



C.M.A(MD)No.145 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.02.2024

CORAM:

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

and

THE HON'BLE MR JUSTICE K.K. RAMAKRISHNAN

C.M.A(MD)No.145 of 2019

and

C.M.P(MD)Nos.1845 & 1846 of 2019

The Branch Manager,
United India Insurance Company Limited,
Madurai Road, Virudhunagar.

: Appellant/2nd Respondent

Vs.

1.S.Kannan
2.K.Panchavarnam
3.Azhaguraj
4.K.Muthusamy

:1st to 3rd Respondents/1st to 3rd Petitioners
:4th Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act, 1988 to set aside the Judgment and Decree dated 12.12.2017 passed in M.C.O.P.No.66 of 2014 on the file of the Motor Accident Claims Tribunal/Subordinate Judge, Virudhunagar.

For Appellant : Mr.A.S.Mathialagan

For Respondents : Mr.S.Pon Senthil Kumaran for R1 to R3



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JUDGMENT

[Judgment of the Court was made by **K.K. RAMAKRISHNAN., J.**]

Being aggrieved over the award passed by the Motor Accident Claims Tribunal/Subordinate Judge, Virudhunagar in M.C.O.P.No.66 of 2014, dated 12.12.2017, the Insurance Company has filed the present appeal.

2.The appellant Insurance Company is the second respondent in M.C.O.P.No. 66 of 2014, on the file of the Motor Accident Claims Tribunal, Subordinate Judge, Virudhunagar. The respondents 1 to 3 are the claimants and the fourth respondent is the owner of the offending bus. The respondents 1 to 3 filed the claim petition in M.C.O.P.No.66 of 2014, claiming a sum of Rs.25,00,000/- (Rupees Twenty Five Lakhs only) as compensation for the death of the son of the respondents 1 and 2 and the brother of the third respondent in the accident that occurred on 23.01.2014. By the order, dated 12.12.2017, the Tribunal has awarded a sum of Rs.22,03,058/- (Rupees Twenty Two Lakhs Three Thousand and Fifty Eight only) as compensation.

3.Facts of the Case:-

According to the respondents 1 to 3, on 23.01.2014 at about 5.30 p.m., the deceased Alagupandian travelled as a passenger in a bus bearing Reg.No.TN-67-AJ-2282 belonging to the fourth respondent. When the said bus was proceeding



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from west to east on Sivakasi to Virudhunagar Main Road, the driver of the bus suddenly applied the brake. As a result of which, the deceased was thrown out from the bus and sustained multiple grievous injuries all over his body. Immediately, he was taken to the Government Hospital, Virudhunagar, where he was given first aid and then, was transferred to Government Hospital, Madurai. However, he was admitted in Jawahar Hospital, Madurai. When he was under treatment as inpatient, succumbed to the injuries during the course of treatment. The deceased was aged about 20 years studying B.E (EEE) first year in Srividhya Engineering College, Virudhunagar. The accident occurred only due to the rash and negligent driving of the driver of the bus. The fourth respondent is the owner and the appellant is the insurer of the offending bus. Therefore, the respondents 1 to 3 filed the claim petition, claiming a sum of Rs.25,00,000/- (Rupees Twenty Five Lakhs only) as compensation.

4.The appellant filed the counter statement and denied all the averments made in the claim petition and contended that the accident did not take place as alleged by the claimants in the petition. Due to overcrowd of passengers hanging on the foot steps, at Srividhya Engineering College Bus stop, the conductor of the bus alighted those passengers from the bus and then moved the bus to some distance. The deceased allegedly involved in the accident knowing well that if he ran behind the



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bus and got into it, he may be knocked down, carelessly chased the bus and attempted to enter into the bus through the front door way of the bus and fell down and sustained grievous injuries and succumbed to the said injuries by warranting the same himself. Hence, they prayed for dismissal of the claim petition.

5. Before the Tribunal, the first respondent examined himself as P.W.1 and another witnesses one Shenbagamanikandan and Gnanamani were examined as P.W.2 and P.W.3 and marked 25 documents as Exs.P1 to P25. The appellant examined one Karuppasamy, Conductor, as R.W.1 and marked Ex.R1.

6.Finding of the Tribunal:

The Tribunal, considering the pleadings, oral and documentary evidence and arguments of the counsel for the appellant and claimants held that the accident occurred only due to the rash and negligent driving by the driver of the bus and directed the appellant Insurance Company to pay a sum of Rs.22,03,058/-(Rupees Twenty Two Lakhs Three Thousand and Fifty Eight only) as compensation and the details as follows:

S.No.	Heads	Amount in Rupees
1	Loss of Earning	21,60,000/-
2	Medical expenses	13,058/-
3	Funeral expenses	15,000/-
4	Loss of Estate	15,000/-
Total		22,03,058/-



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Aggrieved over the same, the appellant filed this appeal.

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7.Submission of the learned counsel for the appellant:

(i) The learned counsel for the appellant Insurance Company submitted that the deceased was responsible for the accident. While he was trying to catch the running bus, he fell down and sustained grievous injuries and scummed to the said injuries. Hence, the negligence aspect was not properly considered by the Tribunal. The Tribunal, without properly appreciating the evidence of R.W.1, Conductor, erroneously came to the conclusion that the driver of the bus was responsible for the accident.

(ii) He also submitted that the Tribunal is not correct in taking 50% of the amount towards future prospectus and the Tribunal has erroneously deducted 1/3rd towards his personal expenses, which are not in accordance with law. Since the deceased was a bachelor, half of the salary has to be deduced. As per the judgment in *2017(2) TNMAC 609 (SC) [National Insurance Co. Ltd., v. Pranay Sethi]*, 40% of the salary to be added towards future prospectus.

