

BEFORE THE MOTOR ACCIDENT CLAIMS TRIBUNAL, THIRUVARUR,
THIRUVARUR DISTRICT.

(PRINCIPAL DISTRICT AND SESSIONS COURT, THIRUVARUR.)

Present: Tmt. M. Shanthi, B.Sc., B.L.,
Motor Accident Claims Tribunal Judge/
Principal District and Sessions Judge,
Thiruvavarur.

Wednesday, this the 26th day of August 2020

M.C.O.P.No. 242/2017.

1. Jayanthi
2. Sathish
3. Gayathiri
4. Kavitha

... Petitioners.

.Vs.

1. K. Veeramani
2. The Branch Manager,
United India Insurance Company Ltd.,
Thiruchirappalli.

... Respondents.

- - - - -

This petition came up before this Court for final hearing on 30.07.2020 in the presence of Mr. V.J. Raja, Learned Counsel for the petitioners and Mr. R. Muthaiyan, Learned counsel for the 2nd respondent, the 1st respondent after receipt of notice, though had appeared initially in person had failed to appear subsequently and had been set exparte, upon perusing the records and on hearing both side and having stood over for consideration till this date this court passes the following...

ORDER

This petition is filed by the petitioners who are the legal heirs of deceased Gandhi under section 166 and 140 of the Motor Vehicles Act towards claiming a compensation of Rs. 25,00,000/- from the respondents for the death of one Gandhi in a road accident.

2. The averments made in the petition in brief are as follows:

On 04.01.2017 at about 07.30 p.m., one Gandhi went to Manakkal Ayyampettai Bazaar by walk to purchase things, near Vadakandam Vettatru bridge in the north side and opposite to Shanmugam house, driver – cum – owner of the Two Wheeler TVS XL Super bearing registration number TN 50/Q 5793 who is the 1st respondent herein, came behind Gandhi with high speed and in a rash and in negligent manner without observing traffic rules and hit against the aforesaid Gandhi. Gandhi sustained injury in his right leg and head and blood oozed out from his nose, sustained injuries all over his body and he succumbed to the injuries on the way to Thiruvavur Government Medical College Hospital.

The deceased was aged 52 years only and he was hale and healthy at the time of accident. The deceased was an agricultural and other coolie worker and through which he earned monthly income of Rs. 10,000/-. First petitioner is the wife of deceased, 2nd petitioner is the son and 3rd and 4th petitioners are daughters. The first respondent is the driver – cum - owner of the vehicle - TVS XL SUPER, 2nd respondent as the Insurance Company for the said vehicle, are jointly and severally liable to pay compensation. The petitioners being the sole legal heirs of the deceased, they have claimed a total compensation of Rs. 25,00,000/- from the respondents.

4. Pith and substance of counter of 2nd respondent in brief are as follows:-

The respondent had not so far received any claim from the vehicle owner in respect of the accident. The petitioner has not also given the particulars of the insurance of the source of their information in the petition for impleading this

respondent as insurer of the vehicle. The petitioner has also established the fact that the vehicle was covered by valid policy of insurance with this respondent at that time of alleged accident. In the absence of the policy particulars, this respondent is not able to trace the same. Therefore, the respondent denies that the driver had valid and effective driving license on the date of the alleged accident.

This respondent submits that even if the vehicle is insured with the liability of the respondent will arise only if the vehicle was driven by a duly licensed driver and also had valid and effective driving license on the date of the alleged accident. This respondent denies that the vehicle had valid R.C., F.C., permit on the date of the alleged accident. This respondent denies that the accident was due to any rashness or negligence on the part of the driver of the 1st respondent. This respondent submits that 1st respondent driver did not drove the vehicle either rashly or negligently as alleged by the petitioner.

The petitioner is strict proof of the alleged accident, rashness and negligence on the part of the 1st respondent's driver. On the other hand, the deceased walked on the road negligent manner and invited the accident on his own fault. Further, the claimants are not legatees of the deceased. They are not entitled to get compensation for the deceased. The petitioners 2 to 4 are separated from the deceased house very long back. They settled their life with their own sources. The deceased is lonely person. He never connected with the petitioner. The petitioners are neither legal heirs nor dependent of the deceased. The vehicle which has involved in the alleged accident is not sent for Motor vehicle Inspector inspection.

