



C.M.A.(MD)No.398 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 03.11.2023

PRONOUNCED ON : 29.01.2024

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

C.M.A.(MD)No.398 of 2018

and

C.M.P.(MD)No.5061 of 2018

The Oriental Insurance Company
Limited,
Represented by its Manager,
Door No.16, North Veli Street,
Madurai District.

... Appellant / 2nd Respondent

Vs.

1.A.Pothumani

2.A.Priya

3.Minor. A.Karankumar

4.Minor. A.Prakash

...1-4th Respondents / 1-4th Petitioners

5.K.Sasitharan

... 5th Respondent / 1st Respondent



C.M.A.(MD)No.398 of 2018

(Minor respondents 3 and 4 are represented by their mother and guardian of 1st respondent Pothumani)

(5th respondent remained exparte before the lower Court)

PRAYER: Civil Miscellaneous Appeal filed under Order 173 of Motor Vehicles Act, 1988, against the Judgment and decree dated 30.01.2018 passed in M.C.O.P.No.74 of 2015 on the file of the Motor Accident Claims Tribunal cum VI Additional District Judge, Madurai.

For Appellant : Mr.E.Chandra Sekaran

For R-1 to R-4 : Mr.B.Elankumaran

For R-5 : No appearance

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the Judgment and decree dated 30.01.2018 passed in M.C.O.P.No.74 of 2015 on the file of the Motor Accident Claims Tribunal cum VI Additional District Judge, Madurai, by the appellant / Insurance Company challenging the liability as well as the quantum of the award passed by the Tribunal.



C.M.A.(MD)No.398 of 2018

2. For the sake of convenience, the parties are referred herein as per their rank before the Trial Court.

3. The brief facts in a nutshell are as follows:

(i) This is a fatal case. The 1st petitioner is the wife of the deceased. The 2nd petitioner is the daughter of the deceased. The 3rd and 4th petitioners are the sons of the deceased. The 1st respondent is the owner of the vehicle. The 2nd respondent is the Insurance Company in which the said vehicle was insured. On 09.10.2014 at about 5.00 A.M., while the petitioner namely Azhagar was walking from south to north above the left side of the Thirumangalam to Cholavanthan bridge, a Swaraj mazda samrat tipper vehicle bearing registration No. TN-75F-5406 belonging to the 1st respondent was driven by its driver which came from the same direction dashed against the deceased Azhagar. As a result of which, the deceased sustained multiple grievous injuries all over the body including head and he died on the spot. Later, the dead body was taken to the Thirumangalam Government Hospital for conducting postmortem.



C.M.A.(MD)No.398 of 2018

(ii) An FIR was lodged against the driver of the Swaraj mazda samrat tipper vehicle bearing registration No. TN-75F-5406 in Crime No. 504 of 2014 under Section 304 (A) I.P.C., before the Thirumangalam Police Station.

(iii) Since the deceased was serving as the backbone of his family, his legal heirs have filed a M.C.O.P.No.74 of 2015 before the Motor Accident Claims Tribunal cum VI Additional District Judge, Madurai, for seeking compensation of Rs.25,00,000/- (Rupees Twenty Five Lakhs only) for the loss of life of the deceased Azhagar.

(iv) Three issues were framed by the learned Tribunal. Following which three witnesses were examined and Ex.P-1 to Ex.P-15 were marked on the side of the petitioner. Three witnesses were examined and Ex.R-1 to Ex.R-6 were marked on the side of the respondents.

(v) The 2nd respondent had filed a counter refuting the allegations put forth in the claim petition. The 1st respondent remained exparte before



C.M.A.(MD)/No.398 of 2018

the Tribunal. On the basis of the oral and documentary evidence and the arguments submitted by the respective parties before the Tribunal, the learned Tribunal had proceeded to conclude that the accident had occurred only due to the rash and negligence of the driver of the 1st respondent's vehicle. Since the vehicle has been insured with the 2nd respondent Insurance Company, the 2nd respondent is entitled to indemnify the 1st respondent.

