BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 12.02.2025

Pronounced on : 24.02.2025

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN
AND
THE HONOURABLE MS.JUSTICE R.POORNIMA

C.M.A.(MD)No.199 of 2019
&
C.M.P.(MD)No.2628 of 2019

The Branch Manager
National Insurance Co. Ltd.,
No.4132, East Raja Veethi,
Pudukkottai. ... Appellant/ 2nd Respondent

Vs.

1.Selvi

2.Minor Gomathi

3.Minor Kaviya

4.Minor Sangeetha

(Minor respondents 2 to 4 are represented by their grandfather and next friend 6th respondent herein.)

5.Minor Lalitha

(Minor 5th respondents is represented by her mother and next friend 1st respondent herein)

6.Palaniappan

7.Indirani ...Respondents 1 to 7 / Petitioners

8.Thirugnanam ...8th Respondent / 1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the fair and decreetal order dated 31.08.2018 made in M.C.O.P.No.783 of 2013 on the file of Motor Accident Claims Tribunal, Special District Court, Pudukkottai and allow this Civil Miscellaneous Appeal.

For Appellant : Mr.S.Srinivasa Raghavan

For Respondents : Mr.K.C.Maniyarasu – for R1 to R7
Mr.R.Balakrishnan
for Mr.S.Poornachandran – for R8

JUDGMENT

(Judgment of this Court was delivered by **R.POORNIMA, J.**)

The appellant / 2nd respondent / Insurance Company has filed this Civil Miscellaneous Appeal against the fair order and decreetal order dated 31.08.2018 passed in M.C.O.P.No.783 of 2013 by the Motor Accident Claims Tribunal, Special District Court, Pudukkottai.

2. Brief facts of the petition filed by the claimant before the Tribunal are as follows:

(a) On 03.09.2013, first petitioner's husband, Arulmozhi, took the vehicle Scorpio bearing Registration No.TN 55 S 3910 belonging to the first respondent on hire along with his friend Durai from his native to Chennai. When the vehicle was coming near Mettupalayam National Firm after Mathurandagam, at about 3.00 a.m., on 04.09.2013 the driver of the first respondent drove it in a rash and negligent manner without observing the traffic rules dashed against the unknown vehicle, caused the accident. The accident occurred due to the carelessness driving of the first respondent's driver.

(b) The 1st petitioner's husband died by sustaining severe injuries and his body was taken to Mathurandagam Government Hospital. Due to the death of her husband, the 1st petitioner was put into untold suffering. The first petitioner lost her love and affection, conjugal relationship and she became young widow and living with difficulties. The petitioners 2 to 5 are minor children also lost their father's love and affection. If deceased Arulmozhi is alive, he gives good education and create a good future, atmosphere to the minor children who are girl children. The petitioner 6 and 7 are the parents of the deceased, who lost their son during their old age and suffering a lot as nobody is there to maintain them. The first petitioner's husband is the only earning member of the family.

(c) The deceased Arulmozhi was an income tax assessee. His Permanent Account Number (PAN) is AK0PA6219M. During the year 2012–2013, his annual income was Rs.3,90,827/-, for which he paid income tax. Since he passed away at his young age 50% of monthly income should be added as future prospectus. At the time of death, he was 34 years old, he was running a business called Rasi Electronics at Ponnamaravathy. From and out of his business, he derived a sum of Rs. 40,000/- per month. All the petitioners are dependent of late Arulmozhi.

(d) The accident occurred due to the rash and negligence act of the first respondent and the vehicle was insured with the second respondent insurance Company. The petitioners are entitled to get compensation from the respondents, they claimed a sum of Rs.1,20,00,000/- (Rupees One Crore and Twenty Lakhs only) as compensation.

3. Brief averments contained in the counter filed by the second respondent are as follows :

(a) The 2nd respondent denied the averment contained in the petition.

