



CMA(MD)No.1080 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.03.2024

CORAM :

**THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN
and
THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN**

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1. M.Basiriya Beevi

2. Minor.M.Sannath Beer Thous

3. Minor.M.Rabika Banu

4. Minor.M.Noorulshifa

(The appellants 2 and 3 are represented through
their mother/1st appellant herein)

4. Samsu Beevi (Died)

(Cause title is accepted vide Court Order dated 10.04.2023 made in
CMP(MD)No.11031/2022 in CMA(MD)SR.No.64180/2022)

... Appellants

vs.

1. S.Tamilarasi

2. The National Insurance Company Limited,
its Branch Manager,

1st Floor, No.5, College Road,
Karaikudi.

(The 1st Respondent remained exparte before the Tribunal.

Hence, notice is not necessary to Respondent No.1) ... Respondents

Appeal filed under Section 173 of the Motor Vehicles Act, 1988,
against the judgment and decree dated 12.11.2019 passed in MCOP.No.
260 of 2015 on the file of the Motor Accidents Claims Tribunal, (IInd
Additional District Judge), Thoothukudi.



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For Appellants : Mr.A.Selvaraj
For R2 : Mr.D.Sivaraman

J U D G M E N T

(Judgment of the Court was made by V.BHAVANI SUBBAROYAN, J.)

Being aggrieved by the judgment and decree dated 12.11.2019 passed in MCOP.No.260 of 2015 by the Motor Accident Claims Tribunal, II Additional District Judge, Thoothukudi, dismissing the claim petition, the claimants have filed the present appeal.

2. The appellants are the claimants. The 1st respondent is the owner of the offending Bus and the 2nd respondent is the insurer of the offending Bus. The appellants filed the claim petition in M.C.O.P.No. 260 of 2015, claiming a sum of Rs.75,00,000/- as compensation for the death of one Mohammed Abdullah in the accident that occurred on 19.03.2015. By judgment and decree dated 12.11.2019, the Tribunal dismissed the claim petition.

3. Facts of the Case:-

According to the appellants/claimants, on 19.03.2015, about 08.45 hours, while the deceased Mohammed Abdullah was travelling in a Tata



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Ace vehicle bearing registration No.TN-65-X-2044 on Paramakudi-Chathirakudi National Highway, at Keelakkottai bus stop, a Bus bearing registration No.TN-63-AX-3699 came in the opposite direction in a rash and negligent manner and dashed against the Tata Ace vehicle, in which, the said Mohammed Abdullah sustained fatal injuries and died on the spot. A case in Crime No.36/2015 under Sections 279, 337, 304(A) IPC was registered against the driver of the bus. The claimants who are wife, three minor daughters and mother of the deceased filed the claim petition claiming compensation.

4. The 2nd respondent filed the counter statement and denied all the averments made in the claim petition and contended that the accident did not occur due to the rash and negligent driving of the driver of the Bus. The deceased himself is the cause for the accident and prayed for dismissal of the claim petition.

5. Before the Tribunal, the wife of the deceased examined herself as P.W.1 and five other witnesses were examined as P.W.2 to P.W.6 and 9 documents were marked as Ex.P1 to P.9. On the side of the 2nd respondent insurance company, two witnesses were examined as R.W.1 and R.W.2 and one document was marked as Ex.R1.

**6. Finding of the Tribunal:**

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The Tribunal, considering the pleadings, oral and documentary evidence and arguments of the counsel for the appellants and 2nd respondent, though held that the accident occurred due to the rash and negligent driving of the drivers of both the vehicles namely, Tata Ace and the Bus and therefore, both the vehicles' insurers are liable to pay compensation to the claimants, however, considering the fact that the owner of the Tata Ace vehicle and its insurer were not added as parties, the Tribunal dismissed the claim petition on the ground of non joinder of necessary parties. Aggrieved over the same, the appellants/claimants are on appeal.

