

**BEFORE THE MOTOR ACCIDENT CLAIMS TRIBUNAL,
IN THE SPECIAL DISTRICT COURT TO DEAL WITH MOTOR
ACCIDENT CASES,**

Tmt. S. ROHINI, B.L.,
SPECIAL DISTRICT JUDGE (MACT)
MADURAI
Monday, the 19th day of August 2024

MCOP No.1210/2023
CNR.No.TNMD0D-000906-2023

1. Sakkarai, S/o. Karuppiyah, Hindu, aged 62 years and residing at 2040, Tamilnadu Housing Board Colony, Mela Anuppanadi, Madurai.
2. S. Gnanapandi, S/o. Karuppiyah, Hindu, aged 42 years and residing at 2040, Tamilnadu Housing Board Colony, Mela Anuppanadi, Madurai.
3. S.Veerapandi, S/o. Sakkarai, Hindu, aged 39 years and residing at 2040, Tamilnadu Housing Board Colony, Mela Anuppanadi, Madurai.

--- Petitioners

/Versus/

1. P.S. Abdul Kadhar, S/o. Sulthan Kani, Muslim, age not known to the petitioners and residing at No.51, J.K.Nagar 1st Street, 3rd Cross Street, Paramasamy Thevar Colony, Narayanapuram, Naganakulam, Madurai-625 014.
2. M/s. National Insurance Company Ltd., thro.its Manager (HUB) having office at No.3, North Veli Street, Madurai-625001.

... Respondents

This petition came up for final hearing before me on 19.08.2024 in the presence of Tr.S. Manikandan, Advocate for the petitioner, 1st respondent was called absent set exparte and Thiru. P.Murugan Advocate for the 2nd respondent and upon hearing the arguments of both side and upon perusal of

the case records, having stood over for consideration till this day, this court doth deliver the following.

ORDER

This petition has been filed by the petitioner under section 164 and 166 of the Motor Vehicles Act 1988 read with rule 3(2) of the MACT Rules for Amendment Act 32/19 claiming compensation of Rs.40,75,000/- and restricted to Rs.30,00,000/- from the respondents, for the death of one Shanmugavalli in a motor accident, which took place on 03.02.2023.

2. The averments contained in the petition copy are briefly as follows:

The occurrence took place on 03.02.2023 at about 10.30 Hrs. when the deceased Shanmugavalli and her husband i.e., the 1st petitioner herein was taking water from public water tap located on the East extreme of the North-South, road, Mela Anuppanadi Main Road. At that time the 1st respondent's vehicle bearing registration mark and No:TN-59-CA-7454 which came from behind without blowing horn in a rash and negligent manner dashed against the deceased Shanmugavalli resulting in the accident. In the accident, the deceased Shanmugavalli who was admitted in Velammal Medical College Hospital, Madurai immediately and she was admitted from 03.02.2023 to 17.02.2023. But, she succumbed to the Death injuries on that day. The accident occurred due to the reckless driving of the driver of the 1st respondent's vehicle registration mark and No.TN-59-CA7454 vehicle which was driven in a negligent manner by its driver, in hectic speed and without adhering to the traffic rules and regulations. The 1st respondent is the owner of the van TN59-CA-7454 which was insured with the 2nd respondent. Hence both the respondents are jointly and severally liable to pay compensation to

the petitioners.

