



C.M.A.(MD) Nos.188 of 2009 & 1646 of 2010

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 04.09.2024

CORAM

THE HON'BLE MR.JUSTICE SUNDER MOHAN

C.M.A.(MD) Nos.188 of 2009 & 1646 of 2010

and

M.P.(MD) No.1 of 2009

C.M.A.(MD) No.188 of 2009

M/s.United India Insurance Company Limited,
represented by its Branch Manager,
Madurai.

... Appellant

Vs.

1.V.Karuthiah (Died)
S/o.Veerana Thevar

2.K.Kalavathy
W/o.Karuthiah

Minor.K.Selvendran (Died)
S/o.Karuthiah

3.K.Silamparasan
S/o.Karuthiah

4.Tamilnadu State Transport Corporation,
represented by its Managing Director,
Bye-Pass Road,
Dindigul, Dindigul District.

5.B.Nagarasan
S/o.Balurajan



C.M.A.(MD) Nos.188 of 2009 & 1646 of 2010

6.Theivendran
S/o.Late.Karuthaiah

7.Mahendran
S/o.Late.Karuthaiah

... Respondents

[R3, who was minor, was declared as major and the guardianship of his father (R1) was discharged *vide* court order dated 10.11.2020 made in C.M.P.(MD) Nos.10262 & 10264 of 2019 in these C.M.As.]

[R6 & R7 were brought on record as Lrs. of the deceased R1 *vide* court order dated 06.04.2023 made in C.M.P.(MD) No.10267 of 2019 in C.M.A.(MD) No. 188 of 2009]

Prayer:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to set aside or modify the judgment and decree passed in M.C.O.P.No.2098 of 2001 dated 21.08.2008 on the file of the Motor Accident Claims Tribunal cum Addl. District Court, (Fast Track Court No.I), Madurai.

For Appellant : Mr.C.Jawahar Ravindran

For R2, R3, R6 & R7 : Mr.K.Kumaravel

For R4 : Mr.M.Prakash

C.M.A.(MD) No.1646 of 2010

1.V.Karuthiah (Died)
S/o.Veerana Thevar



C.M.A.(MD) Nos.188 of 2009 & 1646 of 2010

2.Kalavathy
W/o.Karuthiah

3.Silambarasan
S/o.Karuthiah

... Appellants

Vs.

1.The Managing Director,
Tamilnadu State Transport Corporation,
Bye-Pass, Dindigul,
Dindigul District.

2.B.Nagarasan
S/o.Balurajan

3.The Branch Manager,
M/s.United India Insurance Company Limited,
Madurai.

4.Theivendran
S/o.Late.Karuthaiah

5.Mahendran
S/o.Late.Karuthaiah

... Respondents

[The 3rd appellant, who was minor, was declared as major and the guardianship of his father (1st appellant) was discharged *vide* court order dated 10.11.2020 made in C.M.P.(MD) Nos.10262 & 10264 of 2019 in these C.M.As.]

[R4 & R5 were brought on record as Lrs. of the deceased 1st appellant *vide* court order dated 06.04.2023 made in C.M.P. (MD) No.10266 of 2019 in C.M.A.(MD) No.1646 of 2010]



C.M.A.(MD) Nos.188 of 2009 & 1646 of 2010

Prayer:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to enhance the compensation awarded by fair and decreetal order dated 21.08.2008 made in M.C.O.P.No.2098 of 2001 on the file of the Motor Accident Claims Tribunal (Fast Track Court No.I/Addl. District Judge), Madurai.

For Appellants : Mr.K.Kumaravel

For R1 : Mr.M.Prakash

For R3 : Mr.C.Jawahar Ravindran

For R4 & R5 : Mr.M.Sridharan

COMMON JUDGMENT

The Insurance Company has filed C.M.A.(MD) No.188 of 2009 challenging the liability fixed on it by the Motor Accident Claims Tribunal (Fast Track Court No.I/Additional District Court), Madurai, *vide* its Judgment and Decree dated 21.08.2008 passed in M.C.O.P.No.2098 of 2001.

2. The claimants have filed C.M.A.(MD) No.1646 of 2010 challenging the finding of the Tribunal on negligence and seeking enhancement of compensation awarded by the Tribunal.



C.M.A.(MD) Nos.188 of 2009 & 1646 of 2010

3. For the sake of convenience, the rank of the parties before the

WEB COURT Tribunal is referred to.

4. The appellants in C.M.A.(MD) No.1646 of 2010 filed a claim petition before the Tribunal, stating that on 06.05.2001, at about 06.30 p.m., while the deceased was riding the motorcycle, owned by the second respondent and the insured with the Insurance Company [the appellant in C.M.A.(MD) No.188 of 2009], a bus belonging to the Tamil Nadu State Transport Corporation had overtaken the motorcycle ridden by the deceased and applied the break suddenly, as a result of which the deceased dashed against the bus, which resulted in the death of the deceased.

