



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.01.2022

CORAM :

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THE HONOURABLE MRS.JUSTICE S.ANANTHI

C.M.A.(MD)No.256 of 2018

and

C.M.P.(MD)No.3736 of 2018

The Divisional Manager,
United India Insurance Company Ltd.,
74-A, Salai Road,
Thilai Nagar,
Trichy.

...Appellant/2nd Respondent

Vs.

1.J.Vasumathi Mary @ Vasumathy
2.M.Jebamalairaj
3.Murali Krishnan

...1st & 2nd Respondents/Petitioners
...3rd Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988, to set aside the decree and judgment, dated 04.07.2017 made in M.C.O.P.No.599 of 2013 on the file of the Motor Accidents Claims Tribunal/Special District Judge, Trichy.

For Appellant :Mr.A.Ilango

For R3 :Mr.J.Alaguram Jothi

For R1,R2 :Mr.N.Sudhagar Nagaraj

JUDGMENT

This Civil Miscellaneous Appeal has been filed to set aside the decree and judgment, dated 04.07.2017 made in M.C.O.P.No.599 of 2013 on the file of the Motor Accident Claims Tribunal, Special District Judge, Trichy.

2.It is a case of fatal accident. On 26.08.2011 at about 06.45 p.m., the deceased Micheal Selvaraj was proceeding from Kattur to Trichy on first respondent's bus was driven by its driver in a rash and negligent manner and the when bus was came near 'G' Corner, Ponmalai on Trichy to Chennai bye pass road, the driver of the bus drove the vehicle at a hectic speed in a rash and negligent manner and suddenly applied break heavily and the deceased, who was



standing in the platform above the foot board was thrown from the bus and one lorry was dashed against and ran away. Due to the said accident, the deceased sustained multiple grievous fatal injuries all over his body and he was taken to the Government Hospital, Trichy as an inpatient but inspite of the treatment, he died.

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3.The claimants have filed a claim petition in M.C.O.P.No.599 of 2013 on the file of the Motor Accident Claims Tribunal/Special District Judge, Tiruchirappalli seeking compensation of Rs.10,00,000/-.

4.Before the Tribunal, on the side of the claimants, two witnesses were examined as P.W.1 and P.W.2 and marked four documents as Exs.P1 to P4. On the side of the respondents, two witnesses were examined as R.W1 and R.W.2 and marked two documents as Ex.R1 and Ex.R2.

5.The Tribunal, after considering the pleadings, oral and documentary evidences and the arguments of the counsel for the claimants and the respondents and also on appreciating the evidences on record, held that the accident occurred only, due to the rash and negligent driving of the driver of first respondent and directed the appellant and the third respondent herein to pay a sum of Rs.15,88,600/- as compensation with 7.5% interest.

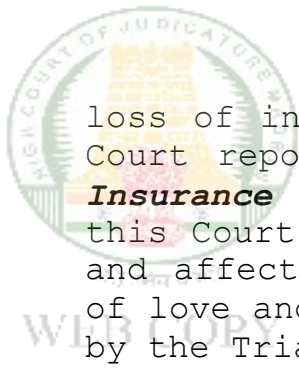
6.Against which, the appellant/United India Insurance Company Ltd., has filed this present appeal to set aside the award of compensation passed by the Tribunal.

7.Heard Mr.A.Ilango, learned counsel appearing for the appellant and Mr.J.Alaguram Jothi, learned counsel appearing for the third respondent and perused the materials available on record.

8.The learned counsel for the appellant contended that the deceased fell down from the bus while he was travelling in the footboard of the bus and a lorry coming from behind has run over the deceased. So some contributory negligence fixed on the deceased. But the Tribunal has fixed entire negligence only on the driver of the bus. Hence, it requires modification.

9.A perusal of records, it is seen that one D.Dhanasekar, who was examined as PW2 stated in his evidence that on the occurrence date, when he was also travelling with the deceased and both of them were standing above the footboard of the bus, the bus driver suddenly applied break in the speed brake and due to which, the deceased was thrown out of the bus and a lorry which came behind it ran over the deceased and he died. Even as per evidence of PW2, the deceased travelled on a footboard. But as per the rough sketch Ex.R2, there was no speed break near the occurrence place. Hence, 10% liability fixed on the deceased, since he travelled on the

<https://hcs.e-courts.gov.in/hcs/Services> Whether the Tribunal has awarded Rs.2,00,000/- towards



loss of income. But as per the decision of the Honourable Supreme Court reported in **(2018) 18 SCC 130** in the case of **Magma General Insurance Company Ltd, Vs. Nanu Ram alias Chuhru Ram and others**, this Court awards Rs.40,000/- each for loss of love and affection. Hence, this Court awarded Rs.80,000/- towards loss of love and affection to the claimants. All the other heads awarded by the Trial Court are hereby confirmed.

10. Accordingly, the claimants are entitled for compensation as follows:

S. No.	Description	Amount awarded by		Award confirmed / enhanced / granted
		Tribunal	this Court	
1.	Loss of dependency	Rs. 12,63,600/-	Rs.12,63,600/-	confirmed
2.	Funeral and Transportation Expenses	Rs. 25,000/-	Rs. 25,000/-	confirmed
3.	Love and Affection for parents	Rs. 2,00,000/-	Rs. 80,000/-	modified
4.	Loss of estate	Rs. 1,00,000/-	Rs. 1,00,000/-	confirmed
Total		Rs. 15,88,600/-	Rs.14,68,600/-	

with interest at 7.5% p.a., as awarded by the Tribunal, from the date of claim petition till the date of realization.

11. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed.

(ii) The quantum of compensation awarded by the Tribunal is reduced from Rs.15,88,600/- to Rs.14,68,600/- with interest at the rate of 7.5% per annum.

(iii) The appellant/United India Insurance Company Ltd., is directed to deposit 90% of compensation amount i.e., Rs.13,21,740/- (Rupees Thirteen lakhs twenty one thousand seven hundred and forty only) less the amount already deposited, together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of M.C.O.P.No.599 of 2013 on the file of the Motor Accidents Claims Tribunal/Special District Judge, Trichy, within a period of six weeks from the date of receipt of a copy of this order.

(iv) On such deposit being made, the first and second respondents/claimants are entitled to withdraw their respective



share as per the ratio of apportionment made by the tribunal. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-II)

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Sub Assistant Registrar(CS)

vsd

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 Accidents Claims Tribunal/
Special District Judge,
Trichy.

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

+1 CC to M/s.A.ILANGO, Advocate (SR-1599[F] dated 12/01/2022)

+1 CC to M/s.N.SUDHAGAR NAGARAJ, Advocate (SR-1033[F] dated 10/01/2022)

+1 CC to M/s.J.ALGURAM JOTHI, Advocate (SR-1100[F] dated 11/01/2022)

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RK(14/02/2022) 4P 7C