(vi) Though, the claimants contended that the deceased earned an amount of Rs.30,000/- (Rupees Thirty Thousand only) by running a travelling business, the learned Tribunal fixed the notional monthly income at Rs.9,000/- (Rupees Nine Thousand only) per month. On the basis of the postmortem report which was marked as Ex.P-2, the age of the deceased was taken as 48 years. By adopting the *Pranay Sethi* case and considering the age of the deceased, 25% of the monthly income was taken as future prospects. Hence, the monthly income would arrive at Rs.11,250/- (Rupees Eleven Thousand Two Hundred and Fifty only) (Rs.9,000 + 2,250= 11,250). After deducting 1/4th for his personal expenses, the notional income of the deceased was fixed at Rs.8,437/- (Rupees Eight Thousand



C.M.A.(MD)No.398 of 2018

Four Hundred and Thirty Seven only). By following the judgement of **Sarla Verma** case reported in reported in 15 April 2009, Suprme Court, the relevant multiplier 13 was adopted and the head loss of income would arrive at Rs.13,16,172/- (Rupees Thirteen Lakhs Sixteen Thousand One Hundred and Seventy Two only). Hence, the learned Tribunal had proceeded to conclude that the claimants were entitled to get an amount of Rs.13,86,172/- (Rupees Thirteen Lakhs Eighty Six Thousand One Hundred and Seventy Two only) as compensation for the loss of life of the deceased Azhagar. The details of the compensation awarded by the learned Tribunal are as follows:

S.No.	Description	Amount
1.	Loss of income	Rs. 13,16,172/-
2.	Loss of consortium for 1 st petitioner	Rs. 40,000/-
3.	Funeral Expenses	Rs. 15,000/-
4.	Transport Expenses	Rs. 15,000/-
	Total	Rs. 13,86,172/-

Aggreived by that award, the appellant Insurance Company / 2nd respondent has filed the present appeal.



C.M.A.(MD)/No.398 of 2018

WEB COPY

4. The learned counsel for the appellant/ Insurance Company has submitted that the Tribunal is wrong in fixing the liability and negligence. The Tribunal ought to have taken the FIR which was marked as Ex.R-1 into consideration in which the information registered by the jurisdictional police was that the said accident was a hit and run case. Therefore, the Insurance Company is not liable to pay any compensation to the claimant. It is further contended that the compensation awarded by the Tribunal is excessive, exorbitant and without any basis and justification. Hence the order passed by the Tribunal is not in accordance with law and the same should be set aside.

5. Per contra, the learned counsel for the claimants has submitted that the Tribunal had considered all the materials and evidence available on record and awarded the compensation which is just, fair and reasonable. Hence the order passed by the Tribunal is in accordance with law and the same has to be confirmed, relying upon the Judgment of Hon'ble Apex Court in ***“Bimla Devi .Vs. Himachal Road Transport Corporation and others”***. The relevant portion of this Judgment is extracted as follows:



C.M.A.(MD)No.398 of 2018

WEB COPY

“14. Some discrepancies in the evidences of the claimant's witnesses might have occurred but the core question before the Tribunal and consequently before the High Court was as to whether the bus in question was involved in the accident or not. For the purpose of determining the said issue, the Court was required to apply the principle underlying burden of proof in terms of the provisions of [Section 106](#) of the Indian Evidence Act, 1872 as to whether a dead body wrapped in a blanket had been found at the spot at such an early hour, which was required to be proved by the respondent Nos.2 and 3.

15. In a situation of this nature, the Tribunal has rightly taken a holistic view of the matter. It was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied. For the said purpose, the High Court should have taken into consideration the respective stories set forth by both the parties.”

He further relied upon the Judgment of Hon'ble Apex Court in **“Mangla Ram .Vs. Oriental Insurance Company Limited”**. The relevant portion of the said Judgment is extracted as follows:



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“22. The question is: whether this approach of the High Court can be sustained in law? While dealing with a similar situation, this Court in Bimla Devi (supra) noted the defence of the driver and conductor of the bus which inter alia was to cast a doubt on the police record indicating that the person standing at the rear side of the bus, suffered head injury when the bus was being reversed without blowing any horn. This Court observed that while dealing with the claim petition in terms of Section 166 of the Motor Vehicles Act, 1988, the Tribunal stricto sensu is not bound by the pleadings of the parties, its function is to determine the amount of fair compensation. In paragraphs 1115, the Court observed thus:

“11. While dealing with a claim petition in terms of Section 166 of the Motor Vehicles Act, 1988, a tribunal stricto sensu is not bound by the pleadings of the parties; its function being to determine the amount of fair compensation in the event an accident has taken place by reason of negligence of that driver of a motor vehicle. It is true that occurrence of an accident having regard to the provisions contained in Section 166 of the Act is a sine qua non for entertaining a claim petition but that would not mean that despite evidence to the effect that death of the claimant's predecessor had taken place by reason of an accident caused by a motor vehicle, the same would be ignored only on the basis of a post-mortem report vis-a-vis the averments made in a claim petition.