The petitioners are not established that the vehicle which has involved in the accident is good condition, as well as ownership, verify the registration number and chasis number apart from that the driver who has drove the vehicle is obtained valid license at that time of the alleged accident. Hence, this petition is liable to be rejected for want of MVI report and defective documents. The driver who has drove the vehicle bearing registration Number TN 50 Q 5793 TVS XL SUPER has not obtained valid driving license at that time of alleged accident. It is purely violation of Motor Vehicle's Act. As per the policy contract, this respondent is not liable to pay compensation to the petitioners.

The respondent denies that the deceased is an agricultural coolie and earned monthly Rs.10,000/- In fact, the deceased is age old sick person, he is not capable of earning. The amount of compensation claimed Rs.25,00,000/- is excessive and out of all proportions. The respondent denies that the deceased is auto owner and earned monthly Rs. 30,000/-. The petitioner not produced any documentary evidence in support of the avocation and age, income of the injured, the nature of injury and also their dependency. Hence, petition may be dismissed with costs.

5. The points for consideration are as follows:-

- (i) Whether the accident had happened due to the rash and negligent driving of the rider of the Two wheeler TVS XL Super bearing Registration Number TN 50 Q 5793 or not?
- (ii) Whether the petitioners are entitled for the compensation?
- (iii) Whether the respondents are liable to pay the compensation?
- (iv) To what relief the petitioners are entitled to?

6. On behalf of the petitioner, two witnesses were examined as P.W.1 and P.W.2 and Exs. P1 to P6 were marked. On behalf of the 2nd respondent's side, Investigator was examined as R.W.1 and Ex.R1 was marked.

Point No.1 to 4 :-

7. All the points are taken up together for consideration for sake of convenience.

8. According to the petitioners, one Mr. Gandhi, who is the husband of 1st petitioner and father of 2nd to 4th petitioners, on 04.01.2017 while he was walking in a Vadakandam Vettatru palam at 07.30 p.m., the vehicle driven and owned by the 1st respondent being TVS XL Super bearing Registration Number TN 50 Q 5793 in a rash and negligent manner and hit the said Gandhi, due to which he had sustained injuries in his right leg, head and he was succumbed to injuries while on the way to Thiruvarur Government Medical College Hospital.

9. In this regard, Ex.P1 First Information Report had been registered against the 1st respondent before the Kodavasal Police Station in Crime Number 7/2017 dated 05.01.2017 under section 304(A) of Indian Penal Code. Then, the body of deceased Gandhi was taken to Thiruvarur Government Medical College Hospital and postmortem was done and as per Ex.P2 Postmortem certificate, the said Gandhi was died due to complications due to head injury and Ex.P3 is the Death Certificate of said Gandhi. The petitioners are the legal heirs of deceased Gandhi as per Ex.P4 Legal Heirship Certificate. Ex.P5 is the Registration Certificate and Ex.P6 is the Insurance Copy of the said vehicle. The occurrence is happened only due to the rash and negligent act of 1st respondent who is the owner cum driver of the said vehicle

and the 2nd respondent being the Insurer of the said vehicle also is liable to indemnify the same and both the respondents are jointly and severally liable to pay the claim amount.

10. Further, the deceased Gandhi was aged about 52 years at the time of accident and was doing agricultural coolie and other coolie works and was earning Rs.10,000/- per month. All the petitioners are dependant upon the deceased and hence the petitioners had prayed to award the petition claim amount.

11. Whereas according to the 2nd respondent, the driver of the vehicle TVS XL Super bearing Registration Number TN 50 Q 5793 had driven the vehicle without driving license which is purely violation of Motor Vehicles Act and hence the 1st respondent alone is liable and the Insurance company is not liable to pay compensation. The deceased had walked on the road in negligent manner and invited the accident on his own fault. Further as per Ex.P3 Death Certificate, the age of deceased Gandhi is shown as 60 years and the 3rd petitioner Gayathiri is already married and living in her husband's house and the claim amount is excessive and arbitrary and claimed without valid reason and hence prayed to dismiss the petition against the 2nd respondent herein.

