

1.Pathirapandi Vs. 1.The Territorial Commander,

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Court : Chennai

Decided On : Mar-15-2013

Judge : C.S.Karnan

Appellant : 1.Pathirapandi

Respondent : 1.The Territorial Commander,

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED:

15. 03/2013 CORAM THE HON'BLE MR.JUSTICE C.S.KARNAN C.M.A(MD)
No.383 o

1. Pathirapandi 2.Valli Thangam 3.Linga Pushpam 4.Linga Durai 5.Minor.Linga Manikanda Prabhu 6.Minor.Lingeswari (Minor Petitioner/Appellants 5 and 6 are rep through their mother 2nd appellant herein) .. Appellants vs 1.The territorial Commander, The Salvation Army Indian South Eastern Territory, Maharaja Nagar, Tirunelveli - 11. 2.The Divisional Manager, Oriental Insurance Company Limited, S.N.High Road, Tirunelveli Junction. 3.Velmurugan 4.The Branch Manager, United India Insurance Company Limited, 3rd Floor, G.G.Complex, 42,Anna Salai, Madras

002. .. Respondents Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicle Act, 1988, against the judgment and decree dated 28.02.2005, made in M.C.O.P.No.450 of 2003, on the file of the Motor Accident Claims

Tribunal, Principal District Court, Tirunelveli. !For Appellant ... Mr.S.Sivathilagam
^For Respondent ... Mr.K.Bhaskaran for R2 :JUDGMENT The appellants/petitioners have preferred the present appeal in C.M.A.(MD)No.383 of 2007, against the judgment and decree passed in M.C.O.P.No.450 of 2003, on the file of the Motor Accident Claims Tribunal, Principal District Court, Tirunelveli.

2. The petitioners, who are the legal heirs of the (deceased) Lingamurthy, have filed the claim in M.C.O.P.No.450 of 2003, claiming compensation of a sum of Rs.15,00,000/- from the respondents for the death of the said Lingamurthy, in a motor vehicle accident. It was submitted that on 23.02.2003, at about 05.00 p.m., when the (deceased) Lingamurthy, was travelling as a passenger in the 3rd respondents Ambassador car bearing registration not TN- 02J-5454, accompanied by one Vatrakaran and driven by one Murugan and when the said car was driven in a careful and cautious manner. On the Nagercoil to Aralvoimozhi Main Road, towards Karuppanvilai from south to north, the 1st respondent's Ambassador bearing registration not TN-72J-1473, coming in the opposite direction and driven at a high speed and in a rash and negligent manner by its driver dashed against the Ambassador car bearing registration not TN-02J-5454 and caused the accident. In the result, the (deceased) Lingamurthy, sustained severe injuries and was admitted at the hospital but was declared dead on arrival. The other two persons namely Murugan and Vatrakaran also sustained injuries. At the time of accident, the (deceased) Lingamurthy was aged 23 years and was working as a contract Worker in the Koodankulam Thermal Power Plant and earning Rs.4,500/- per month. Hence, the petitioners, who are the parents, brothers and sisters of the (deceased) Lingamurthy have filed the claim against the 1st, 2nd, 3rd and 4th respondents. The 1st and 2nd respondents are the owner and insurer of the Ambassador Car bearing registration not TN-72J-1473 and the 3rd and 4th respondents are the owner and insurer of the Ambassador car bearing registration not TN-02J-5454.

