



C.M.A.No.1192 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.10.2023

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

Civil Miscellaneous Appeal No.1192 of 2021

1. K.Tamilarasi
 2. Minor. S. Dhanveer
[Minor rep. by his mother/
K.Tamilarasi, 1st appellant herein]
 3. Thulasimani
 4. Subramani (Died)
- ... Appellants/Claimants

Vs.

1. The Managing Director,
Tamil Nadu State Transport Corporation,
Chennimalai Road, Erode.
 2. V.Yuvaprakash
 3. National Insurance Company Limited,
Rajaji Street, Kangeyam.
- ... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Award and Decree, dated 10.09.2020 made in M.C.O.P.No.923 of 2018 on the file of the Motor Accidents Claims Tribunal, Special Court, Kangeyam.

For Appellants	:	Mr. Ma. P. Thangavel For Mr. B. Devagi Thangavel
For R1	:	Mr. M. Murali Vinodh For Mr. A. Sundaravadhanam



C.M.A.No.1192 of 2021

JUDGMENT

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This Civil Miscellaneous Appeal has been filed by the claimants challenging the finding of the Tribunal that the claimants are also contributed for the accident in the Award passed in M.C.O.P.No.923 of 2018, dated 10.09.2020, on the file of the Motor Accidents Claims Tribunal, Special Court, Kangeyam, wherein, the Tribunal has held that the deceased in this case has also contributed for the accident and awarded 50% of quantified compensation.

2. The parties are referred to hereunder according to their litigative status and ranking before the Tribunal.

3. The case of the claimants are as follows:

The claimants are the dependants of the deceased one Senthilkumar. On 30.09.2017 at about 11.15 p.m., the deceased Senthilkumar was driving Omni car bearing Registration No.TN 38 AS 6723 from Kangeyam to Erode. While he was reached near Government School, Sillangkattupudur, Kangeyam-Erode road, a bus bearing Registration No.TN 39 N 0193 belongs to the first respondent-Transport Corporation came in the opposite direction in high speed which was driven in rash and negligently, dashed on the Omni Car, which resulted in causing



C.M.A.No.1192 of 2021

injuries to the person travelled in the Omni Car. The deceased Senthilkumar had sustained multiple grievous injuries and died on the way to Hospital. A criminal case was also registered only against the driver of the bus in Crime No.223/2017 under Sections 279, 304 A of IPC on the file of the Arachalur Police Station. He was aged about 37 years and his dependants who are his wife, son and the parents have filed Claim Petition seeking compensation of Rs.25,00,000/- by invoking Section 166 of the Motor Vehicles Act.

4. The first claimant is wife of the deceased Senthilkumar, the second claimant is the son and the third and fourth claimants are the parents of the deceased Senthilkumar.

5. The first respondent-Transport Corporation filed counter and contended that the accident was not occurred due to the negligent driving of the driver of the bus and the Omni car driver has driven the vehicle and suddenly entered into the middle of the road inspite of his precautionary efforts taken by the bus driver, the accident had taken place. Hence, the driver of the bus is not responsible for the accident and the first respondent is not liable to pay any compensation to the claimants.



C.M.A.No.1192 of 2021

6. The second respondent, who is the owner of the Omni car has not contested the claim and was remained ex-parte.

7. The third respondent who is the insurer of the Omni car filed counter and contended that the deceased is the owner of the Omni car and without entering his name in the R.C book, he was using the car. The accident had occurred only due to the negligence of the bus driver, hence this respondent is not liable to pay any compensation to the injured/claimants. Hence, prays to dismiss the claim against the respondent Nos.1 and 3.

8. Before the Tribunal, on the side of the petitioners, P.W.1 and P.W.2 were examined and Exs.P1 to P15 were marked. On the side of the first respondent, R.W.1 was examined and no documents marked. On the side of the third respondent no witness and documents marked.

9. The Tribunal after considering the evidences placed on record, in Point No.1 has held that the deceased has also contributed for the accident. Hence both the drivers are equally responsible for the accident taken place. In Point No.2, the Tribunal has quantified the compensation and



C.M.A.No.1192 of 2021

awarded a sum of Rs.6,52,500/- i.e., 50% of the total compensation quantified to be paid by the first respondent and the claim against other respondents are dismissed.

10. Aggrieved over the finding of the award that the deceased in this case has also contributed to the occurrence and also seeking enhancement of compensation under other heads, this appeal has been filed.