(b) The 2nd respondent denied the age, occupation, monthly income of the deceased. The deceased was not at all employed and earning the sum as mentioned in the petition. He was not an income tax assessee or paid sales tax or professional tax assessee. The amount of compensation under several heads are without foundation of facts and probabilities, but are speculative. The 2nd respondent has a doubt whether the petitioners are the real legal heirs and dependants of the deceased.

(c) The manner of accident narrated in the application is not correct. As per the FIR, the accident had happened on 04.09.2013 at about 03.00 hours. In the main petition, it was stated that the accident occurred on 03.09.2013. The allegations in the FIR is neither believable nor acceptable. The petitioners have to put to strict proof of the same. The 2nd respondent has to verify the entire police record, medical record in order to ascertain the real cause and manner of accident. The Police had not traced-out the unknown vehicle. The said Vehicle is also responsible for the accident.

(d) The 2nd Respondent relied upon the judgment reported in 2010(2) TNMAC page 699 Madras High Court-in this case, Lorry proceed ahead of Tempo traveller applying sudden brake and hitting against the vehicle coming at back safe distance between two vehicles not maintained - negligence apportioned at 50 : 50. The above case is clearly applicable to the facts of this case.

(e) The 2nd respondent denied that the first respondent's driver had a valid and effective driving license with necessary endorsement to drive particular type of vehicle said to have been involved in this accident, on the date of accident.

(f) If the award is passed in favour of the petitioners, then the award should carry only 6% interest per annum as per provisions of Interest Act.

(g) The compensation claimed by the petitioners are high and excessive. Hence, the petition is liable to be dismissed.

4. Brief averments contained in the additional counter filed by the second respondent are as follows :

(a) It is stated in the FIR that an unknown vehicle from the behind. It is the duty of the police to trace out the unknown vehicle. The petitioners can seek remedy against insured and insurer of the unknown vehicle.

(b) The claimants are directed to produce PAN details otherwise TDS will be deducted as per Income Tax Act Rules.

(c) If the Court is come to the conclusion that the 2nd respondent is liable to be pay any amount as compensation and in any event of granting interest by the Court and if the accrued interest on the compensation exceeds Rs.50,000/- the 2nd respondent is legally liable to deduct TDS under Section 194(3) Income Tax Act.

4. During trial on the side of the petitioner, PW1 to P.W.4 was examined and Ex.P1 to Ex.P14 were marked. On the side of the 2nd respondents, RW1 was examined and no document was marked.

5. After hearing both side, the trial Judge awarded compensation of Rs.70,73,610/- under the following heads :

Loss of Income	Rs.70,03,609/-
Loss of consortium	Rs.40,000/-
Loss of estate	Rs.15,000/-
Funeral expenses	Rs.15,000/-
Total	Rs.70,73,610/-

The learned Judge directed the appellant/2nd respondent-Insurance Company to pay the entire award amount within a period of one month.

6. Aggrieved by the said order, the present Civil Miscellaneous Appeal has been filed by the Insurance Company who is

the 2nd respondent before the lower Court against the negligence and quantum with the following among other grounds :

(i) That the fair order and decreetal order of the Tribunal are contrary to law, against the weight of oral as well as documentary evidence adduced by both parties and are opposed to all the probabilities of the matter in dispute,

(ii) In view of the verdict of the Larger Bench of the Hon'ble Supreme Court of India delivered in United India Insurance Co. Ltd., v. Shila Dhutta & Others reported in 2011 (2) TNMAC 481 SC, leave under Section 170 of the Motor Vehicle Act is not required to be obtained by the appellant/Insurance company.

(iii) The findings of the Tribunal that the appellant/2nd respondent Insurance company has failed to identify their vehicle that was going ahead of the insured vehicle is untenable, uncalled for and unacceptable and the Tribunal has conveniently forgotten the burden of proof regarding the material fact of manner of accident that lies on the shoulders of the claimants.