12. According to P.W.1 the accident was happened only due to the rash and negligent driving of the 1st respondent. To strengthen the claim of P.W.1 one Kamalakannan who is the eyewitness to the said occurrence had deposed as P.W.2 had stated that, “ . . . நான் எட்டியலூரில் வசித்து வருகிறேன். நான் விவசாயம் செய்து வருகிறேன்.

இறந்த காந்தியை எனக்கு தெரியும். 3 ஆண்டுகளுக்கு முன்பு மேற்படி காந்தி வெட்டாற்று பாலத்திலிருந்து மணக்கால் அய்யம்பேட்டை நோக்கி வடக்கு புறமாக சும்பகோணம் சாலையில் சென்று கொண்டிருந்தார். அவருக்கு பின்னால் நான் சென்று கொண்டிருந்தபோது TVS XL Regr. No. TN 50 Q 5793 ஓட்டிய நபர் பின்னால் சென்று மேற்படி காந்தி மீது மோதிவிட்டார். நானும் கணேசனும் அடிபட்ட காந்தியை 108 ஆம்புலன்சில் திருவாரூர் அரசு மருத்துவக் கல்லூரி மருத்துவமனைக்கு அழைத்து வந்தோம். வரும் வழியிலேயே மேற்படி காந்தி இறந்துவிட்டார். விபத்து குறித்து அவரது வீட்டிற்கு தகவல் சொன்னேன் . . .".

13. Though the respondent had suggested that the accident was happened only due to the deceased Gandhi who had walk on the road without obeying the traffic rule at the time of accident and invited the accident on his own fault. There is nothing on record to prove the same. The 1st respondent who is the owner – cum – driver of the vehicle did not appear and either denied the nature of accident or deposed as witness on behalf of the respondent's side. The 2nd respondent who is the Insurance company had filed petition under section 170 of Motor Vehicles Act.

14. Ex. R1 Investigation report reveals that the vehicle at the time of accident was duly insured with the 2nd respondent and further the Kodavasal police had investigated the matter and filed final report under section 304(A) of Indian Penal Code against the 1st respondent stating that the 1st respondent drove the vehicle rashly and negligently at the time of accident and caused death of the said Gandhi and the Criminal trial had been pending before the Court.

15. The factum of accident, death of the said Gandhi and pendency of criminal case against the 1st respondent had not been denied by the 2nd respondent and their

contention is that the 1st respondent did not have valid license to ride the vehicle and hence there is a breach of policy conditions as well as the deceased himself had walked on the road without obeying the traffic rules had invited the accident.

16. While considering the enclosures of Ex. R1 documents, the Accident Register dated 04.01.2017 reveals that the deceased Gandhi who is aged about 52 years had been brought dead at 08.45 p.m., in the said hospital. The Rough sketch and the Observation Mahazar reveal that the deceased Gandhi at the time of occurrence was walking near the left side end of the road and as per the prosecution case, the 1st respondent drove the vehicle rashly and hit the deceased Gandhi. Further, the Motor Vehicle Inspection report reveals that the occurrence was not due to any mechanical defect and the driving license of the 1st respondent was not produced.

17. The oral evidence of P.W.1 as well as the eye witness P.W.2 coupled with the above mentioned documents clearly reveals that the 1st respondent drove the said vehicle rashly and negligently and hit the deceased Gandhi who was walking on the left side of the road and caused this fatal accident. Though the 2nd respondent had claimed that the deceased Gandhi himself had invited the accident and did not produce any oral or documentary evidence in this regard and no steps have been taken to examine any other eye witness or the 1st respondent as the respondent's side witness. Even in Ex.R1 documents, there is no finding given by Investigator that the said accident occurred due to act of deceased Gandhi.

