleaded in this case as party, whereas the owner of the Tractor is impleaded as first respondent in this case. But the first respondent has not contested the case and remained exparte. At the same time, the Tractor belongs to the first respondent has been insured with the second respondent, who is the Insurance Company. The second respondent has contested the case and filed its detailed counter.

5.The accident and the involvement of the Tractor belongs to the first respondent in the accident have not been denied by the second respondent, whereas the manner of the accident and the negligence on the part of the driver of the tractor have been denied by the second respondent. Ex.P2-Final Report reveals that the respondent police has laid charge sheet under Sections 279 and 304-A IPC after completion of investigation against one Marimuthu, S/o.Kalimuthu, who is said to have been the driver of the Tractor at the time of accident.

6.Based upon the findings, the tribunal has come to the conclusion that the driver of the tractor is rash and negligent and he does not possess any driving licence on the date of the accident. Accordingly, the Tribunal exonerated the Insurance Company and fasten the liability upon the owner of the vehicle, namely, the first respondent. As against the finding of the Tribunal, the appellants have preferred this appeal on the point of



liability as well as the quantum.

7.The learned counsel for the appellants would contend that though the driver of the offending vehicle does not possess driving licence, the insurance company cannot be exonerated from the liability and they have to pay and recover and relied upon the **National Insurance Company Limited vs. Swaran Singh & others reported in 2004 (1) TNMAC 104 (SC)**.

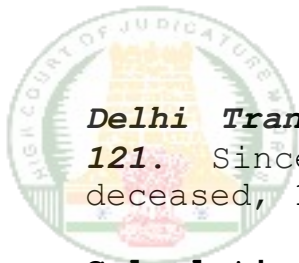
8.The learned counsel for the Insurance Company has relied upon the judgment reported in **2020 (2) TNMAC 455** in the case of **Beli Ram Vs Rajinder Kumar and another**. In the case law of Hon'ble Apex Court, it is held that "when a tort-feasor failed to renew the driving license within 30 days of expiry of driving license, as per the provision of the Motor Vehicle Act, the Insurance Company is not liable to pay compensation, as owner of the vehicle has committed breach of terms of policy by entrusting the vehicle to a person not possessing a valid driving license.

9. I had an occasion to consider the above decision in C.M.A.No.1706 of 2016, wherein I followed the decision rendered by brother Justice Mr.G.Jayachandran in C.M.A.No.1746 of 2015 and held that in respect of the Workmen compensation Act alone, for non-possession of the driving licence, the insurance company can be exonerated. However, when the claim petition is filed under Motor Vehicles Act, the Insurance Company may be directed to pay and recover the compensation amount from the owner of the vehicle. Accordingly, the order of the Tribunal exonerating the liability of the Insurance Company is hereby set aside and the Insurance Company is directed to pay the quantum of compensation fixed hereunder and recover the same from the owner of the vehicle.

10.On the point of quantum of compensation heard both sides.

11.As per Ex.P7-certificate of daily wages of deceased Thavaselvan by the Chittanathan Viboothi Manufacturing Company Viputhi manufacturing company, the deceased was earning Rs.12,000/- per month as an average and the deceased was 29 years old at the time of the accident. However, he has not produced any valid document and evidence to prove the same. Hence, in support of Ex.P7 no one was examined from the employer side, which also assumes to be significance.

12.Taking into consideration the facts pleaded by the appellants, I am of the considered view that the date of the accident being 28.07.2019, the monthly income of the deceased is fixed at Rs.8,000/-. Since he is aged about 27, following the Pranay Sethi's Case, he is entitled for 50% towards future prospectus. The proper multiplier to be adopted in the instant case is 17 as per the decision rendered in **Sarlavarma and others vs.**



Delhi Transport Corporation and another reported in (2009) 6 SCC 121. Since there are four dependents depending on the income of the deceased, 1/4th has to be deducted towards his personal expenses.

Calculation

Notional income = Rs.8,000/-
50% Future Prospects = Rs.4,000/-
Total = Rs.8,000 + Rs.4,000 = Rs.12,000/-

Loss of dependency

= Rs.12,000 X 12 X 17 - 1/4 deduction
= Rs.18,36,000/-

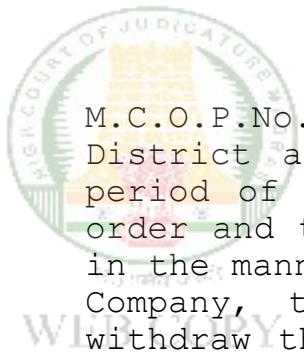
13. Apart from the above amount, the claimants are entitled to a sum of Rs.15,000/- towards 'funeral expenses' and a sum of Rs.15,000/- towards 'Transport Expenses'. The first appellant herein is entitled to a sum of Rs.40,000/- towards 'loss of consortium'. The appellants 2 to 4 herein are entitled to a sum of Rs.40,000/- each, towards 'loss of love and affection'.

14. Accordingly, the award of the Tribunal in M.C.O.P.No. 247 of 2017 is modified as follows:-

Sl. No.	Particulars	Amount granted by the Tribunal	Amount granted by this Court
1	Loss of dependency	Rs.10,71,000/-	Rs.18,36,000/-
2.	Funeral Expenses	Rs.20,000/-	Rs.15,000/-
3.	Transport Expenses	Rs.20,000 /-	Rs.15,000 /-
4.	Loss of love and affection	Rs.30,000/-	Rs.1,20,000/-
5.	Loss of Consortium to the first appellant	Rs.50,000/-	Rs.40,000/-
	Total	Rs.11,91,000/-	Rs.20,26,000/-

The compensation awarded by the Tribunal is enhanced from Rs.11,91,000/- to Rs.20,26,000/- which shall carry interest at the rate of 7.5% per annum.

15. In the result, this Civil Miscellaneous Appeal is partly allowed. The quantum of compensation awarded by the Tribunal is enhanced from Rs.11,91,000/- to Rs.20,26,000/- which shall carry interest at the rate of 7.5% per annum. The appellants/claimants are directed to pay the Court fee, if any, for the enhanced compensation amount and the Registry is directed to draft the decree only after the receipt of Court fee. The second respondent herein - New India Assurance Company Limited is directed to deposit the entire compensation of Rs.20,26,000/- (if not already deposited) together with interest at the rate of 7.5% per annum from the date of deposit till the date of deposit to the credit of



M.C.O.P.No.247 of 2017 on the file of the learned Additional District and Sessions Court (Fast Track Court), Palani, within a period of eight weeks from the date of receipt of a copy of this order and then to 'recover' the same from the owner of the vehicle, in the manner known to law. On such deposit being made by Insurance Company, the appellants 1, 3, and 4 herein are at liberty to withdraw the same, as apportioned by the Tribunal, after following due process of law. The second appellant herein is a minor, and therefore, her share of compensation amount is ordered to be deposited in any one of the nationalized bank until she attains majority and the first appellant is permitted to withdraw the interest directly from the bank, once in three months in order to maintain the minor. No costs.

Sd/-

Assistant Registrar(CS-II)

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Sub Assistant Registrar(CS)

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To

1.The Additional District and Sessions Judge (Fast Track Court),
Palani.

Copy to

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

+1 CC to M/s.D.VENKATESH, Advocate (SR-13700[F] dated 23/03/2022)

+1 CC to M/s.J.S.MURALI, Advocate (SR-13769[F] dated 23/03/2022)

JUDGMENT MADE IN
C.M.A(MD)No.819 of 2021
22.03.2022

ks (CO)

TR(01.04.2022) 5P 6C