



C.M.A(MD)No.1130 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 30.08.2023

Delivered on : 19.10.2023

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.M.A(MD)No.1130 of 2018

T.Sankarammal : Appellant/Petitioner

Vs.

1.D.Premkumar

2.The New India Assurance Company Limited,
Divisional Officer,
41/B, Victoria Street,
Thoothukudi – 1.

3.A. Marimuthu

4.The Branch Manager,
National Insurance Company Limited,
Divisional Office, S.N.High Road,
Tirunelveli.

: Respondents/Respondents

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, against the award, dated 06.03.2018 made in M.C.O.P.No.176 of 2012 on the file of the Motor Accident Claims Tribunal cum Principal Sub Court, Tenkasi, and enhance the compensation.



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For Appellant : Mr.D.Srinivasa Ragavan,
For Respondents : Mr.S.Lakshman, for R2.
: Mr.J.S.Murali, for R4.

J U D G M E N T

The Civil Miscellaneous Appeal is directed against the award passed in M.C.O.P.No.176 of 2012, dated 06.03.2018, on the file of the Motor Accident Claims Tribunal cum Principal Sub Court, Tenkasi.

2. The appellant/claimant, who was awarded with compensation of Rs.4,43,400/- payable by the second respondent for the death of Shanmuganathan, consequent to an accident occurred on 27.11.2011, challenged the contributory negligence fixed on the deceased and also the quantum of compensation awarded at by the Tribunal.

3. The case of the claimant is that on 27.11.2011, at about 02.00 pm., when the deceased Shanumuganathan was riding his two wheeler bearing Registration No. TN-76-J-9903, with one Manikandan as pillion rider from Courtallam to Kuthukalvalasai, Ilanii Road, near Kunnakudi Madam, a bus bearing Registration No. TN-69-AC-0709,



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which came in the opposite direction in a rash and negligent manner, dashed against the two wheeler and as a result of which, the rider Shanmuganathan was thrown out; that the said Shanmuganathan sustained head injury and other injuries; that the injured Shanmuganathan was immediately taken to Government Hospital at Tenkasi and after first aid treatment, he was referred to Tirunelveli Medical College Hospital and that despite treatment, he succumbed to the injuries on 28.11.2011 and that the accident was occurred only due to the rash and negligent driving of the bus driver.

4. It is the further case of the claimant that the deceased Shanmuganathan was working as a Teacher in Vetri Vikas Boys Higher Secondary School, Keeranur; that he was taking tuition classes for 11th and 12th standard and that he was getting monthly income of Rs.25,000/- and that he was aged 30 years at the time of accident.

5.The defence of the second respondent is that the deceased Shanmuganathan rode his motorcycle along with his friend Manikandan as pillion rider, after consuming Alcohol in north to south direction in a rash and negligent manner and dashed against the front left side of the



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bus and caused the accident and that the accident was occurred only due to the rash and negligent driving of the two wheeler.

6. The fourth respondent has also taken a stand that both the rider and the pillion rider were under the influence of Alcohol while driving the vehicle involved in the accident and that the rider of the vehicle was not holding any valid driving license at that time. The first and third respondents had remained ex-parte.

7. During trial, the claimant has examined herself as P.W.1 and examined one Gurusamy as P.W.2 and exhibited 10 documents as Ex.P.1 to Ex.P.10. On the side of the respondents, six witnesses were examined as R.W.1 to R.W.6 and three documents were exhibited as Ex.P.1 to Ex.P.6 and two witness documents were exhibited as Ex.X.1 and Ex.X.2.

8. The learned trial Judge, upon considering the evidence both oral and documentary and on hearing the arguments of both the sides, has passed the impugned award, dated 06.03.2018, holding that the deceased Shanmuganathan and the bus driver were responsible for the accident and fixed the contributory negligence at 50 % and thereby mulcted 50%



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liability on the second respondent and directed them to pay compensation of Rs.4,43,400/- with interest and cost. Aggrieved by the impugned award, the claimant has preferred the present appeal.

9. The points that arise for consideration are :

(i) Whether the Tribunal erred in fixing the contributory negligence on the part of the Shanmuganathan at 50%, despite showing that the accident was occurred due to the rash and negligent driving of the bus driver and that the same was proved by the claimant ?

(ii) Whether the impugned award, dated 06.03.2018 is liable to be interfered with ?

10. It is pertinent to note that the accident and the involvement of the two wheeler bearing Registration No.TN-76-J-9903 and a bus bearing Registration No.TN-69-AC-0709 are not in dispute.

11. It is the case of the claimant that the accident was occurred only due to the rash and negligent driving of the bus driver and whereas according to the second respondent, the accident was occurred only due



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to the rash and negligent riding of the two wheeler by the deceased Shanmuganathan, who was in drunken state and hence, the bus driver was not at fault.