5. The claimants made the State Transport Corporation as the first respondent, the owner of the motorcycle ridden by the deceased as the second respondent, and the Insurance Company as the third respondent in the claim petition.

6. The State Transport Corporation filed a counter before the Tribunal, stating that the accident did not take place due to the negligence



C.M.A.(MD) Nos.188 of 2009 & 1646 of 2010

of its driver and that the deceased came from behind and dashed against the stationary bus, as a result of which the deceased sustained fatal injuries.

7. The Insurance Company [the appellant in C.M.A.(MD) No.188 of 2009] filed a counter, stating that the deceased did not have a valid driving licence; and that the accident took place only due to the negligence of the bus driver, and therefore, they are not liable to pay any compensation.

8. Before the Tribunal, the claimants examined P.W.1 and P.W.2 and marked Exs.P1 to P8. On the side of the respondents, R.W.1 to R.W.3 were examined, and Ex.R1 to R4 were marked.

9. The Tribunal, after taking into consideration the oral and documentary evidence, held that the State Transport Corporation is not liable to pay compensation since the bus driver was not guilty of rash and negligent driving and that the deceased had contributed 50% negligence to the accident, and therefore, the remaining 50% of the compensation has to be paid by the owner of the motorcycle and the Insurance Company.



C.M.A.(MD) Nos.188 of 2009 & 1646 of 2010

10. The learned counsel for the claimants submitted that the Tribunal passed a strange order inasmuch as it had directed 25% of the compensation to be paid by the owner of the insured motorcycle and remaining 25% to be paid by the Insurance Company [the appellant in C.M.A.(MD) No.188 of 2009], which is not in accordance with law; that the Tribunal had ignored the evidence of P.W.2, which would show that the accident took place only due to the negligence of the bus driver, and ought to have fixed contributory negligence on the bus driver; and that the compensation awarded by the Tribunal is meagre and therefore, prayed for enhancement.

11. The learned counsel for the Insurance Company [the appellant in C.M.A.(MD) No.188 of 2009] submitted that the finding of the Tribunal that the rider of the insured motorcycle was the tortfeasor and therefore, the Insurance Company is liable to pay 25% of the compensation is not in accordance with law and therefore prayed for allowing the appeal in C.M.A.(MD) No.188 of 2009.

12. The learned counsel for the State Transport Corporation, per contra, submitted that the finding of the Tribunal that the bus driver was



C.M.A.(MD) Nos.188 of 2009 & 1646 of 2010

not guilty of negligence is in accordance with the evidence on record as the driver was acquitted by the Criminal Court and that the evidence of R.W.1 would show that the rider of the insured motorcycle, namely, the deceased, was at fault.

13. The points for consideration in the instant appeals are: (a) whether the finding of the Tribunal on the liability is justified; and (b) whether the compensation awarded by the Tribunal is just and reasonable.

14. As regards the first question, it is seen that the claimants had examined P.W.2, the pillion rider of the insured motorcycle, and the eyewitness to the occurrence, who had stated that the bus driver overtook the insured motorcycle, and since the bus driver applied the break suddenly, the rider of the motorcycle, namely, the deceased, lost his control and dashed against the bus, which resulted in the death of the deceased.

15. The State Transport Corporation examined R.W.1, the bus driver, who had deposed that the bus was parked in the bus stop, the deceased came from behind and dashed against the bus, which resulted in



C.M.A.(MD) Nos.188 of 2009 & 1646 of 2010

the death of the deceased, and that he was acquitted by the learned Judicial Magistrate No.2, Madurai, *vide* Judgment dated 04.12.2007 in C.C.No.450 of 2002 and also marked Ex.R2, the rough sketch that was filed before the Criminal Court, and Ex.R1, the Judgment dated 04.12.2007 passed by the Criminal Court.

16. On perusal of the Judgment of the Criminal Court, it is seen that the police had investigated and filed a final report against the bus driver, stating that the accident took place because the bus driver applied the sudden brake and the deceased had collided with the bus from behind. The Judgment of the Criminal Court reveals that the prosecution therein had established that the bus driver applied sudden break but failed to establish under what circumstances he had applied sudden break, and the Criminal Court, by giving benefit of doubt, held that the bus driver was not guilty of an offence punishable under Section 304A of the Indian Penal Code.

17. The standard of proof before the Criminal Court and the standard of proof and the nature of enquiry before the Tribunal are different. The fact that the bus driver had applied a sudden break has been



C.M.A.(MD) Nos.188 of 2009 & 1646 of 2010

established by the claimants and has also been revealed from the records of the criminal case. However, the rider of the insured motorcycle, namely, the deceased, ought to have been careful.

