

**BEFORE THE MOTOR ACCIDENT CLAIMS TRIBUNAL/
DISTRICT AND SESSIONS JUDGE
COMMUNAL CLASH CASES COURT,
MADURAI**

**Present: THIRU.B. RAJAVEL, B.Sc., B.L.,
MACT Judge/District and Sessions Judge,
Communal Clash Cases Court, Madurai**

**Tuesday the 15th day of March 2022
M.C.O.P. No.2283/2017**

- - -

1. Tmt.J. RAJALAKSHMI
2. Minor. J.SHIPANI
3. Minor. J. SUDHARSHINI
4. Minor. J. SIDDHARTH
5. Tmt. M. MALLIGA

(Minor petitioners 2 to 4
represented through their Mother/natural guardian
i.e., the 1st petitioner – Tmt. J. Rajalakshmi)

...Petitioners

/Vs/

- 1) The State Express Transport Corporation Ltd.,
represented by its Managing Director,
Pallavan Salai,
Chennai 600 002.

- 2) V. Janakiraman,
Driver,
State Express Transport Corporation Ltd.,
Pallavan Salai,
Chennai 600 002.

..Respondents

This petition filed before the Principal District Court, Madurai
on 13-12-2017 and taken on file as M.C.O.P. No.2283/2017 and transferred to this

court for disposal and Advocate Thiru.R. Narayanan, appeared for the petitioners and Advocate Thiru. R. Kamalahasan, appeared for the 1st Respondent and 2nd respondent called absent set exparte and this petition came before me finally on 15--3-2022 and on hearing the argument of both sides this tribunal passed the following:

ORDER

This Claim petition is filed under section 140, 141, 142, and 166 of the M.V.Act (Amended Act 54/1994) and r/w Rule 3 (1) of the Motor Accidents Claims Tribunal Rules for claiming compensation of Rs.91,50,000/-which was restricted to Rs.75,00,000/- on account of death of one **M. JEEEVANANTHAM** with interest from the date of petition till the date of realization and costs.

2. Brief averments in the petition are as follows:

The Accident had happened on 7-9-2012 by 4 p.m., the deceased Jeevanantham was riding a motor cycle bearing Registration No.TN-59-BZ-2295 from Melur to Madurai Road in front of the Union Office, Melur in a slow speed by following all traffic rules and regulations of the above said road. At that time, the 2nd respondent who was driving a SETC passenger Bus bearing Registration No. TN-01-N-7528 belong to the 1st respondent, in a rash and negligent manner,without observing any traffic rules and regulations at high speed without sounding horn and dashed against the motor cycle which was rode the deceased M. Jeevanantham. Due to the accident deceased was thrown away and sustained multiple grievous injuries/fatal injuries all over the body (particularly cut injury over his neck) and died on the spot itself. A criminal case was registered against the 1 Respondent's driver u/s 279, 337 and 304(A) IPC in crime No.692/2012 by Madurai District, B-1, Melur Police Station officials and the criminal case is pending before the Judicial Magistrate Court, Melur. The deceased was aged about 39 years and he was doing Business dealing in Electronics and Electrical goods in Riyadh, Saudi Arabia and he was earning an income Rs.60,000/- per month. The petitioners are the legal heirs of the deceased. Hence, the respondents are liable to pay

the compensation to the petitioners. Hence this petition is to be allowed.

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

The averments made in the petition are false. Except the averments specifically admitted by the respondent all other averments are denied.

On 7-9-2012 S.E.T.C. bus bearing Registration No.TN-01-N-7528 started its trip from Tirunelveli to Chennai driven by its driver carefully, observing all traffic rules and regulations keeping extreme left side of the road. At about 16.00 hours when this respondent bus was proceeding on the Melur to Madurai main road while nearing the place in front of Melur union office, the respondent driver noticed one private bus bearing Registration No. TM 59 BZ 6262 proceeding in the opposite direction, at over speed, rash and negligent manner. The respondent driver drove the bus carefully, keeping his side after proper warning and indication following the rules and regulations as per road laws, in the mean time the driver of the above private bus bearing Registration No.TN 59 BZ 6262 that was coming in the opposite direction, applied sudden brake and stopped the bus without any road sense. Unfortunately, another motor cyclist with bearing Registration No.TN 59 BZ 2295, which was proceeding back of the private bus at over speed, rash and negligent manner dashed rear to the private bus and then due to sudden skit came towards right side crossing the centre line and came ahead to the respondent bus in the opposite. The respondent driver in order to avoid the accident with the motor cyclist applied sudden brake and stopped the respondent bus keeping extreme left side of the road. But, the motor cyclist in an uncontrollable seed dashed against the rear right side wheel arch of the respondent bus. Hence, the petition is liable to be dismissed.