18. It is well settled principle that the proof of rash and negligent act in Motor Accident Claim's case would not require strict proof as that of criminal offences and

the petitioner can very well prove the preponderance of probability and hence this Court is of the view that the petitioners had proved that the rash and negligent act of the 1st respondent alone had resulted in the said fatal accident which caused death of the said Gandhi. The 2nd respondent having admitted that the Insurance Policy is valid and in force, is liable to indemnify the act of 1st respondent and both the respondents jointly and severally liable to pay compensation to the petitioners.

19. With regard to breach of policy conditions i.e., driving without license, it is for the 2nd respondent to pay and recover the same from the 1st respondent, since the petitioners are third parties to the said Insurance agreement.

20. With regard to age of the deceased, Ex.P2 Postmortem Certificate and Ex.P4 Legal Heirship Certificate as well as Ex.R1 documents namely the Accident Register dated 04.01.2017 issued by the Government Hospital, Thiruvarur and Inquest Report reveal that the deceased is aged about 52 years, where as Ex.P3 Death Certificate reveals that the deceased Gandhi was aged about 60 years. In the absence of any other proof for determining the age of the deceased, the Court is of the view that it would be safe to decide that the deceased was 52 years at the time of death.

21. As per Ex.P4 Legal Heir ship Certificate, the 1st petitioner being the wife and the 2nd to 4th petitioners beings the son and daughters of deceased Gandhi are entitled to receive the compensation. The petitioner had claimed that the deceased Gandhi at the time of death was working as agricultural and other coolie works and was earning Rs.10,000/- per month and did not produce any document in support of the same.

22. While considering the age of the deceased, the place where the deceased and his family lived, his profession and number of members in his family and considering the rise of inflation, the daily income of the deceased Gandhi to be atleast Rs. 250/- per day. In this regard, the Hon'ble Madras High Court in Santhi .Vs. Natesan, dt. 25.11.2013 had observed that, “ . . . 28. In her evidence, P.W.1 deposed that her husband was doing agricultural coolie work at the time of accident and was earning Rs.8,000/- per month. The learned counsel for the claimants submitted that in the present case the accident of the year 2011 and the Tribunal ought to have taken the monthly income of the deceased at Rs.8,000/-.

29. Normally, if a person doing agricultural coolie work, there would be no proof available regarding avocation and the daily coolie he/she received. However, considering the age of the deceased and his avocation as agricultural coolie, the Tribunal has fixed the notional monthly income of the deceased at Rs.5,000/-. As stated supra, in the present case, the accident was happened in 2011. During the year 2011, if a person doing agricultural coolie, would have earned at least Rs.250/- per day. Since in the present case the deceased was doing agricultural coolie at the time of accident, he would have earned Rs.7,500/- per month. Therefore, this Court is inclined to take the monthly income of the deceased at Rs.7,500/- in the place of Rs.5,000/- taken by the Tribunal. Thus, the annual income is calculated at Rs.90,000/-. Since the living members are five in numbers, it would appropriate to deduct one-fourth towards personal and living expenses. Deducting one-fourth towards personal expenses, the yearly contribution to the family is calculated at

Rs.67,500/- . . .”

As per the decision of the Hon’ble Madras High Court, the income of the deceased who was doing agricultural coolie work until the time of death in the year 2017, had been considered as Rs. 7,500/- per month. Hence, the earning of the deceased is calculated as Rs. 7,500/- per month.

23. As per the decision of Hon’ble Supreme Court of India in National Insurance Company .Vs. Pranay Sethi and Others reported in CDJ 2017, CC 1220, since the age of the deceased has been fixed as 52 years, with regard to future prospects, there will be in addition of 15% salary. In this regard, the earning of the deceased per month is $\text{Rs.7,500/-} + 15\% = \text{Rs. 1125/-}$. $\text{Rs. 7500} + \text{Rs.1125/-} = \text{Rs. 8,625/-}$.

24. Since there are four family members who were dependant upon the deceased, it would be appropriate to deduct 1/4th of the said income towards personal and living expenses of deceased which would come to $\text{Rs. 8,625} \times \frac{1}{4} = \text{Rs. 2,156/-}$. $\text{Rs. 8,625} - \text{Rs. 2,156/-} = \text{Rs. 6,469/- p.m.}$, Since the age of the deceased was 52 years, the multiplier adopted is 11. Hence, the compensation amount is to be $\text{Rs. 6,469} \times 11 \times 12 = \text{Rs. 8,53,908/-}$ and the same is rounded to Rs. 8,53,900/-.