18. Considering all the evidence on record, this Court is of the view that the accident took place predominantly due to the negligence of the deceased, and the contributory negligence of the bus driver cannot be ruled out. In the facts and circumstances, contributory negligence on the bus driver can be fixed at 30% and on the deceased can be fixed at the remaining 70%. The liability fixed by the Tribunal on the Insurance Company is not in accordance with law, and therefore, the Insurance Company as also the owner of the motorcycle are exonerated. Point No.1 is answered accordingly.

19. As regards the quantum of compensation, this Court finds that the notional income fixed by the Tribunal at Rs.3,000/- per month for the accident that took place in the year 2001 is justified. The Tribunal ought to have added 40% towards future prospects. The Tribunal has adopted the multiplier as 11, considering the age of the deceased's father, the first claimant. The multiplier applicable is 18, as the deceased was 20 years old



C.M.A.(MD) Nos.188 of 2009 & 1646 of 2010

at the time of the accident. Hence, the compensation under the head 'loss of income' would be Rs.4,53,600/- [Rs.3,000/- + $40/100 \times 12 \times 18 \times 50/100$ (since the deceased was a bachelor)].

20. The award of compensation under the head 'loss of love and affection' was Rs.20,000/-. Considering the year of the accident, the claimants would be entitled to Rs.15,000/- each, totalling Rs.60,000/- (Rs. 15,000 x 4) towards loss of love and affection.

21. As regards the compensation under the other heads, namely, 'transport expenses' and 'funeral expenses', at Rs.2,000/- and Rs.3,000/-, it is confirmed. Thus, the total compensation is modified as follows:

<i>Sl. No</i>	<i>Heads</i>	<i>Amount awarded by the Tribunal</i>	<i>Amount awarded by this Court</i>	<i>Award confirmed, enhanced or reduced</i>
1	Loss of Income	Rs.2,64,000/-	Rs.4,53,600/-	Enhanced
2	Loss of Love and Affection	Rs. 20,000/-	Rs. 60,000/-	Enhanced
3	Transport Expenses	Rs. 2,000/-	Rs. 2,000/-	Confirmed
4	Funeral Expenses	Rs. 3,000/-	Rs. 3,000/-	Confirmed
Total		Rs.2,89,000/-	Rs.5,18,600/-	Enhanced by Rs.2,29,600/-
After deducting 70% contributory negligence on the deceased (5,18,600 – 70/100), the total compensation would be Rs.1,55,580/-				



C.M.A.(MD) Nos.188 of 2009 & 1646 of 2010

22. The State Transport Corporation [the fourth respondent in C.M.A.(MD) No.188 of 2009/the first respondent in C.M.A.(MD) No. 1646 of 2010] is directed to deposit the aforesaid compensation of Rs.1,55,580/- together with interest at 7.5% from the date of the claim petition till the date of the realization, within a period of eight (8) weeks from the date of the receipt of a copy of this Judgment.

23. On such deposit, the claimants are entitled to the same as per the apportionment fixed by the Tribunal.

24. The second and fourth claimants [the second and third appellants in C.M.A.(MD) No.1646 of 2010/the second and third respondents in C.M.A.(MD) No.188 of 2009] are permitted to withdraw their shares along with proportionate interest, less the amount already withdrawn, if any, by filing an application before the Tribunal.

25. The first claimant [the first appellant in C.M.A.(MD) No.1646 of 2010/the first respondent in C.M.A.(MD) No.188 of 2009] died during the pendency of these C.M.As. The share of the first claimant shall be withdrawn equally by the second and fourth claimants [the second and



C.M.A.(MD) Nos.188 of 2009 & 1646 of 2010

third appellants in C.M.A.(MD) No.1646 of 2010/the second and third respondents in C.M.A.(MD) No.188 of 2009] and the other legal heirs [the sixth and seventh respondents in C.M.A.(MD) No.188 of 2009/the fourth and fifth respondents in C.M.A.(MD) No.1646 of 2010] along with the proportionate interest, less the amount already withdrawn by the first claimant during his lifetime, if any, by filing an application before the Tribunal.

26. The Insurance Company [the appellant in C.M.A.(MD) No.188 of 2009/the third respondent in C.M.A.(MD) No.1646 of 2010] is permitted to withdraw the amount deposited, if any, before the Tribunal, along with the accrued interest, by filing an application before the Tribunal.

27. In the result, C.M.A.(MD) No.188 of 2009 is allowed and C.M.A.(MD) No.1646 of 2010 is partly allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

04.09.2024

Index: Yes/ No
Neutral Citation: Yes / No
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C.M.A.(MD) Nos.188 of 2009 & 1646 of 2010

Copy To:

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- 1.The Addl. District Judge
Motor Accident Claims Tribunal (Fast Track Court),
Madurai, Madurai District.
- 2.The Section Officer,
V.R.Section,
Madurai Bench of Madras high Court,
Madurai.



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C.M.A.(MD) Nos.188 of 2009 & 1646 of 2010

SUNDER MOHAN, J.

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C.M.A.(MD) Nos.188 of 2009
& 1646 of 2010

04.09.2024