7.Submission of the learned counsel for the appellants:

Learned counsel for the appellants submitted that without considering the evidence of PW1 & PW2 read with Ex.P1-FIR registered against the driver of the Bus, the Tribunal fixed the contributory negligence. He further submitted that in the claim petitions filed by PW3 to PW6 claiming compensation for the injuries sustained by them in the very same accident, the 2nd respondent insurance company admitted their liability and settled the claims before the Lok Adalat. It is also submitted



that when the Tribunal concluded the case by fixing contributory negligence, ought not to have dismissed the claim petition on the ground of non joinder of owner of Tata Ace and its insurer, which is against the Division Bench judgment of this Court reported in **2014 (2) TN MAC 874, Managing Director, M/s. Tamil Nadu State Transport Corporation, Pudukkottai Versus P. Simon Peter & Others**, wherein, it has been held that when two vehicles are responsible for the accident, claim can be made against any one of the insured vehicle. Thus, the learned counsel seeks to quash the judgment and decree passed by the Tribunal and to allow the appeal.

8. Submission of the learned counsel for the 2nd respondent:

Learned counsel for the 2nd respondent insurance company submitted that the Tribunal rightly dismissed the claim petition on the ground of non joinder of necessary parties which does not require any interference by this Court.

9. This Court considered the rival submissions and also perused the records.

**10. Discussion on negligence and liability:-**

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(i) Though PW1-wife of the deceased and PW2-salesman working in the Broiler Chicken shop of the deceased have given evidence that the driver of the bus alone was responsible for the accident, PW3 to PW6-passengers of the Bus insured with the 2nd respondent company, deposed that it is only the deceased who drove the Tata Ace vehicle rashly and negligently and caused the accident. The Tribunal considering the oral and documentary evidence on both sides held that the accident was the result of contributory negligence of the drivers of both the vehicles namely, Tata Ace driven by the deceased and the Bus insured with the 2nd respondent and accordingly fixed contributory negligence, but dismissed the claim petition on the ground of non joinder of owner and insurer of Tata Ace vehicle.

(ii) Upon perusal of the pleadings and evidence adduced on either side, though we concur with the finding of the Tribunal fixing contributory negligence, we differ with the view of the Tribunal in dismissing the claim petition on the ground of non joinder of necessary parties. The Motor Vehicles Act is a beneficial legislation to ensure payment of just compensation to the victim or legal heirs of the deceased



as the case may be. When such being the intention in the enactment of the Motor Vehicles Act and as rightly contended by the appellants that when two vehicles are responsible for the accident, claim can be made against any one of the insured vehicle, we are of the view that the Tribunal ought not to have dismissed the claim petition on the technical ground of non joinder of necessary parties. We also find that the Tribunal has also failed to consider the fact that the injured claimants/PW3 to PW6 who were travelled in the Bus and sustained injuries in the very same accident, were compensated in the Lok Adalat by the insurance company admitting their liability.

(iii) Thus, while we confirm the finding of the Tribunal fixing contributory negligence on the drivers of both the Tata Ace vehicle and the Bus, we set aside the judgment of the Tribunal dismissing the claim petition on the ground of non joinder of necessary parties. Considering the fact that though the accident occurred in 2015, till date, the claimants have not been paid any single pie, without resorting to remand the case to the Tribunal for fixation of quantum, we are inclined to arrive at the quantum on the basis of the available evidence, for which course, the counsel for the appellants and 2nd respondent are also agreeable.