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12. *The deceased was a constable. Death took place near a police station. The post-mortem report clearly suggests that the deceased died of a brain injury. The place of accident is not far from the police station. It is, therefore, difficult to believe the story of the driver of the bus that he slept in the bus and in the morning found a dead body wrapped in a blanket. If the death of the constable had taken place earlier, it is wholly unlikely that his dead body in a small town like Dharampur would remain undetected throughout the night particularly when it was lying at a busstand and near a police station. In such an event, the court can presume that the police officers themselves should have taken possession of the dead body.*

13. *The learned Tribunal, in our opinion, has rightly proceeded on the basis that apparently there was absolutely no reason to falsely implicate Respondents 2 and 3. The claimant was not at the place of occurrence. She, therefore, might not be aware of the details as to how the accident took place but the fact that the first information report had been lodged in relation to an accident could not have been ignored.*

14. *Some discrepancies in the evidence of the claimant's witnesses might have occurred but the core question before the Tribunal and consequently before the High Court was as to whether the bus in question was involved in the accident or not. For the purpose of determining the said issue, the Court was required to apply the principle underlying the burden of proof in terms of the provisions of Section 106 of the Evidence Act, 1872 as to whether a dead body wrapped in a blanket had been found at the*



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spot at such an early hour, which was required to be proved by Respondents 2 and 3.

15. In a situation of this nature, the Tribunal has rightly taken a holistic view of the matter. It was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied. For the said purpose, the High Court should have taken into consideration the respective stories set forth by both the parties.” (emphasis supplied). The Court restated the legal position that the claimants were merely to establish their case on the touchstone of preponderance of probability and standard of proof beyond reasonable doubt cannot be applied by the Tribunal while dealing with the motor accident cases. Even in that case, the view taken by the High Court to reverse similar findings, recorded by the Tribunal was set aside.

23. Following the enunciation in *Bimla Devi's* case (*supra*), this Court in *Parmeswari* (*supra*) noted that when filing of the complaint was not disputed, the decision of the Tribunal ought not to have been reversed by the High Court on the ground that nobody came from the office of the SSP to prove the complaint. The Court appreciated the testimony of the eyewitnesses in paragraphs 12 & 13 and observed thus:



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“12. The other ground on which the High Court dismissed the case was by way of disbelieving the testimony of Umed Singh, PW 1. Such disbelief of the High Court is totally conjectural. Umed Singh is not related to the appellant but as a good citizen, Umed Singh extended his help to the appellant by helping her to reach the doctor’s chamber in order to ensure that an injured woman gets medical treatment. The evidence of Umed Singh cannot be disbelieved just because he did not file a complaint himself. We are constrained to repeat our observation that the total approach of the High Court, unfortunately, was not sensitised enough to appreciate the plight of the victim.

13. The other socalled reason in the High Court’s order was that as the claim petition was filed after four months of the accident, the same is “a device to grab money from the insurance company”. This finding in the absence of any material is certainly perverse. The High Court appears to be not cognizant of the principle that in a road accident claim, the strict principles of proof in a criminal case are not attracted.....”