3. The 1st respondent, in his counter has denied the averments in the claim regarding manner of accident. It was submitted that on 23.02.2003, at about 05.00 p.m., the (deceased) Lingamurthy, drove the Ambassador Car bearing registration not TN-02J-5454, on the National Highway, towards Karuppanvilai, in a rash and

negligent manner and that on seeing this, the driver of the 1st respondent's Ambassador Car bearing registration not TN-72J-1473, which was coming in the opposite direction from Valliyur to Nagercoil, had stopped the car on the left side of the road. In spite of this, the said Lingamurthy had dashed his car against the 1st respondent's car and caused the accident. It was submitted that the 1st respondent's car driver sustained injuries and was admitted at the Catherine Booth Hospital, Nagercoil and received treatment. It was submitted that the Aralvoimozhi Police authorities had enquired the 1st respondent's car driver regarding the accident and he had given them an oral complaint regarding of the manner of accident at 07.30 p.m., on the date of accident and that on the next day, the 1st respondent's car driver had been admitted at K.J.M.S.Hospital, Thiruvananthapuram, for better treatment and that on being discharged from this Hospital, he had come to know that an F.I.R had been filed against him based on the complaint given by one Murugan. It was submitted that the (deceased) Lingamurthy, did not have a valid driving licence to drive the vehicle at the time of accident. It was submitted that no documentary evidence had been filed by the petitioners to prove the income and occupation of the (deceased) Lingamurthy.

4. The 2nd respondent in his counter has submitted that the petitioners should prove that they are the legal heirs of the deceased and that they should prove that the (deceased) Lingamurthy was employed in the Koodankulam Thermal Power Plant and earning Rs.4,500/- per month, through documentary evidence. The averments in the claim regarding manner of accident was also not admitted. It was submitted that a Maruthi Van bearing registration not TN-74D-9111, had also proceeded on the same road behind the 1st respondent's car and that the driver of the Maruthi Car had dashed behind the 1st respondent's car. As such, in the said accident, three vehicles had been involved. It was submitted that as the accident had occurred in the middle of the road, both the drivers of the cars had been equally negligent in causing the accident. It was submitted that if the 3rd respondent's car driver had been careful in his driving, the accident could have been averted. It was submitted that the 3rd respondent's car driver did not have a valid driving licence to drive the vehicle at the time of accident. It was also submitted that the claim is bad for non-joinder of the owner and insurer of the Maruthi Van involved in the accident as necessary party. It was submitted that the

claim was excessive.

5. The 4th respondent in his counter has denied the averments in the claim regarding income and occupation of the (deceased) Lingamurthy. It was submitted that the 3rd respondent's car driver did not have a valid driving licence to drive the car at the time of accident. It was submitted that the petitioner should prove that they are the legal heirs of the deceased through documentary evidence and that the 3rd, 4th, 5th and 6th petitioners, being the brothers and sisters of the (deceased) Lingamurthy cannot be considered as the legal heirs of the deceased by law. It was submitted that as the accident had occurred due to the negligence of one Rajan, who is the driver of the 1st respondent's Ambassador car bearing registration not TN-72J-1473 and as the final report of the police had been filed against him, only the 1st and 2nd respondents are liable to pay compensation. It was submitted that as the (deceased) Lingamurthy did not have a valid licence to drive the car at the time of accident, he had violated the policy conditions of insurance and as such the 4th respondent cannot be held liable to pay any compensation.

6. The Motor Accident Claims Tribunal framed three issues for determination in the case namely: "(1) Due to whose negligence was the accident caused?; (2) Who is liable to pay compensation?; (3) Are the petitioners entitled to get compensation?; If so what is the quantum of compensation which they are entitled to get." 7. In the same accident, two other claims were been filed in M.C.O.P.Nos.685 and 686 of 2003, by the injured persons viz., Murugan and Vattarakaran, who had also travelled in the 3rd respondent's car bearing registration not TN-02J-5454. On a joint memo filed by the counsels for their respective parties, a joint trial was conducted and common evidence was recorded in M.C.O.P.No.450 of 2003. The 1st petitioner in M.C.O.P.No.450 of 2003 was examined as PW.1, the petitioner viz., Murugan in M.C.O.P.No.685 of 2003 was examined as PW.2 and the petitioner viz., Vatrakaran in M.C.O.P.No.686 of 2003 was examined as PW.3 and eight documents were marked as Exs.P1 to P8 namely: Ex.P1-F.I.R; Ex.P2-Observation Mahazar dated 23.02.2003; Ex.P3-post mortem report; Ex.P4-Medical treatment record issued at Thiravium hospital to (deceased) Lingamurthi at 23.02.2003; Ex.P5-medical bills; Ex.P6-ID card of (deceased) Lingamurthi;

