BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 28.08.2023

PRONOUNCED ON:29.09.2023

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.M.A(MD)No.644 of 2019
and
C.M.P.(MD)No.7976 of 2019

The Branch Manager,
Reliance General Insurance Company Ltd.,
No.15/A, P.L.A.Kanagu Towers,
11th Cross street,
Thillai Nagar,
Trichy-18. : Appellant/Respondent No.2

Vs.

1.KR.Kaliammal
2.P.Velkani
3.P.Mathesh(minor)
4.P.Subasree(minor)
(Minor respondents 3 and 4
represented through their mother
and next friend 2nd respondent herein)
: Respondents 1 to 4 / Petitioners

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act,1988 against the award and decree dated 17.08.2017, passed in M.C.O.P.No.24 of 2012, on the file of the Motor Accident Claims Tribunal / Subordinate Judge, Devakottai.

For Appellant : Mr.V.Sakthivel

For Respondents :Mr.B.Muruganandam
for R.1 and R.2
: Minors R.3 and R.4 represented
by R.2
: R.5 – dispensed with.

JUDGMENT

This Civil Miscellaneous Appeal is directed against the award passed in M.C.O.P.No.24 of 2012, dated 17.08.2017, on the file of the Motor Accident Claims Tribunal / Subordinate Court, Devakottai.

2. The appellant/Insurer, who was made liable to pay the compensaiton of Rs.17,25,000/- with interest at 7.5%p.a., to the respondents 1 to 4/claimants for the death of one Prabhu consequent to an accident occurred on 25.04.2011, challenged the liability mulcted on it and also the quantum of compensation awarded at by the Tribunal.

3. The case of the claimants is that on 25.04.2011 at about 01.30p.m., when the deceased Prabhu was proceeding in a Eicher van bearing Registration No.TN-22-AB-5063 from Melur to Madurai and at the Melur Bye-pass road, a lorry bearing Registration No.TN-58-F-3462

which was proceeding in front of the Eicher Van which was driven carelessly and negligently and without any indication, was stopped suddenly and as a result of which, Eicher lorry dashed against the container lorry from behind, that the driver Prabhu and the cleaner had sustained serious injuries, that the driver Prabhu while taking to hospital, had succumbed to injuries and that the accident was occurred only due to rash and negligent driving of the driver of the container lorry. It is the further case of the claimants that the deceased was aged about 28 years at the time of accident and that he was working as a driver in goods lorry and was earning Rs.10,000/- p.m.

4. The defence of the appellant/Insurer is that the deceased Prabhu drove Eicher van in a rash and negligent manner and dashed against the back side of the parked lory, that F.I.R., was also registered against the deceased driver and that since the deceased was the tortfeaser, the second respondent is not liable for the claim. It is their further defence that the lorry driver was not possessing valid driving licence at the time of accident, that the first respondent-owner has violated the terms and conditions of the policy and permit concerned and that therefore, the second respondent is not liable for the claim.

5. During trial, the claimants have examined the first claimant – Kaliammal as P.W.1 and the brother of the deceased – Thiru.Muthusamy alleged to be occurrence witness as P.W.2 and exhibited 9 documents as Exs.P.1 to P.9. The appellant- Insurer has examined its official as R.W.1 and adduced no documentary evidence. The Tribunal, upon considering the evidence both oral and documentary and on hearing the arguments of both sides, has passed the impugned award dated 17.08.2017 by holding that the accident was occurred only due to the negligent driving of the container lorry driver, mulcted liability on the appellant-Insurer and directed them to pay compensation of Rs.17,25,000/- with interest and costs. Aggrieved by the impugned award, the Insurer has come forward with the present Civil Miscellaneous Appeal.

6. The appellant has filed a memo stating that since they have filed the appeal on the point of contributory negligence on the part of the deceased and challenging the quantum of compensation, notice to the fifth respondent may be dispensed with, as he has remained exparte before the Tribunal and the said memo was already recorded.