11. The learned counsel for the appellants submitted that the Tribunal has not properly appreciated the evidence adduced on the side of the claimants has held that since Rough Sketch was not produced before the Tribunal, it was not in a position to arrive any conclusion regarding the manner in which, the accident was occurred. However, based on the evidences adduced on the side of the respondents and without appreciating the evidences produced and more particularly, records relating to the criminal case and evidence of eyewitnesses, the Tribunal has wrongly held that the deceased in this case has contributed to the negligence and the same is liable to be set aside and compensation shall be awarded to the claimants as claimed by them. He has also stated that the Tribunal has not awarded



future prospects and the compensation awarded under other heads are also not proper. The learned counsel has also relied on the Judgment of the Hon'ble Apex Court in ***Mangla Ram vs. Oriental Insurance Company Limited and Others reported in 2018 (1) TN MAC 681 (SC)***, to contend that Spot Plan/ Rough Sketch is not a vital document to prove the accident and non-production of the same, is not fatal to the case of parties in claim petitions.

12. The learned counsel for the first respondent-Transport corporation has submitted that on the side of the Transport Corporation R.W.1 was examined and he had categorically stated about the manner in which the accident was taken place and the Tribunal after appreciating the evidences, gave finding against the deceased. Hence there is no need for modification and set aside the award of the Tribunal.

13. I have considered the rival submissions made on both sides and also perused the records available on record.

14. Before the Tribunal, the claimants had examined P.W.2, one Ramesh, who is the eyewitness to the occurrence on the side of the claimants. He has stated that on 30.09.2017, at about 11.15 p.m., he was



C.M.A.No.1192 of 2021

waiting in front of the Government Union Middle School at Sillangkattupudur to receive one of his relatives. A Maruthi Omni Car, bearing Registration No.TN 38 AS 6723 was coming from South to North direction on the left hand side of the road and at the same time, from North to South direction, a Transport Corporation Bus bearing Registration No.TN 39 N 0193 came in the opposite direction in high speed and directly hit on the Maruthi Omni car, which resulted in causing severe injuries to the deceased Senthilkumar. In the cross examination also, he has reiterated that the bus was driven in high speed.

15. The Respondent No.1 has examined R.W.1-driver of the bus who was stated that he had driven the bus with due care and caution and according to him, the Maruthi Omni Car driven on the left hand side of the road and he attempted to stop the bus, the Maruthi Omni Car hit on the right hand side of the bus and resulted in causing injuries to the deceased. In the cross examination, he has admitted that the criminal case was registered against him and Final Report was also filed and was contesting the criminal case, later, he was suspended from service.



16. The Tribunal in his award, discussed the manner in which the accident was taken place and the Tribunal has also discussed about the damages caused to both the vehicles. The Final Report was also filed before the Tribunal was marked as Ex.P5. In ***Bimla Devi and Others vs Himachal Road Transport Corporation and Others [2009 (13) SCC 530]***, the Apex Court has held that the evidence required to prove the negligence act on the part of the tortfeasor in the case of Motor Accident Claims is only a Preponderance of Probabilities and a strict rule of evidence is not applicable. The Tribunal has further held that, since Rough Sketch to indicate the accident spot, prepared by the police not produced and this has raised serious doubt regarding the evidence adduced on the side of the claimants.

17. Eventhough, Rough Sketch was not marked by either of the parties, the evidence of P.W.2 is being corroborated by the other documentary proof, including filing of Final Report against R.W.1. Since, the evidence of R.W.1 has not been corroborated by any other evidence, the Tribunal ought to have accepted the evidence of P.W.2 regarding the occurrence since the same is more probable than the evidence of R.W.1. Further, findings of the Tribunal that non-production of Rough Sketch



raised a doubt regarding the case of the claimants is also not proper. In view of the observations made by the Hon'ble Apex Court in ***Mangal Ram vs. Oriental Insurance Company Limited and Others***, the Apex Court has held that recordings made in the Site Plan/Rough Sketch indicating the spot where the accident has taken place is not the substantial piece of evidence and the same could not be the basis for assuming the manner in which, the accident was taken place unless there is other materials available to corroborate the same. In Paragraph No.23 read as follows:

“23. Be that as it may, the next question is whether the Tribunal was justified in concluding that the Appellant was also negligent and had contributed equally, which finding rests only on the site map (Exh. 2) indicating the spot where the motorcycle was lying after the accident? We find substance in the criticism of the Appellant that the spot where the motor vehicle was found lying after the accident cannot be the basis to assume that it was driven in or around that spot at the relevant time. It can be safely inferred that after the accident of this nature in which the Appellant suffered severe injuries necessitating amputation of his right leg above the knee level, the motorcycle would be pushed forward after the collision and being hit by a high speeding jeep. Neither the Tribunal nor the High Court has found that the spot noted in the site map, one foot wrong side on the middle of the road was the spot where the accident actually occurred. However, the finding is that as per the site map, the motorcycle was found lying at that spot. That cannot be the basis to assume that the Appellant was driving the motorcycle on the wrong side of the road at the relevant time.