24. It will be useful to advert to the dictum in N.K.V. Bros.

(P) Ltd. Vs. M. Karumai Ammal and Ors. 16, wherein it was contended by the vehicle owner that the criminal case in relation to the accident had ended in acquittal and for which reason the claim under the Motor Vehicles Act ought to be rejected. This Court negated the said argument by observing that the nature of proof required to establish culpable rashness, punishable under the [IPC](#), is more stringent than negligence



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sufficient under the law of tort to create liability. The observation made in paragraph 3 of the judgment would throw some light as to what should be the approach of the Tribunal in motor accident cases. The same reads thus:

“3. Road accidents are one of the top killers in our country, specially when truck and bus drivers operate nocturnally. This proverbial recklessness often persuades the courts, as has been observed by us earlier in other cases, to draw an initial presumption in several cases based on the doctrine of res ipsa loquitur. Accidents Tribunals must take special care to see that innocent victims do not suffer and drivers and owners do not escape liability merely because of some doubt here or some obscurity there. Save in plain cases, culpability must be inferred from the circumstances where it is fairly reasonable. The court should not succumb to niceties, technicalities and mystic maybes. We are emphasizing this aspect because we are often distressed by transport operators getting away with it thanks to judicial laxity, despite the fact that they do not exercise sufficient (1980) 3 SCC 457 disciplinary control over the drivers in the matter of careful driving. The heavy economic impact of culpable driving of public transport must bring owner and driver to their responsibility to their neighbour. Indeed, the State must seriously consider nofault liability by legislation. A second aspect which pains us is the inadequacy of the compensation or undue parsimony practised by tribunals. We must remember that judicial tribunals are State organs and [Article 41](#) of the Constitution lays the



C.M.A.(MD)No.398 of 2018

WEB COPY

jurisprudential foundation for State relief against accidental disablement of citizens. There is no justification for niggardliness in compensation. A third factor which is harrowing is the enormous delay in disposal of accident cases resulting in compensation, even if awarded, being postponed by several years. The States must appoint sufficient number of tribunals and the High Courts should insist upon quick disposals so that the trauma and tragedy already sustained may not be magnified by the injustice of delayed justice. Many States are unjustly indifferent in this regard.”

6. Heard the learned counsel for the appellant and perused the materials available on record. On the side of the claimants, three witnesses were examined and Ex.P-1 to Ex.P-15 were marked. On the side of the respondents, three witnesses were examined and Ex.R-1 to Ex.R-6 were marked.

7. I carefully perused the materials available on record and found that there was no eye witness for the said accident on the side of the petitioners. The driver of the 1st respondent namely Murugesan was produced before the learned Trial Court and he stated that the indicator of



C.M.A.(MD)/No.398 of 2018

the said vehicle was broken on the date of the accident. The learned Tribunal had observed that the said driver Murugesan was examined as R.W-1 and he failed to depose anything as to reason behind the damage in the indicator of the vehicle. He was enlarged on bail and he also deposed that he was enquired by the jurisdictional police to accept the same. However, he had not made any complaint as to the same to any competent authority. On the basis of the oral and documentary evidence and the rival submissions of both the Counsels, it is clear that the accident had happened on the extreme left of the said road. Thus, the Tribunal has rightly assessed the oral and documentary evidence and arrived at a just and reasonable compensation. In view of the same, this Court is of the considered view that it is not necessary to interfere with the award passed by the Tribunal. Accordingly, this Civil Miscellaneous Appeal is dismissed. Consequently, connected miscellaneous petition is closed.

8. The appellant is directed to deposit the compensation amount as awarded by the Tribunal with accrued interest and costs to the credit of M.C.O.P.No.74 of 2015 before the Motor Accident Claims Tribunal cum VI Additional District Judge, Madurai, within a period of eight weeks (8)



C.M.A.(MD)No.398 of 2018

from the date of receipt of copy of this judgment, less the amount, if any already deposited. On such deposit, the claimants are entitled to get their shares as per the apportionment fixed by the Tribunal, less the amount, if any already withdrawn, by making necessary application before the Tribunal. The respondents 1 and 2 / claimants are permitted to withdraw their shares together with interest and the share of the minor respondents 3 and 4 shall be deposited in any one of the Nationalised Banks till they attain majority. The 1st respondent, who is the mother of the minor claimants is permitted to withdraw the interest of minors once in three months directly from the Bank. No costs.

29.01.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
Sml



C.M.A.(MD)No.398 of 2018

To

The Motor Accident Claims Tribunal,
cum VI Additional District Judge,
Madurai.

Copy to

The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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C.M.A.(MD)No.398 of 2018

L.VICTORIA GOWRI, J.,

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C.M.A.(MD)No.398 of 2018

29.01.2024