3. The averments contained in the counter filed by the 2nd respondent are briefly as follows :

The 2nd respondent denies all the averments made by the petitioners in the claim petition except those that are all specifically admitted by him. the 2nd respondent submits that the petitioners are put to strict proof of every averments made by them through proper oral and documentary evidences. The claim petition is not maintainable either in law or facts and has to be dismissed. The petitioners are not entitled to the compensation as prayed by them. The petitioners must prove their claims through proper oral and documentary evidences. This 2nd respondent denies the averments of the petitioners that on 03.02.2023 at about 10.30 hours, while the deceased Shanmugavalli with her husband, was taking water from public water tap, located on the extreme east side of Mela Anuppanadi main road running from north to south direction, a Mahindra Bolero Pick up van bearing Reg.No.TN59CA7454, belonging to the 1st respondent and coming from behind and driven by its driver in a rash and negligent manner, without sounding the horn, in a hectic speed, without adhering to the rules and regulations and dashed against the deceased and as a result the deceased sustained grievous injuries as false and incorrect. The averments of the petitioners that after the accident immediately the deceased was taken to Velammal Medical College Hospital, Madurai and admitted there and took treatment as an inpatient from 03.02.2023 to 17.02.2023, but died on 17.02.2023 at the said hospital during treatment due to accidental injuries and due to the sudden demise of the deceased, the petitioners have lost their head

of the family, being deprived of security and monetary contributions getting from the deceased, are all denied as false and incorrect. at the time of the accident, the driver of the Mahindra Bolero Pick up van bearing Reg.No.TN-59CA7454, belonging to the 1st respondent drove the same in a moderate speed by observing all traffic rules and regulations. But the deceased who was sitting near the mud pot shop suddenly crossed the road in a negligent manner, without following the traffic rules and regulations, without noticing the van coming behind and thereby voluntarily invited the peril and also contributed her negligence in the occurrence of the accident. Hence the entire negligence for the said accident cannot be shifted on the shoulder of the driver of the Mahindra Bolero Pick up van bearing Reg.No.TN-59-CA 7454 belonging to the 1st respondent. It is further submitted that if the deceased who walked on the road, had proceeded on the road with due care, the accident would have been avoided as she also got duty to avert the accident. It is submitted that the petitioners must prove the alleged negligence on the part of the driver of the Mahindra Bolero Pick up van bearing Reg.No.TN-59CA7454, belonging to the 1st respondent, through proper oral and documentary evidences. The amount claimed by the petitioners under various heads and columns, mentioned in the claim petition are not reasonable, highly exaggerative and baseless. The 2nd respondent hereby reserves his right to file additional counter if any as and when required. Hence, the claim petition dismiss against this respondent.

4. On the side of the petitioners, PW.1 and PW.2 examined and Ex.P1 to Ex.P11 were marked. On the side of the respondent no oral documentary evidence were produced.

5. The 2nd respondent has filed an application u/s.170 of Motor

Vehicles Act, 1988 seeking permission of this Tribunal to take all the defence available to the 2nd respondent and the same was allowed.

6. Point for consideration:

1. Whether the accident had happened due to the rash and negligent driving of the driver of the 1st respondent of the vehicle bearing Regn. No. TN-59-CA-7454 ?
2. Who has to pay compensation?
3. Whether the petitioners are entitled to get compensation and if so, what is the quantum payable?

7. Point No. 1 :

The learned petitioner counsel argued that the accident occurred due to rash and negligent driving of the driver of the 1st respondent and the 1st respondent's vehicle was insured with the 2nd respondent. Hence 1st respondent as the insurer of 2nd respondent vehicle is liable to pay the compensation to the petitioners.

8. The learned 2nd respondent's counsels argued that the accident occurred due to the rash and negligent act of the deceased. The 1st respondent's driver is not responsible for the accident. Therefore, the 2nd respondent is not liable to pay the compensation to the petitioners.

9. To prove the petitioners case on Petitioners side the deceased Husband examined as PW1 and Ex.P1 to P.10 were marked. One Kalimuthu examined as PW2 and Ex.P11 was marked. On the side of the respondent no oral documentary evidence were produced.

10. PW1 who is an eye-witness to the occurrence, to depose the manner of accident in support of the claim averments. FIR also not Challenged by

the 1st respondent's driver. The 1st respondent was set exparte in this petition. In this case on hand there is no contra evidence let in by the 2nd respondent to prove the defence taken by them in the counter statement regarding the manner of the accident.

