

IN THE COURT OF THE MOTOR ACCIDENTS CLAIMS TRIBUNAL, THENI

PRESENT: THIRU S. SRINIVASAN., B.Sc., M.L.,

Motor Accidents Claim Tribunal Judge,

(ADDITIONAL DISTRICT JUDGE)

Tuesday the 5th day of February 2019

M.C.O.P. No.17/2018

1. Vellaiammal
2. Chinnakaruppan
3. Subbiah
4. TamilSelvi
5. Nagarathinam

.....Petitioners

/Vs/

1. Selvam
2. TATA AIG General Insurance Company Ltd.,
rep. thro' its Branch Manager, Madurai.

.....Respondents

This petition is coming before me for final hearing on 30.01.2019 in the presence of Thiru.C.Gopalakrishnan, Counsel for the Petitioners and the respondents 1 & 2 are remained exparte and upon hearing the argument of petitioners side, perusal of all connected material records and having stood over for consideration till this date, this court passed the following ...

//ORDER//

This petition is filed U/S 140, 141, 142, 163, 166 and 182A of M.V. Act and r/w rule 3(1) TNMACT rule claiming compensation to the tune of Rs.5,00,000/- with 15% interest and costs for the death of Oorkathan who is the husband of 1st petitioner and the father of petitioners 2 to 5 occurred in a Road Traffic Accident.

2. Brief averments of the petition as follows:

On 09.09.2014 at about 5.30 P.M, the deceased Oorkathan returned from his Paddy field and when he came to his house by walking on Cumbum to Theni Main Road and when the deceased was crossing the road from west to east direction near Veterinary Hospital at Kottur,

the rider of a Two wheeler PULSUR bearing Reg.No.TN 60 L 8503 rode the vehicle in a rash and negligent manner and hit against the deceased Oorkathan and caused serious injuries to the deceased. Immediately after the accident, the deceased Oorkathan was admitted in G.H, Theni as Inpatient from 09.09.2014 to 11.10.2014 and the deceased succumbed to the injuries at G.H, Theni on 11.10.2014 without responding to the treatment. A Criminal Case was registered against the rider of a Two wheeler in Cr. No.308/2014 of Veerapandi P.S. The accident was occurred only due to the rash and negligent act of the rider of a Two wheeler TN-60-L-8503 belonged to the 1st respondent. The 1st respondent is the owner of a Two wheeler TN-60-L-8503 and the vehicle was duly insured with the 2nd respondent. Hence the 1st respondent as owner of a Two wheeler and the 2nd respondent as insurer of the vehicle are liable to compensate the petitioners. The petitioners have claimed a total compensation of Rs.5,00,000/- from the respondents 1 and 2.

3. The respondents remained Exparte in this case.

4.The points for consideration are:

1. Whether the accident was occurred due to the rash and negligent act of the rider of a Two wheeler TN-60-L8503 belonged to the 1st respondent?
2. Who is liable to pay compensation?
3. Whether the petitioners are entitled to compensation? If so, what is the quantum?

5. In order to prove the case of the petitioners, PW1 and PW2 were examined and Ex.P1 to P10 were marked on the side of the petitioners.

6. POINT NO.1:

It is the case of the petitioners that, on 09.09.2014 at about 5.30 P.M, the deceased Oorkathan returned from his Paddy field and when he came to his house by walking on Cumbum to Theni Main Road and when the deceased was crossing the road from west to east

direction near Veterinary Hospital at Kottur, the rider of a Two wheeler PULSUR bearing Reg.No.TN 60 L 8503 rode the vehicle in a rash and negligent manner and hit against the deceased Oorkathan and caused serious injuries to the deceased. Immediately after the accident, the deceased Oorkathan was admitted in G.H, Theni as Inpatient from 09.09.2014 to 11.10.2014 and the deceased succumbed to the injuries at G.H, Theni on 11.10.2014 without responding to the treatment. The 3rd petitioner namely Subbiah was examined as PW1 and the eye witness Surulinathi was examined as PW2.

7. On perusal of FIR Ex. P1, it finds that the Veerapandi Police registered a criminal case against the rider of a Two Wheeler TN-60-L-8503 in Cr. No. 308/2014. PW2 has deposed that, the accident was occurred only due to the rash and negligent act of the rider of a Two wheeler TN-60-L-8503 belonged to the 1st respondent. Hence after considering Ex.P1 and the evidence of PW1 & PW2, this Tribunal came to the conclusion that, the accident was occurred due to the rash and negligent act of the rider of a Two wheeler TN-60-L-8503 belonged to the 1st respondent and this point is answered accordingly.

8. POINT NO: 2

It is not in dispute that the Two wheeler TN-60-L-8503 is belonged to the 1st respondent and the vehicle was insured with the 2nd respondent on the date of accident. Hence there is no violation of Insurance Policy conditions arose in this case. Hence this tribunal came to the conclusion that the 2nd respondent being the insurer of the vehicle belonged to the 1st respondent is held liable to pay the compensation to the petitioners and this point is answered accordingly.