4. On the petitioner's side PW 1 and PW 2 were examined and Exhibit P 1 to Ex P 20 were marked. On the Respondent's side R.W.1 witness was examined and no documents were marked.

5) Points for consideration:

- 1) Who acted negligently and caused the accident?
- 2) Who is liable to pay the compensation?
- 3) Whether the petitioners are entitled to get compensation if so the quantum of compensation payable ?

6) Point NO. 1:

To prove the negligence on the side of the petitioners P.W.2 Thiru. Jothimani has been examined. Claimants side Ex P 1 to Ex P 20 marked. According to the testimony of P.W.2 that the occurrence was happened on 7-9-2012 at about 4.00 P.M., the deceased Jeevanandham riding a motor cycle bearing Registration No.TN 59 BZ 2295 along with pillion rider Jothimani on Melur Madurai Main Road, towards Madurai. When the two wheeler was nearing Melur Panchayat Union Office, at that time the driver of the passenger bus bearing Registration No. TN 01-N-7528 belongs to the 1st Respondent drove the same in a rash and negligent manner and dashed against the motor cycle. On the other hand, 2nd respondent who is the driver of offending vehicle bearing Registration No. TN-01-N-7528 was examined as R.W.1. The 2nd respondent contended that the allegation made by the petitioner and P.W.2 is not sustainable and the accident was happened only due to the senseless action of the private bus driver and the deceased. The testimony of R.W.1 reads that 7.9.12 at about 4.00 P.M., the accident was occurred when the motor cyclist tried to overtake and grazed rear to the front on going private bus due to the impact motor cyclist over came to the wrong side after crossing the centre line of the road. The 2nd respondent had no other option except to stop the bus keeping left side of he road. But, the deceased unable to control the two wheeler and dashed against the right side back wheel arch of the respondent's vehicle. But it is seen from the Ex P 1 FIR that the accident was occurred on the middle of the road. Evidence of P.W.2

discloses that on seeing the bus coming opposite side the deceased tried to over take the private bus from right side during the process he fell down. There was a strong possibility that the deceased while overtaking the private bus and slipped down his vehicle and came under the wheel of the offending vehicle because there was no space between two passenger bus. The rider of the two wheeler to overtake or pass a vehicle travelling in the same direction is required to ensure that there is sufficient and clear space for overtaking and he is supposed obtain signal from the driver ahead of him that he may be overtaken. Therefore it is evident from the evidence of P.W.2 that instead of giving way on the right side to the respondent's vehicle which is coming from opposite side the deceased himself went on the wrong side and thus this accident occurred. However, driver of 1st respondent must take all reasonable steps to avoid the accident. The driver on the wheel of the Respondent's vehicle must vigilant while, the vehicle is coming from the opposite direction. The evident of R.W. 1 that on noticing the deceased was attempting to over take the private bus, he stopped the bus, is not supported by any independent evidence. Had the driver of the bus really stopped the same it would not have resulted in fatal injuries to the deceased considering the totality of evidence, inference could be easily drawn that both of them have contributed to the accident. Ex P 2 Postmortem certificate read that the deceased sustained head injuries and due to the head injury the deceased succumbed at the spot. If the deceased worn protective head gear (Helmet) as contemplated u/s 129 of MV act the head injury and loss of life could have been prevented. Under such circumstances this tribunal hold that the deceased and 2nd respondent contributed negligence in the ratio of 30:70 for the cause for the accident and thus this point is answered accordingly.

7) Point No.2:

As per the answer laid down in Point No.1 the deceased and the 2nd respondent contributed negligence in the ratio of **30%:70%** for the cause for the accident. Under such circumstances it is decided that the petitioners are entitled for the compensation to

the extent of negligence caused by the 2nd respondent and the 1st respondent is liable to pay the compensation to them and thus this point is answered accordingly.

8) Point No.3:

As per the answer laid down in Points No.1 and 2 the 1st respondent is liable to pay 70% of the compensation to the petitioners and that the petitioners are entitled for the compensation to the extent of 70% only. The petitioners claimed a total compensation of Rs.75,00,000/- under various heads.

Dependency of the deceased:

As per Ex P 3 Legal heir certificate the petitioners 1,2,3,4 and 5th petitioners are the wife, daughters, Son and mother of the deceased and they are all depending the income of the deceased Jeevanandham and their Adhar cards and bank pass books which are marked as Ex P 13 to Ex P 19. Hence the petitioners are depending the income of the deceased and they are entitled to get the compensation.

9) Age of the deceased:

In the claim petition it is mentioned the age of deceased was aged about 38 years. Ex P 8 Passport date of birth of the deceased was mentioned as 29-6-1973. Therefore age of the deceased was fixed at 39 years and relevant multiplier is **15**.