7. The learned Counsel for the appellant would submit that the Tribunal has failed to notice that even in the F.I.R., and the claim petition

of the respondents 1 to 4 that the fifth respondent/first respondent vehicle was standing in the road at the time of accident and that the Tribunal ought to have decided that the accident had occurred due to the negligence on the part of the deceased and dismissed the claim petition. The learned Counsel would further submit that the Tribunal had added future prospects, when the claimants have not proved the occupation and the income of the deceased, that the mode of calculation done by the Tribunal is not proper and that the amounts awarded under the heads of loss of consortium and loss of love and affection are on the higher side.

8. The points that arise for consideration are:

(1) Whether the Tribunal erred in deciding that the accident was occurred only due to the negligence of the container lorry driver, despite showing that the deceased Prabhu alone had driven the Eicher van in a rash and negligent manner and without keeping sufficient distance between the two vehicles and dashed against the backside of the parked lorry and thereby caused the accident?

(2) Whether the quantum of compensation arrived at by the Tribunal is just and proper and is in accordance with law?

9. The claimants in order to prove the mode of accident, have examined P.W.2 alleged to be the occurrence witness. P.W.2- Muthusamy is none other than the brother of the deceased and according to him, he travelled in the Eicher van along with his brother Prabhu and sustained injuries in the accident. P.W.2 in his chief examination would reiterate the contentions raised in the claim petition with regard to the mode of accident, that his brother was driving Eicher van and while they were proceeding in Madurai – Othakadai Bye pass road, the lorry bearing Registration No.TN-58-F-3462 which was driven in a negligent manner, was stopped suddenly and as a result of which Eicher van dashed against the backside of the container lorry. In cross-examination, he would reiterate the same version that since the container lorry was stopped by applying break suddenly, the Eicher van has dashed against the backside of the container lorry.

10. Admittedly, F.I.R., came to be registered against the deceased Prabhu. As already pointed out, according to the Insurer that the container lorry was parked on the side of the road on the previous day itself, due to repair and that the deceased, by driving his Eicher van in a rash and negligent manner had dashed against the backside of the

stationed container lorry. It is pertinent to note that P.W.1 – mother of the deceased in her cross-examination would admit that the van driven by her son had dashed against the stationed lorry and the relevant portion is extracted hereunder:

> " விபத்தன்று எனது மகன் வேன் ஓட்டிச்சென்றபோது ஏற்கனவே சாலை ஓரத்தில் நின்றிருந்த லாரியின் பின்னால் மோதி விபத்து ஏற்பட்டது என்றால் சரிதான்"

11. The Insurer has examined its officer Tmt.Anjana Devi as R.W.1 and admittedly she is not the occurrence witness. Though R.W.1 in her cross-examination would say that they are going to examine the container lorry driver, they have not chosen to examine him. As rightly contended by the learned Counsel for the appellant, even assuming for arguments sake, that the container lorry was stopped suddenly, it is not the case of the claimants nor P.W.2 that the deceased Prabhu was proceeding behind the lorry by keeping sufficient distance.

12. At this juncture, it is necessary to refer the judgment of the Hon'ble Supreme Court in ***Nishan Singh and others Vs. Oriental Insurance Company Limited through Regional Manager and others***

reported in ***(2018) 6 SCC 765,*** wherein also a defence was taken that the truck driver suddenly applied brake while the truck was in the centre of the road, the maruti car, which was proceeding behind the truck, collided with the truck from the back and the relevant passages are extracted hereunder:-

> "*10. .... The finding so recorded by the Tribunal has been affirmed by the High Court, by observing that the evidence was clearly indicative of the fact that the maruti car was being driven in a rash and negligent manner, which was the cause for accident of this nature and resulting in death of one of the passengers in the maruti car. The maruti car was driven by none other than PW-2 Manjeet Singh. In his evidence, he has admitted that the subject truck was running ahead of the maruti car for quite some time about one kilometre and at the time of accident, the distance between the truck and maruti car was only 10-15 feet. He has also admitted that the law mandates maintaining sufficient distance between two vehicles running in the same direction. It is also not in dispute that the road on which the two vehicles were moving was only about 14 feet wide. It is unfathomable that on such a narrow road, the subject truck would move at a high speed as alleged. In any case, the maruti car which was following the truck was expected to maintain a*

safe distance, as envisaged in Regulation 23 of the Rules of the Road Regulations, 1989, which reads thus:

> *"23. Distance from vehicles in front.-The driver of a motor vehicle moving behind another vehicle shall keep at a sufficient distance from that other vehicle to avoid collision if the vehicle in front should suddenly slow down or stop."*

The expression 'sufficient distance' has not been defined in the Regulations or elsewhere. The thumb rule of sufficient distance is at least a safe distance of two to three seconds gap in ideal conditions to avert collision and to allow the following driver time to respond. The distance of 10–15 feet between the truck and maruti car was certainly not a safe distance for which the driver of the maruti car must take the blame. It must necessarily follow that the finding on the issue under consideration ought to be against the claimants.

11. The Tribunal also noted that there was no evidence on record to indicate that the driver of the truck suddenly applied his brake in the middle of the road. Further, the finding on issue No.1 recorded by the Tribunal is that there was no evidence regarding exact place of occurrence of accident and having taken survey.

> *Therefore, the issue under consideration was answered against the appellants (claimants), namely, that the subject truck was not driven rashly and negligently by the truck driver nor had he brought the truck in the centre of the road at right side or applied sudden brake as being the cause of the accident. Being a concurrent finding of fact and a possible view, needs no interference."*

13. Regulation 23 of the Rules of the Road Regulations, 1989 contemplates that the driver of a motor vehicle moving behind another vehicle shall keep at a sufficient distance from that other vehicle to avoid collision if the vehicle in front should suddenly slow down or stop. The Honble Apex Court, in the above decision, by holding that sufficient distance i.e., a safe distance of two to three seconds gap in ideal condition is necessary to avert collision, has observed that the distance of 10–15 feet between the truck and maruti car was certainly not a safe distance, for which, the driver of the maruti car must take the blame.

14. No doubt, as rightly contended by the learned Counsel for the claimants, though the Insurer has taken a stand that the container lorry was parked on the previous day itself due to repair, they have not chosen to adduce any evidence to substantiate the same. It is not the specific case of the appellant/Insurer that the

container lorry was stopped with necessary indicators on the backside of the lorry so as to caution the vehicles coming behind. It is pertinent to note that the accident was occurred in day time ie., at 01.30p.m. Considering the evidence available on record, this Court has no hesitation to hold that the deceased Prabhu has also contributed to the accident and this Court fixes the same at 25%, Hence, the finding of the Tribunal that the container lorry alone was responsible for the accident cannot be sustained.

15. Now turning to the quantum of compensation, the Tribunal taking note of Ex.P.2 - postmortem certificate, Ex.P.5- transfer certificate and Ex.P.6 – driving licence, has fixed the age of the deceased as 28 years at the time of accident and the same is not disputed by the appellant/Insurer. As already pointed out, the claimants in their claim petition have stated that the deceased by working as a goods lorry driver, was earning Rs.10,000/- p.m.. But as rightly pointed out by the learned Counsel for the appellant, in the claim petition in Column -6, they have specifically mentioned the monthly income of the deceased as Rs.6,000/-. The Tribunal, by taking note of the monthly income noted in Column-6 of the claim petition has fixed the monthly income of the deceased at Rs. 6,000/- and as such, the same cannot be found fault with. The Tribunal, after deducting 1/4th of income towards personal living expenses of the

deceased, has then added the future prospects at 50%. As rightly contended by the learned Counsel for the appellant, the above mode of calculation is not correct. Regarding the future prospects, the Hon'ble Supreme Court in ***National Insurance Company Ltd., Vs. Pranay Sethi*** reported in ***2017(2) TNMAC 609 (SC)***, has held that if the deceased was self employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the 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.