(iv) That the Tribunal ought to have found that the burden of proof relating to involvement of the vehicle, manner of accident and negligence aspect are purely on the shoulders of the claimants only and the appellant/insurance company cannot be expected to prove such particulars by adducing contra evidence.

(v) That the Tribunal ought to have seen that the material available on record would be sufficient to hold that the vehicle owned by the 1st respondent in the claim petition was actually not involved in the accident and the Tribunal ought to have found so by appreciating the evidence in proper perspective.

(vi) That the Tribunal ought to have found that unless there is a proof that the vehicle owned by the 1st respondent in the claim petition was actually involved in the accident there could be no liability on the part of the appellant/2nd respondent to indemnify the owner and to compensate the claimants.

(vii) That the Tribunal has chosen to discard the evidential value of the witnesses on the side of the respondents and the findings of the

Tribunal relating to negligence and liability are incorrect and false.

(viii) The discrepancy between the time of accident mentioned in the claim petition and the prosecution records ought to have been taken stock by the Tribunal and the Tribunal is not justified in deciding the liability and negligence in a mechanical manner.

(ix) The quantum of compensation fixed at Rs.70,73,609/- is itself excessive and arbitrary and the same is liable to be set aside.

Hence, prayed to set aside the judgment of the trial Court and allow the Civil Miscellaneous Appeal.

8. Heard the learned counsel on either side and perused the material available on records.

9. Now, this court has to decide the following points for consideration :

(1) whether the accident occurred due to the rash and negligent act of the driver of the 8th respondent/1st respondent ?

(2) Whether the compensation awarded by the Tribunal is on the higher side ?

10. Point No.1 :

Ex.P1 FIR registered in crime No.702/2013 against the driver of the first respondent's vehicle bearing Registration No.TN 55 S 3910, the complaint name has been mentioned as Palaniappan, father of the deceased Arulmozhi. Ex.P12 is the Motor Vehicle Inspection report issued by the Motor Vehicle Inspector, Madhuranthagam to the vehicle bearing Registration No.TN 55 S 3910, in which the deceased was travelling reveals that there were damages on the front side of the vehicle Scorpio, belonging to the 1st respondent and also reveals that the vehicle was insured with the 2nd respondent and was in force at the time of accident. The Motor Vehicle Inspector opined that the accident was not due to any mechanical defect. Ex.P13 is the Registration Certificate of Scorpio bearing Registration No.TN 55 S 3910. Ex.P14 is the driving license of Thiru.Pandiaraj, driver of the 1st respondent, valid on the date of accident.

11. On the side of the appellant – Insurance Company, the

Assistant Manager has been examined as RW1, during cross examination, he admitted that a criminal case has been filed against the driver of the first respondent vehicle. He also admitted that the first respondent vehicle is taxi and the driver of the vehicle was having driving license and the vehicle was insured with the second respondent and was in force at the time of accident.

12. One Thiru.Kumar, has been examined as PW3, who is an eye witness to the occurrence clearly stated that the driver of the first respondent vehicle drove the vehicle in a rash and negligent manner and dashed against unknown lorry and caused the accident. The FIR also filed against the driver of the vehicle, therefore, it is proved that the accident had occurred due to the rash and negligent act of the driver of the 1st respondent vehicle.

13. The learned counsel for the appellant argued that the unknown vehicle has to be added as a party and the owner and the Insurance Company of the unknown vehicle is made liable for the accident. P.W.3 clearly stated that the unknown vehicle did not stop but left the place and could not be identified. The Police were unable to

identify the unknown vehicle, for that the petitioners could not be held responsible. Moreover the driver of the vehicle did not prefer any complaint against the unknown vehicle. Instead a case was filed against him in Crime No.702/2013 for rash and negligent driving. The Tribunal held that the Insurance Company, with whom the first respondent vehicle was insured is liable to pay compensation to the petitioners, which is proper. We do not wish to interfere with the findings of the Tribunal. The Point No.1 is answered accordingly.