10) Income of the deceased:

It is claimed by the petitioner that the deceased Jeevanandam was Business Man in Soudi Arabia and earned Rs.60,000/- per month. Ex P 9 is the Exit and reentry visa issued by foreign country immigration authority. Ex P 9 reads that “In case of loss (Re entry visa), the employer must be informed immediately” In Ex P 7 it has been stamped on 4-4-95, that “employment within three months' and his profession was salesman But no document is produced to prove the deceased doing business in Electronic goods in Riyadh. A perusal of the passport entries of the deceased's reveals that he had continued to remain in employment for a period of over 17 years in Riyadh till his death in the year

2012. There are numerous entries of foreign travel in Ex P 7 and Ex P 9 during the 17 years of his stay in Riyadh. In

2020 (2) TNMAC -1- (SC)

United India Insurance Co.Ltd., -vs- Satinder Kaur @ Satwinder Kaur & ors.

the Honorable Supreme Court fixed income of the skilled labour at Rs.32000/-. In the cited case law the deceased was skilled labour in Doha and employed till 1998. In this case date of accident is 7-9-2012. The deceased had continued to remain in employment for a period of over 17 years. He was evidently doing fairly well. Hence, this tribunal followed the guidance of the Hon'ble Supreme Court in the above Judgment to fix the notional income of the deceased at Rs.40000/- per month. The deceased had to maintain an establishment in Riyadh, and incur expenditure for the same in commensurate with the high cost of living in a foreign country. As per the Judgment of our Hon'ble Supreme Court in

2020 (2) TNMAC -1- (SC)

United India Insurance Co.Ltd., -vs- Satinder Kaur @ Satwinder Kaur & ors. 50% of the income of the deceased would be required to be deducted. Since, he was living in a foreign country.

11) Future Prospects:

As per **2017 (2) TN MAC 609(SC)**

National Insurance Co Ltd -vs- Pranay Sethi and others

the future prospects of the deceased has to be taken into consideration by taking **40%** of the monthly income of the deceased. Since, the age of the deceased is 39 years. The monthly income of the deceased was fixed as Rs.**40,000/-** per month after adding 40% of the said monthly income towards future prospects would come to Rs.**16,000/-** per month. Hence, by adding **Rs.40,000/- + Rs.16,000/- = Rs.56,000/-** per month.

12) Deduction:

As per **2020 (2) TNMAC -1- (SC)**

United India Insurance Co.Ltd., -vs- Satinder Kaur @ Satwinder Kaur

& ors.

the 50% of the income of the deceased has to be deducted towards his personal expenses of the deceased. Hence, deducting $\frac{1}{2}$ of his income towards the personal expenses of the deceased is Rs.28,000/- per month. Hence, his income comes to Rs.28,000/- per month.

13) Multiplier:

The deceased Jeevanandham was 39 years at the time of his death. Accordingly the multiplier of **15** would be the appropriate multiplier as per the table set out in Sarala Varma's case.

14) Pecuniary Loss:

Hence, since, the monthly income of the deceased is fixed as Rs.28,000 /- by applying the multiplier of **15**. (Rs.28,000 x 12 x 15 =Rs.50,40,000/- It would comes to Rs.50,40,000/-).Hence, under the head of the pecuniary loss an amount of Rs..50,40,000/- is awarded.

15) Loss of Estate:

Due to the sudden demise of the deceased at the age of 39 years, the family has lost its only bread winner. So, a sum of Rs. **15,000/-** is allowed under this head.

16) Funeral Expenses:

The fee paid in crematorium fee paid for use of space in cemetery and expenses on several religious practices and conventions pursuant to death considering the above, a sum of Rs.**15,000/-** is allowed under this head.

17) Consortium:

It is true that the payment of consortium is not only limited to spousal consortium it includes parental consortium and filial consortium. Therefore, the children of the deceased also entitled to get the consortium. Hence, under the head of the consortium an amount of Rs.**1,25,000 /-** is awarded.

So, the petitioners are entitled for the compensation amount as follows:

1) Loss of Pecuniary Benefits	: Rs. 50,40,000/-
2) Loss of Estate	: Rs. 15,000/-
3) Funeral Expenses	:Rs. 15,000/-
4) Consortium	:Rs. 1,25,000/-

Total compensation	: Rs. 51,95,000/-

Rs. 51,95,000/- in which 70% = Rs.36,36,500/-

Hence, the petitioners are entitled to get compensation for a sum of Rs.36,36,500/- and out of which the 1st petitioner is entitled to get Rs.16,36,500/- and the 2nd to 4th petitioners are entitled to get Rs.6,00,000/- each and the 5th petitioner is entitled to get Rs.2,00,000/- . **Accordingly I answered the point No. 3.**

In the result, this petition is allowed in part with proportionate cost against the 2nd respondent. The 2nd respondent is liable to pay the compensation on behalf of the 1st respondent for the compensation of Rs.36,36,500/- (Rs Thirty six Lakhs Thirty six thousand five hundred only) payable with interest at 7.5% per annum from the date of numbering of the petition to till the date of deposit.