25. Further, the Hon’ble Supreme Court of India in United India Insurance Company Ltd., .Vs. Satinder Kaur @ Satwinder Kaur dt. 30.06.2020 had observed that, “. . . In Magma General Insurance Co. Ltd. v. Nanu Ram & Ors.,¹² this Court interpreted consortium to be a compendious term, which encompasses spousal consortium, parental consortium, as well as filial consortium. The right to consortium would include the company, care, help, comfort, guidance, solace and affection of the

deceased, which is a loss to his family. With respect to a spouse, it would include sexual relations with the deceased spouse. Parental consortium is granted to the child upon the premature death of a parent, for loss of parental aid, protection, affection, society, discipline, guidance and training. Filial consortium is the right of the parents to compensation in the case of an accidental death of a child. An accident leading to the death of a child causes great shock and agony to the parents and family of the deceased. The greatest agony for a parent is to lose their child during their lifetime. Children are valued for their love and affection, and their role in the family unit. Modern jurisdictions world-over have recognized that the value of a child's consortium far exceeds the economic value of the compensation awarded in the case of the death of a child. Most jurisdictions permit parents to be awarded compensation under loss of consortium on the death of a child. The amount awarded to the parents is the compensation for loss of love and affection, care and companionship of the deceased child. The Motor Vehicles Act, 1988 is a beneficial legislation which has been framed with the object of providing relief to the victims, or their families, in cases of genuine claims. In case where a parent has lost their minor child, or unmarried son or daughter, the parents are entitled to be awarded loss of consortium under the head of Filial Consortium. Parental Consortium is awarded to the children who lose the care and protection of their parents in motor vehicle accidents. . . .”

26. As per the above decision, for loss of Spouse consortium to the 1st petitioner is Rs. 40,000/- and for loss of parental consortium to 2nd to 4th petitioners is Rs. 30,000/-, for funeral expenses Rs. 15,000/- and for Transportation charges Rs. 5,000/-

and totally the award of compensation is Rs.9,43,900/- and the said amount will carry an interest of 7.5 % from the date of the petition.

26. Considering that the 1st petitioner who had lost her husband, is entitled to get Rs. 4,00,000/-, 2nd and 4th petitioners being the son and daughter of the deceased, each petitioner is entitled to receive Rs. 2,00,000/- and the 3rd petitioner who is the married daughter of deceased is entitled to receive a sum of Rs. 1,43,900/-.

In the result, the petition is allowed with costs and an award of Rs.9,43,900/- is passed in favour of the petitioners against the 1st and 2nd respondent and on behalf of the 1st respondent, it is ordered to deposit the award amount with interest at 7.5% per annum from the date of case taken on file, till the date of deposit (excluding the period of default if any) and is payable by the second respondent at the first instance and to recover the same thereafter from the 1st respondent. The 1st petitioner is entitled to get Rs. 4,00,000/-, 2nd and 4th petitioners being the son and daughter of the deceased, each petitioner is entitled to get Rs. 2,00,000/- and the 3rd petitioner who is the married daughter of deceased is entitled to receive a sum of Rs. 1,43,900/-. Time for deposit 2 months from this date. The 2nd respondent is hereby directed to deposit the award amount to the credit of the “MACT” Principal District Judge, which is the Bank Account of this claim Tribunal specially being maintained for this purpose at State Bank of India, Vilamal Branch, Thiruvavarur Town, Account No. 362030343024 and IFSC Code – SBIN0010663 directly by NEFT (or) RTGS mode and the 2nd respondent insurance company is directed to submit a letter to this claim Tribunal enclosing a copy of the Bank advise in prescribed format as directed by the

Honourable High Court in the Judgment reported in 2016 (3) CTC page 128, after serving a copy of the advice to the petitioner within two months from today and on such deposit, after necessary application by the petitioner and by the order of this Tribunal, 50% of the award amount with accrued interest and cost to be transferred to the Bank Account of the petitioners. On deposit, the petitioners are entitled to receive the 50% of the amount with proportionate interest. The remaining award amount of 50% shall be deposited in a Nationalised bank for a period of 3 years in cumulative deposit. Deficit Court Fee shall have to be paid by the petitioners within one month on or before 25.09.2020. Failing which, the petitioners are not entitled to get interest from 26.09.2020 till the date of deposit for the said award amount. Advocate fee Rs. 16,439/-.