Ex.P7-wound certificate of PW.2 and Ex.P8-wound certificate of PW.3. On the respondent's side, one witness was examined and eight documents were marked as Exs.R1, R2 and R3 namely: Ex.R1- F.I.R dated 12.12.2003; Ex,R2-final report in C.C.No.88 of 2003, dated 20.03.2003; Ex.R3-rough sketch in C.C.No.88 of 2003, dated 24.02.2003.

8. PW.2, Murugan had adduced evidence that on 23.02.2003, when he was driving the Ambassador car bearing registration not TN-02J-5454 from Nagercoil towards Valliyur and accompanied by the (deceased) Lingamurthy and Vatrakaran, at about 05.00 p.m. When the car was near Immanuel Petrol Bunk at Aralvoimozhi, the 1st respondent's Ambassador Car bearing registration not TN-72J-1473, coming in the opposite direction and driven by its driver at a high speed and in a rash and negligent manner dashed against his car and caused the accident.

9. PW.1, had deposed evidence that the accident had been caused by the rash and negligent driving of the 1st respondent's car and in support of his evidence, he had marked the exhibits listed as P1 to P3.

10. RW.1, Rajan, the driver of the 1st respondent's car had adduced evidence that on 23.02.2003, he had driven the car bearing registration not TN- 72J-1473 from Valliyur to Nagercoil and that at about 05.00 p.m, when he was driving on the left side of the Immanuel Petrol Bunk, the 3rd respondent's car bearing registration not TN-02J-5454, coming in the opposite direction and driven in a rash and negligent manner by its driver had dashed against his car and caused the accident. He had deposed that the F.I.R had been registered only as against the 3rd respondent's driver and in support of his evidence, he had marked Ex.R1-F.I.R and Ex.R2-Final Report, filed by the Police in C.C.No.193 of 2003.

11. The Tribunal, on observing that RW.1 had not stated in his evidence that the 3rd respondent's car was driven by the (deceased) Lingamurthi and on observing that there are contradictions in the counter filed by the 1st and 2nd respondents of the evidence of RW.1, held that the 3rd respondent's car had been driven by Murugan i.e., PW.2. The tribunal, on considering that the police after investigation had filed the final report in the criminal case against the driver of the 1st

respondent's car and on considering the evidence of PW.2 and the other oral and documentary evidence, held that the accident had been caused by the rash and negligent driving by the driver of the 1st respondent's car. Hence, the tribunal on observing that the 1st respondent's car had been insured with the 2nd respondent at the time of accident, held the 2nd respondent liable to pay compensation to the petitioners. The claim as against the 3rd and 4th respondents were dismissed.

12. On scrutiny of Ex.P3-post mortem report, it is seen that the deceased was aged 23 years at the time of accident. PW.1, had adduced evidence that his son i.e., the (deceased) Lingamurthy was employed as a Contract worker at Koodangulam Thermal Power Plant and earning a sum of Rs.4,500/- per month and that after the accident, he was admitted at Thiravium Hospital for treatment. In support of his evidence he had marked Ex.P4-medical certificate issued at Thiravium hospital and the medical bills for Rs.2,681/- issued at Thiravium Hospital as Ex.P5(series). The tribunal on considering that no documentary evidence had been marked to prove the income of the deceased, held that the notional income of the deceased was Rs.2,400/- per month. The tribunal, on adopting a multiplier of "8" as was relevant to the age of the 1st and 2nd petitioners and after deducting 1/3rd of income of deceased for his personal expenses awarded a sum of Rs.1,53,600/- ($\text{Rs.2,400} \times \frac{2}{3} \times 12 \times 8$) as compensation under the head of loss of income; Rs.2,681/- was awarded towards medical expenses as per Ex.P5-medical bills; Rs.3,719/- was awarded for funeral expenses. In total, the tribunal awarded a sum of Rs.1,60,000/- as compensation to the petitioners and directed the 2nd respondent, on behalf of the 1st respondent, to deposit the said sum together with interest at the rate of 9% per annum from the date of filing the petition till date of deposit, with costs, within four weeks from the date of its order.