11. The factum of accident is not disputed by the 2nd respondent. The general rule is that in a motor accident claims case, the claimants are expected to prove the negligent of offending vehicle with the rule of preponderance of probabilities but not beyond reasonable doubt. On considering the above all this tribunal inclined to hold that accident occurred due to rash and negligent driving of the driver of the 1st respondent. Point No.1 answered accordingly.

12. Point No.2:-

Already for Point No.1, this tribunal answered that the accident occurred only due to the rash and negligent driving of the driver of the 1st Respondent bearing No.TN-59-CA-7454 herein. The 2nd respondent admitted that the 1st respondent vehicle was insured with 2nd respondent at the time of accident. Hence both are jointly and severally liable to pay compensation to the claimants. As the 2nd respondent is the insurer of the 1st respondent, 2nd respondent is liable to pay the compensation to the claimants. Point No.2 is answered accordingly.

13. Point No.3:

In petition, the petitioner stated that the age of the deceased as 57 years. Ex P10 is the Aadhaar card of the deceased Shanmugavalli in which the date of birth of the deceased Shanmugavalli mentioned as 01.01.1966. The accident happened on 03.02.2023. Hence this tribunal inclined to fix the age of the deceased as 57 years.

14. The claimants claim compensation as they are the legal heirs of

the deceased. As per Legal heir certificate Ex.P6 it is clear that petitioner alone the Legal heirs of the deceased. Hence 1 to 3 petitioners are entitled to claim compensation of the deceased Shanmugavalli.

15. Income of the deceased:-

The deceased age fixed as 57 years. The petitioner stated that the deceased was working as cooking work and there by earning Rs.25,000/- per month at the time of accident. But on petitioner side has not filed any single document to prove the income of the deceased. The accident happened on 03.02.2023. As per reported in Judgment **"2019(1) TNMAC 54 (Mad) Andal; Anjali; M.Santhosh Vs. Avinav Kannan and another."** the notional income has to be worked out taking into account the cost of inflation index and therefore taking the basic income at Rs.6500/- the cost the inflation index for the year 2022- 2023 (i.e) 331 has to be multiplied and divided by the cost of inflation index for the year 2022-2023 (i.e) $6500 \times 331 / 129 = 16678$ /-per month. Hence the Notional income of the deceased fixed as Rs.16678/-per month.

16. Future Prospects:-

The deceased was aged above 57 years. There is possibility of earning more in the future. Therefore 10% future prospects included as per the decision of Hon'ble Supreme Court reported in **National Insurance company ..vs. Pranay sethi others by 5 bench (SC) on 31.10.2017, 2009(2) TNMAC page 1** the 10% income comes to Rs.16678/+1668=18346/-.

17. Deduction of Personal expenses:___

As per reported judgment of the **(Smt.Sarala verma and others /Vs./ Delhi Transport Corporation and another)**, the ruling reported in

2013(1) TNMAC page 481 S.C. the 1 to 3 petitioners are the legal heirs of deceased therefore 1/3 income of the deceased has to be deducted as per personal expenses of the deceased. Hence 1/3 of deduction comes to **(18346-6115/-=12231/-)**

18. Annual income:-

Already this tribunal fixed a notional income of the deceased at Rs.12231/ - per month, after deducting the personal expenses. Annual income Rs.12231/-x12=Rs.1,46,772/-.

19. Multiplier:-

According to verdict of our apex court **2009(2) TNMAC page 1 (Smt.Sarala verma and others /Vs./ Delhi Transport Corporation and another)** the multiplier is fixed as 9. Since, the age of deceased already fixed as 57 years.

20. Loss of income:-

As per verdict of our apex Court this tribunal inclined to grant Spousal consortium to the 1st petitioner and parental consortium to the 2nd and 3rd petitioners. Hence the 1 to 3 petitioners are entitled to consortium Rs.40,000/-each. The petitioners are entitled to compensation and the head of funeral expenses and loss of estate. Ex.P3 and Ex.P9 shows that the petitioner spent Rs.3,06,998/- + 8100 =315098) Rs.3,15,098/-for Medical expenses. Hence the petitioners are entitled for medical expenses of the deceased.