11. Discussion on quantum

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(i) It is the case of the claimants that the deceased was aged 40 years at the time of accident and was running a chicken shop in the name and style of "K.M.M.Broiler Chicken Shop" and earned Rs.25,000/- per month. However, no evidence was produced by the appellants to prove the said income. Therefore, the monthly income of the deceased is fixed at Rs.12,000/- per month notionally. After adding 40% towards future prospects, the income comes to Rs.16,800/-. After deducting 50% of income towards contributory negligence, the income works out to Rs. 8,400/-. The multiplier according to the age of the deceased namely, 40 as per the judgment of the Apex Court in **Sarla Verma v. Delhi Transport Corporation, reported in 2009 (2) TN MAC 1 (SC)**, is 15. Since the number of dependants is four as of today, 1/4th of income namely, Rs.2,100/- should be deducted towards the personal expenses of the deceased. After such deduction, the monthly income comes to Rs. 6,300/-. After computing annual income and applying 15 multiplier, the loss of income is computed as follows:-

$$\text{Rs.}6,300 \times 12 \times 15 = \text{Rs.}11,34,000/-$$

Thus, the appellants/claimants are entitled to a sum of Rs. 11,34,000/- towards the loss of income.



(ii) At the time of accident, the 1st appellant/wife of the deceased was aged 35 years and she lost the consortium of her husband. Hence, a sum of Rs.40,000/- is awarded for loss of consortium. The appellants 2 to 4 who are the daughters of the deceased, were minors aged 17, 14 and 7 years respectively, at the time of accident. They lost the love and affection, advice, care and guidance of their father in all walks of their life. Therefore, a sum of Rs.40,000/- each, totally Rs.1,20,000/-, is awarded for loss of love and affection. The 4th appellant/mother of the deceased died pending this appeal and therefore, question of awarding compensation to her does not arise. Apart from the above, under conventional heads, namely, loss of estate and funeral expenses a sum of Rs.15,000/- each, is awarded. The rate of interest is fixed at 7.5% per annum from the date of claim petition till the date of deposit.

12. Conclusion

(i) In the light of the above said discussion, claimants would be entitled to claim the following amounts as compensation under the various heads enumerated hereunder:

<i>Sl. No</i>	<i>Compensation</i>	<i>Amount in Rupees</i>
1	Loss of Income	Rs.11,34,000/-



2	Loss of consortium	40,000/-
3	Loss of love and affection	1,20,000/-
4	Funeral expenses	15,000/-
5	Loss of estate	15,000/-
Total		13,24,000/-

(ii) Out of the total compensation of Rs.13,24,000/-, the 1st appellant/wife of the deceased is entitled to Rs.4,24,000/- and appellants 2 to 4/daughters of the deceased are entitled to Rs.3,00,000/- each with respective proportionate accrued interest and costs. The counsel for the appellants is directed to file cost memo in this appeal which shall form part of the decree.

(iii) The 2nd respondent insurance company is directed to deposit the award amount of Rs.13,24,000/- with 7.5% interest per annum from the date of claim petition till the date of deposit along with costs, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the 1st appellant is permitted to withdraw Rs.4,24,000/- along with proportionate accrued interest and costs. At the time of accident, the appellants 2 to 4 who are the daughters of the deceased, were minors aged 17, 14 and 7 years respectively. Now the appellants 2 and 3 would have attained majority. Therefore, they are



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permitted to withdraw their respective shares with proportionate interest by making appropriate application before the Tribunal discharging guardianship. The 4th appellant continues to be a minor and therefore, her share with proportionate interest shall be deposited in a Nationalised Bank in Fixed Deposit renewable periodically, till she attains majority. The interest accrues on such deposit is permitted to be withdrawn by the 1st appellant/mother of minor once in three months directly from the bank.

13. In the result, this Civil Miscellaneous Appeal is partly allowed to the extent indicated above along with costs. Registry is directed to refund the excess court fee to the appellants as per the procedure therefor.

(V.B.S., J.)

(K.K.R.K., J.)

27.03.2024

Index : Yes / No

Neutral Citation : Yes / No

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To

1. The Judge,
II Additional District Judge,
Motor Accident Claims Tribunal,
Thoothukudi.



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V.BHAVANI SUBBAROYAN, J.
and
K.K.RAMAKRISHNAN, J.

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

JUDGMENT MADE IN
CMA(MD)No.1080 of 2023
DATED : 27.03.2024