13. Not being satisfied by the award passed by the tribunal, the petitioners have preferred the present appeal. The learned counsel for the appellants has contended in his appeal that the tribunal ought to have taken into consideration not only the age of the parents of the deceased alone, but also the age of all the dependents, when the petitioners 5 and 6 are minors and as such the tribunal failed to consider the fact that the extent of dependancy of minor petitioners upon

the deceased till their attainment of the age of a major. It was contended that the tribunal ought to have considered the life expectancy of the deceased and the dependently. It was also contended that the tribunal ought to have taken into account, the future prospects of the deceased into consideration and fixed a higher income for computation of loss of income especially considering the fact that the deceased was aged only 23 years at the time of accident. Hence, it was prayed for grant additional compensation of a sum of Rs.3,40,000/-.

14. The learned counsel for the Insurance Company submits that against the said award, an appeal had been filed by the Insurance Company in C.M.A.No.313 of 2007 and the award has been challenged and the same was dismissed, since the quantum of compensation was an appropriate one. Therefore, the learned counsel entreats the Court to dismiss this appeal also.

15. On verifying the facts and circumstances of the case and arguments advanced by the learned counsel on either side and on perusing the impugned award of the Tribunal, this Court does not find any discrepancy in the conclusions arrived at regarding liability. However, the quantum of compensation awarded is on the lower side, since the deceased was 23 years and it is seen that he was a contract worker and earning Rs.4,500/- per month. The 1st and 2nd claimants are the aged parents and aged about 65 years and 60 years respectively and the 5th and 6th claimants are minors aged about 14 and 12 years respectively. Therefore, the claimant's family have lost their only earning member in the said accident. Therefore, this Court is inclined to grant additional compensation. This Court grants Rs.2,16,000/- ($\text{Rs.4,500} \times 1/2 \times 12 \times 8$) under the head of loss of income; Rs.10,000/- is awarded to each of the claimants under the head of loss of love and affection; Rs.10,000/- is awarded towards funeral expenses and Rs.5,000/- is awarded towards transport expenses. In total, this Court grants Rs.2,91,000/- as compensation to the petitioners. After deducting initial compensation of a sum of Rs.1,60,000/-, this Court awards a sum of Rs.1,31,000/- as additional compensation to the claimants. This amount will carry interest at the rate of 7.5% per annum from the date of filing the claim petition till date of payment of compensation. This additional compensation amount is apportioned as follows: The 1st claimant is entitled to receive Rs.25,000/- and the 2nd claimant is entitled

to receive Rs.26,000/- and each of the claimants 3 to 6 are entitled to receive a sum of Rs.20,000/-. This Court directs the Insurance Company to deposit the additional compensation amount, with accrued interest thereon, within a period of four weeks from the date of receipt of a copy of this order.

16. After such a deposit being made, it is open to the claimant to withdraw their apportioned share amount with accrued interest thereon, lying in the credit of M.C.O.P.No.450 of 2003, on the file of the Motor Accident Claims Tribunal, Principal District Court, Tirunelveli, after filing a memo along with a copy of this order.

17. In the result, the above appeal is partly allowed. Consequently, the award and decree passed in M.C.O.P.No.450 of 2003, on the file of the Motor Accident Claims Tribunal, Principal District Court, Tirunelveli, dated 28.02.2005, is modified. No costs. ub To 1.The Motor Accident Claims Tribunal, Principal District Court, Tirunelveli. 2.The Section Officer, VR Section, High Court, Madras.

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