Further, the Respondents did not produce any contra evidence to indicate that the motorcycle was being driven on the wrong side of the road at the time when the offending vehicle dashed it. In this view of the matter, the finding of the Tribunal that the Appellant contributed to the occurrence of the accident by driving the motorcycle on the wrong side of the road, is manifestly wrong and cannot be sustained. The High Court has not expressed any opinion on this issue, having already answered the issue about the non-involvement of the offending vehicle in favour of Respondent Nos. 2 & 3”.

18. With regard to the quantum of compensation awarded by the Tribunal is concerned, the Tribunal has fixed the notional income of the deceased as Rs.6,000/- per month. Considering the date of accident is on 30.09.2017, the learned counsel for the claimants submitted that the notional income fixed on the deceased is on the lower side and from the year 2017, it is the norms followed by the Court that fixing of Rs.15,000/- as the notional income, from the year 2015 onwards, by following the norms of fixing the notional income is Rs.15,000/- per month. Accordingly, the deceased who is the driver by profession and his notional income is fixed as Rs.15,000/- per month and his aged about 37 years, applicable multiplier is '15' and the dependants of the deceased is four in person reasonably deducted 1/4 as the personal expenses of the deceased and 40% added towards future prospects



C.M.A.No.1192 of 2021

and the total compensation arrived under the head of loss of income at

Rs.28,35,000/- $[(15000 \times 12 \times 15 \times 1/4) = 2025000 + 40\%]$.

19. As per the Judgment of the Hon'ble Apex Court in ***National Insurance Company Ltd., vs. Pranay Sethi and others [2017 (16) SCC 680]***, the claimants are entitled to get compensation under the head loss of consortium. The wife of the deceased is entitled to get compensation of Rs.40,000/- for spouse consortium and the son of the deceased is entitled to get parental compensation of Rs.40,000/- and the parents of the deceased is entitled to get Rs.40,000/- each i.e., Rs.80,000/- as Filial Consortium. Accordingly, the compensation awarded under the head of loss of consortium and loss of love and affection has been modified to Rs.1,60,000/-. As far as under conventional heads are concerned a sum of Rs.15,000/- each is granted under the head loss of estate and funeral expenses. The Tribunal has also awarded compensation under the head loss of guidance since loss of consortium is inclusion of compensation supports the parents guidance and this Court is of the view that granting compensation under the head loss of guidance is not necessary and the same is hereby rejected. Thus the compensation awarded by the Tribunal is



C.M.A.No.1192 of 2021

modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of income	Rs.10,80,000/-	Rs.28,35,000/-	Enhanced
2.	Loss of Love and affection	Rs.1,00,000/-	----	Rejected
3.	Loss of Consortium	Rs.50,000/-	Rs.1,60,000	Enhanced
4.	Loss of Guidance	Rs.50,000/-	----	Rejected
5.	Funeral Expenses	Rs.25,000/-	Rs.15,000/-	Reduced
6.	Loss of Estate	----	Rs.15,000/-	Granted
	Total Compensation	Rs.13,05,000/-	Rs.30,25,000/-	Enhanced by Rs.17,20,000/-

20. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal is at Rs.13,05,000/- is hereby enhanced to Rs.30,25,000/- [Rupees Thirty Lakhs and Twenty Five Thousand only] together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit. The first respondent/Transport Corporation is directed to deposit the award amount, now determined by this Court, along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.923 of 2018, on the file of the Motor Accidents Claims Tribunal, Sub Court, Kangeyam. On such deposit, the appellants/claimants are entitled to withdraw the



C.M.A.No.1192 of 2021

amount, now awarded by this Court, along with interest and costs, as per the apportionment fixed by the Tribunal, less the amount if any, already withdrawn. The Tribunal shall disburse the amount now awarded by this Court by directly giving credit to the Savings Bank Account of the claimants without any formal application. The share of the minor claimant is directed to be deposited in any one of the Nationalized Bank till the minor claimant attains majority. On such deposit, the first claimant, being the mother of the minor claimant is permitted to withdraw the accrued interest once in three months for the welfare of the minor claimant. In other aspects, the award of the Tribunal shall stand confirmed. There shall be no order as to costs in the present appeal.

11.10.2023

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Index:Yes/No

Speaking Order:Yes/No

Neutral Citation Case: Yes/No

To:

1. The Special Judge,
Motor Accidents Claims Tribunal, Kangeyam.
2. The Section Officer,
V.R.Section, High Court, Chennai.

K.RAJASEKAR,J.



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C.M.A.No.1192 of 2021

ssi

C.M.A.No.1192 of 2021

11.10.2023