12. The claimant, in order to prove the mode of the accident, has examined P.W.2 alleged to be the occurrence witness. P.W.2 would say that while he was proceeding to his agricultural fields in national high way from south-north, the deceased Shanmuganathan was proceeding in his two wheeler from south-north and on the left side of the road and at the place near Kunnakudi Madam, the bus which came in the opposite direction in a rash and negligent manner, had dashed against the two wheeler and as a result of which, the rider Shanmuganathan had sustained serious injuries and that subsequently, succumbed to the injuries.

13. In cross examination made on behalf of the second respondent, P.W.2 would say that he is not a relative to the claimant; that he has not preferred any complaint before the Police; that he has not admitted the injured in the hospital; that the two wheeler was proceeding from south to north at that time and that both the vehicles had dashed against each



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other directly. During cross examination made on behalf of the fourth respondent, P.W.2 would say that the bus driver has lodged the complaint to the Police; that the accident was occurred only due to the negligence of the bus driver and that he had seen the accident.

14.The second respondent has examined bus driver as R.W.3, who has preferred the Police complaint and he would say that he was proceeding in his bus from south-north; that the two wheeler rider had dashed against the front left side of the bus. In cross examination made on behalf of the claimant, he would say that the accident was occurred at 02.15.pm., and immediately after accident, he went to the Police Station; that the persons were working in the nearby fields at the time of accident and that the road portion, where the accident was occurred, was a curved portion.

15. The second respondent has also summoned and examined the Special sub Inspector of Police and he would say that on the basis of the complaint given by R.W.3, F.I.R., came to be registered; that the deceased Shanmuganathan and his friend Manikandan were found in drunken state and that the accident was occurred only due to the



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negligence of the deceased and hence, a final report was filed as abated and on that basis, RCS notice was served and that he has not conducted the investigation of the above case.

16. As rightly pointed out by the learned trial Judge, in Ex.X.1/rough sketch prepared by the Police during investigation, the accident was shown to be occurred on the middle of north-south curve road. Admittedly, on the basis of the compliant lodged by R.W.3/driver of the bus, F.I.R., came to be registered against the deceased Shanmuganathan and that the jurisdictional Police, after completing the investigation, has filed the final report as charge abated.

17. As rightly contented by the learned counsel for the appellant, the filing of the final report against a particular person or finding of a criminal Court mulcting responsibility on a particular person are not binding on the Tribunal and the Tribunal is duty bound to consider the evidence placed before it and to decide as to who is responsible for the accident.



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18. In Ex.P.3/Motor Vehicle Inspector's inspection report for the bus, damages were shown to have occurred FL Bumper damaged; FL parking damage and whereas in Ex.P.3, it has been shown that FR FL indicator damaged for the motor vehicle. With regard to the contention of the second respondent that the deceased was in drunken state at the time of accident, the Tribunal taking note of the evidence of the Medical Officer, who attended the deceased in Tenkasi Government Hospital and the AR issued under Ex.R.1 and also the post-mortem certificate under Ex.P.2, has rightly come to the decision that there is no evidence to prove that the deceased was under the influence of Alcohol at that time.

19. But at the same time, considering the evidence of P.W.2, R.W.3 and R.W.4 and taking note of the rough sketch under Ex.X.1 and motor vehicle inspection reports of the two vehicles under Ex.P.3 and Ex.P.4, the finding of the Tribunal that the deceased as well as the bus driver were equally responsible for the accident and that since there was head on collision between the two vehicles, was inclined to fix the contributory negligence at 50 % each, cannot be found fault with.



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20. Admittedly, the second respondent has not preferred any appeal or cross objection to challenge the finding of the Tribunal mulcting 50% of the liability on it.

21. Now turning to the quantum of compensation, it is evident from Ex.P.7 to Ex.P.9 that the deceased was holding M.A., B.Ed. Though the claimant has alleged that the deceased was working in Vetri Vikas Boys Higher Secondary School, Keeranur and was getting Rs.4,500/- and was getting Rs.20,500/- from tuition classes, she has not produced any iota of evidence to prove the same.

22. The Tribunal in the absence of any evidence for income, has notionally fixed the monthly income of the deceased at Rs.6,000/-. But the learned counsel for the appellant would submit that the monthly income fixed by the Tribunal is very much low and ought to have fixed Rs.12,500/-. The Hon'ble Supreme Court in *Syed Sadiq Vs. United India Insurance Company* reported in **2014 (1) TN MAC 459** has fixed the monthly income at Rs.6,500/- for a vegetable vendor. The Hon'ble Division Bench of this Court in *Managing Director, State Transport Corporation, Coimbatore, Vs. P.Jegannathan and others* reported in **2019**



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ACJ 1806, has filed the notional income on the basis of the cost inflation index notification, dated 13.06.2006 issued by the Central Board of Direct Taxes. As per the said index, the cost of inflation index for the year 2008 – 2009 is '137' and for the year 2011-2012 is '184' and taking notional income fixed by the Hon'ble Apex Court for the vegetable vendor at Rs.6,500/-, during the year 2008 – 2009, this Court fixes the monthly income of the deceased at Rs.8,729/- rounded off Rs.8,700/- **(Rs.6,500 x 184 /137)**.

