

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 (FTC))
Friday, the 16th day of November 2018

M.C.O.P. No.60/2018

1. Veerraj
2. Panchali
3. Rengaraj
4. Kalpana

...Petitioners

/Vs/

1. Arockiasamy
2. The Oriental Insurance Company Ltd.,
Rep. thro' its Branch Manager, Theni.

.....Respondents

This petition is coming before me for final hearing on 13.11.2018 in the presence of Thiru.M.Jeyakumar, Counsel for the Petitioners, Thiru.A.Vellaisamy Counsel for the 1st Respondent and the 2nd Respondent remained exparte and upon hearing the arguments of both sides, 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 140,141,142,160,163A, 163B, 166 and 182A of M.V. Act and r/w rule 3(1) TNMACT rule claiming compensation to the tune of Rs.20,00,000/- with 24% interest and costs for the death of a minor boy Mathankumar who is the son of 1st and 2nd petitioners and brothers of 3rd and 4th petitioners which occurred in a Road Traffic Accident.

2. Brief averments of the petition as follows:

On 10.05.2011 at about 6.30 P.M., when the deceased Minor boy Mathankumar was walking on Theni to Cumbum Main Road in front of Palaniappa Higher Secondary School,

Palanichettyatti by keeping left side of the road from north to south direction along with his friends Saranraj, Vignesh Kumar, Srikalyani, Maheswaran and the family members of Maheswaran and other friends to take a “Fire Pot” (தீச்சட்டி) to the Veerapandi Sri Gowmariamman Temple, the 1st respondent who is the owner-cum-driver of an Auto bearing Reg.No.TN60B7724 drove the vehicle in a rash and negligent manner and without hooting the horn and hit against deceased Mathankumar and his friends and caused serious injuries to the deceased Mathankumar. Immediately after the accident, the deceased Mathankumar was taken to Theni G.H. for treatment and he was declared as brought dead at Theni, G.H.

A Criminal Case was registered against the 1st respondent who is the owner-cum-driver of an Auto by Palanichetty Patty Police in Cr.No.169/2011 U/s. 279, 337 and 304(A) IPC. The accident was occurred only due to the rash and negligent act of the 1st respondent who is the owner-cum-driver of an Auto bearing Reg. No.TN-60-B-7724. The said vehicle was duly insured with the 2nd respondent on the date of accident. Hence the 2nd respondent being the insurance company is liable to compensate the petitioners. The 1st petitioner is the father and 2nd petitioner is the mother and the 3rd and 4th petitioners are the brother and sister of the deceased Mathankumar and they have claimed the total compensation of Rs.20,00,000/- from the respondents. Hence, the respondents are liable to pay the compensation to the petitioners.

3. Brief averments of Counter filed by the 1st Respondent :

The accident did not happen due to the fault of the 1st respondent. The 1st respondent had driven the vehicle in a normal speed by observing the traffic rules of the road at the time of the accident. This respondent was the owner of the vehicle involved in the accident at the time of accident. This respondent had valid Insurance policy in the 2nd respondent's Insurance Company at the time of accident. The claim on the various heads of the petitioners is highly excessive and exorbitant one. This respondent is not liable to pay any compensation to the petitioners. If the petitioners are entitled any compensation, they have to claim compensation only from the 2nd respondent and not from the 1st respondent. This petition is liable to be dismissed as against the 1st petitioner.

4.The points for consideration are:

1. Whether the accident was occurred due to the rash and negligent act of the 1st respondent who is the owner-cum-driver of an Auto TN 60 B 7724?
2. Who is liable to pay compensation?
3. Whether the petitioners are entitled to the 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 P9 were marked on the side of the petitioners. No oral and documentary evidence was adduced on the side of the 1st respondent.

6. POINT No.1

It is the case of the petitioners that, on 10.05.2011 at about 6.30 P.M., when the deceased Minor boy Mathankumar was walking on Theni to Cumbum Main Road in front of Palaniappa Higher Secondary School, Palanichettyatti by keeping left side of the road from north to south direction along with his friends Saranraj, Vignesh Kumar, Srikalyani, Maheswaran and the family members of Maheswaran and other friends to take a “**Fire Pot**” (தீச்சட்டி) to the Veerapandi Sri Gowmariamman Temple, the 1st respondent who is the owner-cum-driver of an Auto bearing Reg.No.TN60B7724 drove the vehicle in a rash and negligent manner and without hooting the horn and hit against deceased Mathankumar and his friends and caused serious injuries to the deceased Mathankumar. Immediately after the accident, the deceased Mathankumar was taken to Theni G.H. for treatment and he was declared as brought dead at Theni, G.H.