16. Considering the above, an addition of 50% of the income towards future prospects is not proper and after addition of 40%, the monthly income would come to Rs.8,400/-. The Tribunal has rightly deducted 1/4th of the income towards personal and living expenses of the deceased and after such deduction, it would come to Rs.6,300/-. As per the dictum laid down by the Hon'ble Supreme Court in ***Sarla Verma and others Vs. Delhi Transport Corporation and another*** reported in ***2009(2) TNMAC 1 (SC),*** the Tribunal has rightly applied the multiplier "17" and hence, the loss of dependency would be Rs.12,85,200/- (Rs.

6,300/- x 17x12).

17. The Tribunal has awarded Rs.50,000/- for the second petitioner, Rs.25,000/- for the first petitioner and Rs.50,000/- each for the claimants 3 and 4 towards loss of love and affection and Rs.10,000/- towards transport expenses and Rs.10,000/- towards funeral expenses.

18. Our Hon'ble Supreme Court in ***Pranay Sethi***'s case has permitted to award Rs.40,000/- towards spousal consortium. But, subsequently, Hon'ble 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 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. Subsequently, Hon'ble 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 the separate head of loss of love and affection.

19. Considering the above, the first claimant being the mother of the deceased is entitled to get Rs.40,000/- towards loss of filial consortium, the second claimant being the wife of the deceased is entitled to get Rs.40,000/- towards spousal consortium and the claimants 3 and 4 being the children of the deceased are entitled to get Rs.40,000/- each towards loss of parental consortium. The claimants are also entitled to get Rs.15,000/- each towards loss of estate and funeral expenses respectively under the conventional heads. Accordingly, the claimants are entitled to get the compensation as follows:

Sl. No	Description	Amount awarded by the Tribunal Rs.	Amount awarded by this Court Rs.	Award confirmed or enhanced or granted
1	Loss of dependency	15,30,000	12,85,200	reduced
3	Loss of love and affection	1,75,000 (50,000+ 1,00,000+ 25,000)	---	----
4	Loss of consortium	-----	1,60,000 (Rs. 40,000/-x4)	granted
5	Funeral expenses	10,000	15,000	enhanced
7	Transport expenses	10,000	15,000	enhanced
	Total	**Rs. 17,25,000/-**	**Rs. 14,75,200/-**	**reduced**

After deducting 25% for contributing negligence, the total compensation is arrived at **Rs.11,06,400/-**(Rs.14,75,200 – Rs.3,68,800). 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 points are answered accordingly.

20. In the result, the Civil Miscellaneous Appeal is partly allowed The compensation awarded by the Tribunal to the claimants is reduced from **Rs.17,25,000/-/- to Rs.11,06,400 /-** along with interest at 7.5%pa., from the date of petition till the date of realization and costs. The

appellant– Insurance Company is directed to deposit the entire award amount along with accrued interest and costs, to the credit of above said M.C.O.P.No.24 of 2012, on the file of the Motor Accident Claims Tribunal / Subordinate Court, Devakottai, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this Judgment and on such deposit, the first claimant is entitled to withdraw Rs.2,00,000/- along with proportionate interest and costs and the second claimant is entitled to withdraw Rs.6,06,400/- along with proportionte interest and costs. The claimants 3 and 4 are entitled to get Rs.1,50,000/-/ each along with proportionate interest and costs. The claimants 3 and 4 being minors, the minors, share shall be deposited in any Nationalized Bank till they attain majority and till then, the second claimant/mother is entitled to withdraw the interest once in six months directly from the Bank, for the maintenance of the minor. Consequently, the connected Miscellaneous Petition is closed. The parties are directed to bear their own costs.

29. 09.2023

NCC : Yes : No
Index : Yes : No
Internet : Yes : No

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To

1.The Motor Accident Claims Tribunal/
Subordinate Court, Devakottai.

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

K.MURALI SHANKAR,J.

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PRE-DELIVERY JUDGMENT MADE IN

C.M.A(MD)No.644 of 2019

29.09.2023