Out of the total compensation, the 1st petitioner being the wife of the deceased is entitled to get Rs.16,36,500/- and the 1st petitioner is entitled to withdraw 50% of the amount on such deposit with proportionate cost and interest and the remaining 50% of her share amount is ordered to be invested in any one nationalized bank for a period of three years.

The 2nd to 4th petitioner are being the minor children is entitled to get Rs.6,00,000/each-. The share amount of the minor petitioner is ordered to be invested in any one of the nationalized bank until the minor attains majority and next friend/mother/ 1st petitioner is permitted to withdraw the accrued interest by filing appropriate application once in six months before the court.

The 5th petitioner is being the mother of the deceased is entitled to get

Rs.2,00,000/- and the 5th petitioner is entitled to withdraw **50%** of the amount on such deposit with proportionate cost and interest and the remaining **50%** of her share amount is ordered to be invested in any one nationalized bank for a period of three years.

No interest for the default period as per the orders if any. The 2nd respondent is directed to deposit the amount within two months. The amount shall be deposited through State Bank of India, Vinayaga Nagar Branch, Account No.36051215499 (MACT) Principal District Judge, Madurai. Disbursement of compensation to the petitioner shall be made by direct transfer to the credit of their respective bank account by NEFT or RTGS of the petitioners. The **first** petitioner is directed to pay deficit court fee within two weeks from the date of this order.

The Bank Account details of 1st petitioner:

Syndicate Bank, Thiruppuvannam, Account No.62742010001263

Aadhar Card No.8028 9682 6578

The Bank Account details of 2nd petitioner:

State Bank of India, Thiruppuvannam, Account No.6808340935,

IFSC SBIN 0011064

Aadhar Card No. 2092 1997 9178

The Bank Account details of 3rd petitioner:

NIL

Aadhar Card No. 9243 0086 8488

The Bank Account details of 4th petitioner:

NIL

Aadhar Card No. 3396 1987 8744

The Bank Account details of 5th petitioner:**Indian Overseas Bank, Thiruppuvannam , Account No. 052801000009456****IFSC Code: IOBA 0000528****Aadhar Card No.6633 2321 1121**

Dictated to the Steno Typist, directly typed by her, corrected and pronounced by me on this the 15th day of March 2022.

(Sd) B.Rajavel

MACT Judge/ District and Sessions Judge,
Communal Clash Cases Court,
Madurai

Petitioners' side witness:

PW 1 - Rajalakshmi

PW 2 – Jothimani

Petitioners' side Exhibits:

Ex P 1	07-09-2012	FIR	True copy
Ex P 2	24-08-2012	Death certificate	original
Ex P 3	08-09-2012	Postmortem certificate	True copy
Ex P 4	02-08-2014	Legal heirship Certificate	original
Ex P 5	-	ID card of the deceased issued by Soudi Arabia	original
Ex P 6	-	ID card of the deceased issued by Soudi Arabia	original
Ex P 7	-	Passport of the deceased Jeevanandam	original
Ex P 8	-	Passport of the deceased Jeevanandam	original
Ex P 9	-	Visa of the deceased	original
Ex P 10	-	Bank pass book of the deceased Jeevanandham (State Bank of India,	original

		Thiruppuvanam)	
Ex P 11	-	Bank pass book of the deceased Jeevanandham (Indian Overseas Bank, Melur)	original
Ex P 12	-	Bank pass book of the 5 th petitioner (2 series)	original
Ex P 13	-	Bank pass book of the 1 st petitioner	xerox
Ex P 14	-	Adhar card of the 1 st petitioner	xerox
Ex P 15	-	Bank pass book of the 2 nd petitioner	xerox
Ex P 16	-	Adhar card of the 2 nd Petitioner	xerox
Ex P 17	-	Adhar card of the 3 rd Petitioner	xerox
Ex P 18	-	Adhar card of the 4 th Petitioner	xerox
Ex P 19		Bank pass book of the 5 th petitioner	xerox
Ex P 20	-	Adhar card of the 5 th Petitioner	xerox

Respondent's side witness:

R.W.1 - Janakiraman

Respondent's side Exhibits:**NIL**

(Sd) B.Rajavel
 MACT Judge/ District and Sessions Judge,
 Communal Clash Cases Court,
 Madurai

/True copy/

Communal Clash Cases Court,
 Madurai