Now the petitioners are entitled to compensation under the various heads as follows:-

Loss of income

(Rs.1,46,772 x9) = 13,20,948/-

Loss of Spousal consortium	=	40,000/-
Loss of Parental consortium	=	80,000/-
Funeral expences	=	15,000/-
Loss of estate	=	15,000/-
Transport expenses	=	5,000/-
Medical bills	=	3,15,098/-

Total	=	17,91,046/-

In the result, the petition is partly allowed and an award of Rs.1791046/- (Rupees Seventeen lakhs, Ninety one thousand and Forty six only) is awarded in favour of the petitioners with cost and against the 2nd respondent. The 2nd respondent is directed to deposit the award amount with interest @ 7.5% p.a. from the date of petition to till date of deposit (excluding the period of dismissal for default if any) with cost within a period of 2 months. The award amount shall be deposited through (in Indian Bank, A/c Name: MACT Special District Judge, Madurai A/c No. VMSDJKMCOP12102023, IFSC Code: IDIB000K215.). Out of the said compensation amount 1st petitioner is allotted to a sum of Rs.15,91,046/- and 2nd and 3rd petitioners are allotted to a sum of Rs.1,00,000/- each. The 2nd and 3rd petitioners are permitted to withdraw the entire award amount immediately. Out of the said compensation amount the 1st petitioner is permitted to withdraw 50% of their share amount with proportionate interest and cost immediately. The remaining share amount of 1st petitioner shall be invested in fixed deposit in a Nationalized Bank for a period of three years. Disbursement of the amounts to the petitioner as stated above shall be made by direct transfer to the credit of their

respective bank account by NEFT or RTGS.

This petition filed on 27.04.2023

The petitioner paid court fee of Rs.100/-. The actual court fee to be paid for the award amount is Rs.17283/- So, the petitioner is directed to pay the balance court fee of Rs.17183/-. The petitioner is directed to pay the court fee within 15 days. If the petitioner is not paying the court fee within prescribed time limit. She is not entitled for the interest for the subsequent period.

The petitioners' advocate fee is fixed at Rs.26,410/-.

As per judgment held by Hon'ble Madras High Court in Tr.Cmp.264 to 281 of 2020 M/s. Chola mandalam Ms. General Insurance Company Ltd., V/s. Ayyanar and others, dated 11.5.2020. There is no separate Decree passed.

Dictated to the Steno-Typist, and directly typed by her in the computer and, corrected and pronounced by me in the open court, on this the 19th day of August 2024.

(Sd.Tmt. S. ROHINI)

Special District Judge (MACT),
Madurai.

Enclosures:

List of witnesses on the side of the petitioner:

P.W1 -Sakkarai
P.W2 -Kalimuthu

List of exhibits on the side of the petitioner :

Ex.P1 Xerox copy of First information report
Ex.P2 Xerox copy of Death summary
Ex.P3 Medical bills
Ex.P4 Xerox copy of Postmortem certificate of the deceased

- Ex.P5 Xerox copy of Death certificate of the deceased
Ex.P6 Xerox copy of Legalheir certificate of the deceased
Ex.P7 Xerox copy of Aadhaar card of the petitioners
Ex.P8 Xerox copy of Bank pass book of the petitioners
Ex.P9 Medical bills
Ex.P10 Xerox copy of Aadhaar card of the deceased
Ex.P11 Case sheet

List of witness on the side of the respondents :Nil

List of exhibits on the side of the Respondents :Nil

(Sd.Tmt. S. ROHINI)
Special District Judge (MACT),
Madurai

Special District Court (MACT),
Madurai.
Draft/Fair Order in
M.C.O.P.No.1210/2023
Dated:19.08.2024