23. It is evident from Ex.P.9 that the deceased Shanmuganathan was born on 04.04.1981 and as such, he was aged 31 years at the time of accident. Admittedly, the Tribunal has not awarded any amount towards future prospects. The Hon'ble Supreme Court in **National Insurance Company Limited vs. Pranay Sethi and others** reported in **2017 ACJ 2700**, has concluded that the deceased was self employed or on a fixed salary, an addition at 40% of the established income should be the warrant, where the deceased was below the age of 40 years. An addition of 25% where deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. Applying the above



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decision of the Honourable Apex Court, 40 % of the income is only to be added towards future prospects and it comes to Rs.12,180/- per month. (Rs.8,700/- + 40%)

24. Since the deceased was a bachelor, 50 % of the income is to be deducted for personal and living expenses of the deceased and after such deduction, the income would be Rs.6,090/-. As per the decision of the Hon'ble Supreme Court in **Smt.Sarla Varma and others Vs. Delhi Transport Corporation and another** reported in AIR 2009 SC 3104, the appropriate multiplier would be '16'. Hence, the loss of dependency would be **Rs.11,69,280/-** (Rs.6,090 x 12 x 16).

25. The Tribunal has awarded Rs.15,000/- towards funeral expenses and Rs.15,000/- towards loss of assets. The Tribunal has not awarded any amount towards consortium. Our Honourable Apex Court in **National Insurance Company Limited vs. Pranay Sethi and others** reported in 2017 ACJ 2700, has permitted to award Rs.40,000/- towards spousal consortium. But, subsequently Honourable Supreme Court in **Magma General Insurance Company Ltd, Vs. Nanu Ram alias Chuhru Ram and others** reported in (2018) 18 SCC 130, has held that



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the right to consortium would include the company, care, help, comfort, love and affection, guidance, solace, etc., which is a loss to his family.

Honourable Supreme Court interpreted consortium to be a compendious term, which encompasses (i) spousal consortium, to be awarded to the surviving spouse, (ii) parental consortium to be awarded to the children upon the premature death of their parents and (iii) filial consortium to be awarded to the parents for the loss of their children. Recently, Honourable Apex Court in **The New India Assurance Company Ltd. Vs. Smt.Somwati and others**, has reiterated the above position and further held that the amount to be awarded for loss of consortium will be as per the amount fixed in **Pranay Sethi's** case. But, at the same time, they have specifically observed that no amount should be awarded under separate head of loss of love and affection.

26. Considering the above, the claimant being the mother of the deceased is certainly entitled to get Rs.40,000/- towards loss of filial consortium. The claimant is also entitled to get Rs.15,000/- towards loss of estate and Rs.15,000/- for funeral expenses under the conventional heads.



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27. Considering the above, this Court decides that the claimant is entitled to get compensation under the following heads:

Head of compensation	Amount awarded by the tribunal	Amount confirmed/modified by this Court
Loss of dependency	Rs. 8,56,800/-	Rs. 11,69,280/-
Funeral Expenses	Rs. 15,000/-	Rs. 15,000/-
Loss of Estate	Rs. 15,000/-	Rs. 15,000/-
Loss of consortium	-	Rs. 40,000/-
Total	Rs. 8,86,800/-	Rs. 12,39,280/-

28. Since this Court has fixed the contributory negligence at 50% on the part of the deceased, the claimant is entitled to get a sum of **Rs.6,19,640/-**. Considering the other facts and circumstances, this Court further decides that the parties are to be directed to bear their own costs and the above point is answered accordingly.

29. In view of the above, the Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the tribunal is enhanced **from Rs.4,43,400/- to Rs.6,19,640/-**. The second respondent/ Insurance Company is directed to deposit the modified amount with interest at 7.5% per annum, within a period of four weeks



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from the date of receipt of a copy of this judgment, if not already deposited and on such deposit, the claimant is permitted to withdraw the award amount with accrued interest and costs, less the amount already withdrawn, if any, by filing a necessary application before the Tribunal. The parties are directed to bear their own costs. Consequently, connected Miscellaneous Petition is closed.

19.10.2023

NCC : Yes/No
Index : Yes/ No
Internet : Yes/ No
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To

- 1.The Motor Accident Claims Tribunal
cum Principal Sub Court, Tenkasi.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

das

Pre-delivery order made in
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