Dictated to the Stenographer Grade I, typed by her directly in the computer, corrected and pronounced by me in the open court on this the 26th day of August 2020.

(Sd/-)... **M. Shanthi,**
Motor Accident Claims Tribunal Judge/
Principal District and Sessions Judge,
Thiruvavur.

Appendix :-

Witnesses examined :-

On the side of the Petitioners :-

P.W.1 : Jeyanthi

P.W.2 : Kamalakannan

Exhibits marked :-

On the side of the Petitioners :-

Ex.P.1	05.01.2017	True Copy of First Information Report
Ex.P.2	05.01.2017	True Copy of Postmortem Certificate of Gandhi
Ex.P.3	09.02.2017	Death Certificate of Gandhi
Ex.P.4	03.03.2017	True copy of Legal Heir Certificate of Gandhi
Ex.P.5	13.01.2015	Copy of Registration Certificate in respect of TVS XL Super Heavy Duty bearing Registration Number TN 50 Q 5793
Ex.P.6	09.01.2016	Copy of Insurance Policy in respect of TVS XL Super Heavy Duty bearing Registration Number TN 50 Q 5793

Witnesses examined :-

On the side of the Respondents : -

R.W.1 : Ashok Arockiyaraj, Investigator

Exhibits marked :-

On the side of the Respondents : -

Ex.R.1 03.11.2017 Copy of the Investigation Report

(I/d/-)... **M. S,**
MACTJ/PDJ.,

/true copy/

ORDER : FAIR / DRAFT
M.C.O.P.NO. 242/2017
DATE : 26.08.2020

Account number 362030343024 and IFSC Code – SBIN0010663 directly by NEFT (or) RTGS mode and the 2nd respondent insurance company is directed to submit a letter to this claim Tribunal enclosing a copy of the Bank advise in prescribed format as directed by the Honourable High Court in the Judgment reported in 2016 (3) CTC page 128, after serving a copy of the advice to the petitioner within two months from today and on such deposit, after necessary application by the petitioner and by the order of this Tribunal, 50% of the award amount with accrued interest and cost to be transferred to the Bank Account of the petitioners. On deposit, the petitioners are entitled to receive the 50% of the amount with proportionate interest. The remaining award amount of 50% shall be deposited in a Nationalised bank for a period of 3 years in cumulative deposit. Deficit Court Fee shall have to be paid by the petitioners within one month on or before 25.09.2020. Failing which, the petitioners are not entitled to get interest from 26.09.2020 till the date of deposit for the said award amount. Advocate fee Rs. 16,439/-.

MACTJ/PDJ

M.C.O.P.NO. 242/2017

ORDER DATE : 26.08.2020

Order Passed.

In the result, the petition is allowed with costs and an award of Rs.9,43,900/- is passed in favour of the petitioners against the 1st and 2nd respondent and on behalf of the 1st respondent, it is ordered to deposit the award amount with interest at 7.5% per annum from the date of case taken on file, till the date of deposit (excluding the period of default if any) and is payable by the second respondent at the first instance and to recover the same thereafter from the 1st respondent. The 1st petitioner is entitled to get Rs. 4,00,000/-, 2nd and 4th petitioners being the son and daughter of the deceased, each petitioner is entitled to get Rs. 2,00,000/- and the 3rd petitioner who is the married daughter of deceased is entitled to receive a sum of Rs. 1,43,900/-. Time for deposit 2 months from this date. The 2nd respondent is hereby directed to deposit the award amount to the credit of the “MACT” Principal District Judge, which is the Bank Account of this claim Tribunal specially being maintained for this purpose at State Bank of India, Vilamal Branch, Thiruvavur Town,