9. POINT NO: 3

The accident was occurred on 09.09.2014. The deceased Oorkathan died on 11.10.2014. The petitioners have produced Ex.P5 Accident Register of deceased Oorkathan issued by Theni Medical College Hospital. As per Ex.P5 Accident Register, it finds that, the deceased Oorkathan was admitted as Inpatient from 09.09.2014 to 11.10.2014. The deceased Oorkathan succumbed to the injuries on 11.10.2014 at his residence and hence, no postmortem was done to the body of deceased

Oorkathan. On perusal of Ex.P5, it finds that, the death of Oorkathan was caused only due to the injuries sustained in the accident. The Petitioners have produced Ex.P9 Death certificate and Ex.P10 Legal Heir Certificate. Ex.P10 Legal Heir Certificate shows that, the 1st Petitioner is the wife and petitioners 2 & 3 are the sons and petitioners 4 & 5 are the daughters and they are the only legal heirs of the deceased Oorkathan. Hence, the petitioners 1 to 5 are entitled to the compensation for the death of deceased Oorkathan.

10. The petitioners would submit that, the deceased Oorkathan was working as an Agricultural Coolie and he was earning Rs.10,000/- p.m. But the petitioners did not produce any document to prove the occupation and income of the deceased Oorkathan and hence, his monthly income is notionally fixed at **Rs.7,500/-** by following the dicta of Hon'ble Supreme Court of India in **Syed Sadiq vs. Divisional Manager, United India Insurance Company Limited,2014(1) TNMAC 459(SC)**. There are 5 family members left by the deceased as dependents at the time of the accident. As per the decision of the Hon'ble Supreme Court in **Sarala Verma** case, 1/4th is to be deducted for personal and living expenses. 1/4th of Rs.7,500/- is Rs.1875/-. $Rs.7,500 - 1,875 = Rs.5,625/-$.

11. As per Ex.P5, the age of the deceased at the time of the accident was 65. Hence, the petitioners are not entitled any future prospects. The proper multiplier as per the decision of **Pranay Sethi case(61-65)** is 7. Hence, the loss of dependency is worked at Rs.5625/- X 12 X 7= Rs.4,72,500/-. The petitioners are also entitled to Rs.5,000/- towards Transportation Charges for taking the body to his native place to conduct his last respects and Rs.15,000/- towards Funeral Expenses and Rs.40,000/- towards Loss of consortium to 1st petitioner and Rs.1,00,000/- towards Loss of Love and affection (petitioners 2 to 5 each Rs.25,000/-), the 2nd and 3rd petitioners and Rs.15,000/- towards loss of estate by following the dictum as laid down by the Hon'ble Supreme Court in **Pranay Sethi case**.

12. The total compensation awarded to the petitioners under the various heads are as follows:

1. Transportation	.. Rs.	5,000/-
2. Funeral Expenses	.. Rs.	15,000/-
3. Loss of consortium to 1st petitiner	.. Rs.	40,000/-
3. Loss of Love and affection (2 to 5 petitioners each Rs.25,000/-)	.. Rs.	1,00,000/-
4. Loss of Estate	.. Rs.	15,000/-
5. Loss of Dependency	..Rs.	4,72,500/-

Total	..Rs.	6,47,500/-

13. In the result, the petition is partly allowed with costs. Award is passed in favour of the petitioners as against the 2nd respondent for the compensation of **Rs.6,47,500/- (Rupees Six Lakhs Forty Seven thousand Five hundred only)** payable with interest at 7.5% p.a. from the date of filing the petition till the date of realization, within two months from this date. Out of Total Award amount of **Rs.6,47,500/-**. The 1st Petitioner is entitled to **Rs.5,47,500/-** and the 2 to 5 petitioners are entitled to **Rs.25,000 /- each**. After the deposit of the compensation amount, the petitioners 1 to 5 are permitted to withdraw their entire share amount with proportionate interest and costs directly from this court. The 1 to 5 petitioners are directed to pay the balance court fees within 10 days from the date of this order. The advocate fee is fixed at Rs.13,475/-

This order is dictated to the steno-typist, transcribed and typed by her in the computer, corrected and pronounced by me in the open court, on this the 5th day of February 2019.

Motor Accidents Claims Tribunals Judge,
(Additional District Judge(FTC)) Theni.

Witnesses examined on the side of petitioners:

PW1 Subbiah

PW2 Surulinathi

Document marked on the side of petitioners:

Ex.P1	09.09.2014	FIR	Certified copy
Ex.P2	10.09.2014	Mahazar	Certified Copy
Ex.P3		Rough Sketch	Certified Copy
Ex.P4	--	MV Report	Certified copy
Ex.P5	--	Accident Register	Certified Copy
Ex.P6	20.03.2015	Charge Sheet	Certified Copy
Ex.P7	--	Insurance Policy	Xerox Copy
Ex.P8	--	STC.No.1015/2015 Judgment	Certified Copy
Ex.P9	--	Death Certificate	Original
Ex.P10	--	Legal Heirship Certificate	Original

Witnesses examined on the side of the Respondents: NIL**Documents marked on the side of the Respondents: NIL**

M.A.C.T.J. (ADJ(FTC))

Theni.