(iii) The learned counsel further submitted that the Tribunal granted extraordinary award without following the guidelines issued by the Hon'ble Supreme Court.

8.Submission of the learned counsel for the respondents 1 to 3:



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(i) The learned counsel for the respondents 1 and 2/claimants submitted that the Conductor's evidence is not substantiated the specific plea that the deceased was sustained injuries when he was trying to board the running bus. Hence, the negligence aspect has properly appreciated by the Tribunal considering the evidence of the independent witness.

(ii) Insofar as quantum of compensation is concerned, the learned counsel for the claimants specifically submitted that the deceased was studying B.E (EEE), however, the Tribunal has fixed the monthly income at Rs.10,000/-, which is very meagre. Since the deceased was a student, 50% future prospectus has been awarded and hence, no interference is warranted by this Court. Hence, he seeks for confirmation of the finding of the Tribunal on quantum and also seeks for dismissal of this appeal.

9. Aggrieved against the said award, dated 12.12.2014, the appellant Insurance Company has filed the present appeal.

10. We have heard the learned Counsel appearing for the appellant and the learned counsel appearing for the respondents 1 to 3 and also perused all the materials available on record.

11. The following points arise for consideration of this appeal:

11.1. Whether the negligence is correctly fixed on the driver of the bus?



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11.2. Whether the compensation granted is in accordance with law?

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12. Discussion on the negligence:

It is the case of the claimants that on 23.01.2014 at 05.30 a.m. the deceased Alagupandian travelled as a passenger in a bus bearing Reg.No.TN-67-AJ-2282 belonging to the fourth respondent. When the driver of the bus suddenly applied the brake, the deceased was thrown out from the bus and sustained multiple grievous injuries all over his body. Though he was given treatment, succumbed to the injuries during the course of treatment. The deceased was aged about 20 years studying B.E (EEE) first year in Srividhya Engineering College, Virudhunagar. An FIR was registered against the driver of the bus. P.W.3, who is the eyewitness, cogently deposed that due to rash and negligent driving of the driver of the bus, the accident had occurred. Hence, his evidence is trustworthy and no materials were let in on the side of the appellant to doubt his testimony. In view of the above discussion, this Court finds no perversity in the findings of the Tribunal in fixing the negligence on the driver of the bus. Therefore, this Court confirms the finding of the Tribunal that driver of the bus drove his vehicle in a rash and negligent manner and suddenly applied the brake and caused the accident. Hence, the appellant/Insurance Company is liable to pay the compensation.

13. Discussion on quantum

<https://www.mhc.tn.gov.in/judis>



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The learned counsel for the appellant Insurance Company submitted that the Tribunal has granted extrorbitant amount of Rs.22,03,058/- as compensation. To appreciate the said contention, this Court perused the school certificate of the deceased and other relevant documents and observes as follows:

13.1. The deceased was studying B.E (EEE), he was aged about 19 years and he was a bright student interested in studies as well as extra curricular activities, which was revealed from the documents Exs.P.5 to P8. Though the Tribunal has considered the educational qualification and extra curricular activities of the deceased, fixed the monthly notional income as Rs.10,000/-, which is not in accordance with law. Hence, the monthly notional income fixed by the Tribunal is enhanced to Rs.13,000/-. The Tribunal has taken 50% of the monthly income as future prospectus and deducted 1/3rd from the salary for personal expenses of the deceased, which are not in accordance with law. Since the deceased was aged about 19 years, student and bachelor, 40% future prospects has to be added and half of the salary has to be deducted as per the judgment in **2017(2) TNMAC 609 (SC) [National Insurance Co. Ltd., v. Pranay Sethi]**. Hence, after adding 40% of the income and after deducting 1/2, and by applying multiplier '18', this Court hereby awards Rs.19,65,600/- $(13000 + 5200(40\%) = 18200 \times 12 \times 18 \times 1/2)$ towards loss of income.

In addition to that, this Court hereby awards the total amount of Rs.



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1,33,058/- under the following conventional heads

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Love and affection = Rs.80,000/-

Medical expenses = Rs.13058/-,

Funeral expenses = Rs.15,000/-,

Loss of estate = Rs.10,000/-,

Transportation = Rs.15,000/-.

Therefore, this Court is inclined to reduce the award passed in the M.C.No.66 of 2014, on the file of the Motor Accident Claims Tribunal, Subordinate Judge, Virudhunagar, **from Rs.22,03,058/- to Rs.20,98,658/-**. The rate of interest fixed by the Tribunal as 7.5% per annum is also confirmed.

14. Accordingly, this Civil Miscellaneous Appeal is partly allowed and the award passed by the Motor Accidents Claims Tribunal, Subordinate Judge, Virudhunagar, in M.C.O.P.No.66 of 2014, dated 12.12.2017 is hereby reduced to **Rs. 20,98,658/-**. The appellant Insurance Company is directed to deposit the reduced amount of **Rs.20,98,658/-** with proportionate accrued interest and costs, and can deduct the amount if already deposited, within a period of eight weeks from the date of receipt of a copy of this order. The claimants are entitled to withdraw the deposited amount as per the ratio fixed by the Tribunal. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-



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Assistant Registrar(CS.I)

/12/2024

Sub Assistant Registrar
(CS-I/II/III/IV)

skn/sbn

To

1.The Subordinate Judge,
Motor Accident Claims Tribunal,
Virudhunagar.

2.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.S.PON SENTHIL KUMARAN, Advocate (SR-8643[F] dated 01/03/2024)

+1 CC to M/s.A.S.MATHIALAGAN, Advocate (SR-8652[F] dated 01/03/2024)

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and

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29.02.2024

SL(20.12.2024)/ 10P/ 6C

Madurai Bench of Madras High Court is issuing certified copies in this format from 17.07.2023.