14. Point No.2 :

Ex.P2 is the postmortem report issued by the Assistant Surgeon, Government Hospital, Mathurandagam. Ex.P3 is the Death certificate issued by the Tahsildar, Mathurandagam. Ex.P4 is the legal heirship certificate issued by theTahsildar, Ponnamaravathy, shows that the petitioners are the legal heirs of Late.Arulmozhi. Ex.P5 is the Transfer Certificate of Arul Mozhi which shows that he was born on 05.07.1979. Ex.P6 is the PAN card of the deceased. Ex.P7 is the acknowledgement issued by the Income Tax Authority which shows that the total income of deceased Arulmozhi during the year 2012–2013 is Rs.3,90,827/- and the net income is Rs.3,39,400/-, Income Tax return for the year 2013–2014 shows that the net income of the deceased is Rs.1,72,270/-. Ex.P9 is the certificate of Registration whichs shows that the deceased was running a business in the name and style of Rasi Electricals and Ex.P.10 is the sale tax receipt, which shows that he was paying sales tax for his business. The Tribunal took the annual income of the deceased at Rs.3,90,827/-.

15. As per judgement by the Apex Court in National Insurance Company Ltd., Vs. ***Pranay Sethi and Others*** reported in ***AIR 2017 SC 5157***, it was held that in case the deceased was self-employed and aged below 40 years, future prospectus to be taken 40% in addition to the actual income. The date of birth of the deceased as per the school records is 05.07.1979. At the time of death, he was 34 years and the Tribunal properly added 40% income in addition to his actual income for the future prospectus and the multiplier was fixed at 16. The deceased was married and the number of dependent family members if exceeds six 1/5th income to be deducted towards his expenses. The Tribunal, therefore, fixed the loss of income at Rs.70,03,609/- (Rs.3,90,827 + 40% (Rs.1,56,330/-) = Rs.5,47,157 - 1/5th income (Rs.1,09,431/-) = Rs.4,37,725.60p x 16 = Rs.70,03,609/-) and loss of estate at Rs.15,000/-,

loss of consortium Rs.40,000/- and Funeral expenses at Rs.15,000/-, which is proper and reasonable.

16. The learned counsel for the appellant argued that there is no loss to the family income and Ex.P8 would go to show that the business of the deceased was continued by the members of the family, even after the accident.

17. Ex.P8 is indeed Income Tax acknowledgement for the year 2013-2014, but the date of the accident is on 04.09.2013. If the Auditor report is filed, it would reveal whether Ex.P8 Income Tax return was filed for the income earned before or after the accident. The Income Tax returns are normally filed for the previous year. There is no proof to show that the business of the deceased continues. Nonetheless, the personal impact of the deceased on his business cannot be compensated, even if the business continues. The petitioners 2 to 5 minor children of tender age, the 1st petitioner must maintain and educate her children. The petitioners 6 and 7 are elders and cannot be expected to manage the business. Therefore, they cannot be expected to concentrate on the business. Therefore, the argument advanced by the learned counsel for

the appellant is not sustainable. The point No.2 is answered accordingly.

18. There are no other serious lapses in the order passed by the Tribunal, there is no strong reason found in the Civil Miscellaneous Appeal to set aside the order of the Tribunal. Therefore, we do not find any merit in the Civil Miscellaneous Appeal, and hence, the Civil Miscellaneous Appeal is liable to be dismissed.

19. In the result, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

(G.J., J.) & (R.P., J.)
24.02.2025

Index : Yes / No
Internet : Yes / No
NCC : Yes / No
RM

To

1.The Special District Court,
Motor Accident Claims Tribunal,
Pudukkottai.

Copy to

1.The Section Officer,
ER/VR Section,
Madurai Bench of Madras High Court,
Madurai.

G.JAYACHANDRAN, J.
AND
R.POORNIMA, J.

RM

Judgment in
C.M.A.(MD)No.199 of 2019

24.02.2025