7. The 1st petitioner Veera Raj who is the father of deceased Mathankumar was examined as PW1 and the eye witness Vignesh kumar was examined as PW2. PW2 has clearly narrated about the rash and negligent driving of the 1st respondent who is the owner-cum-driver of an Auto bearing Reg.No.TN60B7724. On perusal of FIR Ex. P1, it finds that the Palanichettyatti Police has registered a criminal case against the 1st respondent who is the owner-cum-driver of an Auto in Cr. No.169/2011 U/s 279, 337 & 304(A)IPC. The evidence of PW2 is in consonance

with the contents of the FIR. The 2nd respondent has not chosen to examine the 1st respondent who is the owner-cum-driver of an Auto to discard the evidence adduced on the side of the petitioners. Hence after perusing Ex.P1 and the evidences of PW1 and PW2, this tribunal came to the conclusion that the accident was occurred due to the rash and negligent act of the 1st respondent who is the owner-cum-driver of an Auto only and this point is answered accordingly.

8. POINT No:2

It is not in dispute that the Auto bearing Reg. No. TN-60-B -7724 is belonged to the 1st respondent and the vehicle was insured with the 2nd respondent on the date of accident. There is no violation of policy 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 compensation to the petitioners and this point is answered accordingly.

9. POINT NO: 3

PW1 has produced Ex.P4 Post-mortem Certificate issued by the Theni Medical College Hospital, in which the cause of death was mentioned as "**DECEASED WOULD APPEAR TO HAVE DIED DUE TO HEAD INJURIES**". As per Ex.P4 P.M. Certificate, it is very clear that the death of Mathan Kumar was caused only due to the injuries of the accident. The petitioners 1 & 2 are the parents of the deceased and they are only entitled to the compensation and the petitioners 3 & 4 are the brother & sister of the deceased an they are not entitled to the compensation for the death of deceased Mathan Kumar. The deceased Mathan Kumar has completed 12th Std. in Nadar Saraswathi Higher Secondary School, Theni at the time of accident. He was a Brilliant student and he scored 662 Marks in 12th Std. as seen from the Mark Statement Ex.P7. The deceased will have a great opportunity to get the permanent job on good salary after completing the college studies. Hence the monthly income of the deceased Mathan kumar is notionally fixed at Rs.15,000/- by following the dicta of **Hon'ble Supreme Court of India in V. Mekala vs. M.Malathi and another, 2014(2) TNMAC 6(SC)**.

10. Further this Tribunal came to the conclusion that the petitioners are entitled to claim future prospects for the deceased Mathan Kumar as per the decision of **Hon'ble Supreme Court of India in National Insurance Company Ltd., vs. Pranay Sethi and others 2018(1) LW 331**. In this case, the Hon'ble Supreme Court has held that, in case of self employed, an addition of 40% of the established income should be the warrant where the deceased was aged between below 40. Hence, the petitioners are entitled to future prospects at 40% of Rs.15,000/- ie.,Rs.6,000/-. Total income of the deceased Rs.15,000/-+6,000/- = Rs.21,000/-.

11. The deceased Mathan Kumar was died as a **Bachelor** and hence, as per the decision of the Hon'ble Supreme Court in Sarala Verma case, 50% is to be deducted for personal and living expenses. 50% of Rs.21,000/- is Rs.10,500/- . $Rs.21,000-10,500 = Rs.10,500/-$. The Hon'ble Supreme Court of India has held in **CDJ 2018 SC 026** as follows in respect of multiplier about the bachelor.

“Having due regard to the judgment delivered by the Constitution Bench of this Court in National Insurance Company Ltd., vs. Pranay Sethi and others 2018(1) LW 331 and in Sarla Verma Vs Delhi Transport Corporation the correct multiplier should be on the basis of the deceased in case of a death of a Bachelor”

Hence, as per the above said decision of Hon'ble Supreme Court of India, the multiplier is to be taken only on the basis of the age of the deceased and not on the age of the parents. The age of the deceased at the time of the accident was 17. The proper multiplier as per the decision of Sarala Verma's case is 18. Hence, the Loss of Dependency is worked at $Rs.10,500 \times 12 \times 18 = Rs.22,68,000/-$. 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.1,00,000/-(2 petitioner each Rs.50,000/-) towards Loss of Love and affection 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 Love and affection (1 & 2 petitioners each Rs.50,000/-)	.. Rs.	1,00,000/-
4. Loss of Estate	.. Rs.	15,000/-
5. Loss of Dependency	..Rs.	22,68,000/-

Total	..Rs.	24,03,000/-

13. Though, the petitioners have claimed only Rs.20,00,000/- as compensation towards the death of deceased Nagaraj, they are entitled to the just and reasonable compensation amount of Rs.24,03,000/-, on the basis of evidence. The **Hon'ble Supreme Court of India in Nagappa v. Gurudayal Singh and others, 2004(2) TNMAC 398(SC): 2003(2) SCC 274**, has permitted to enhance the compensation amount, though lesser compensation amount was claimed in the petition.

14. In the result, the petition is partly allowed with costs. Award is passed in favour of the petitioners 1 & 2 as against the 2nd respondent for the compensation of **Rs.24,03,000/- (Rupees Twenty Four Lakhs Three thousand 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.24,03,000/-**, the 1st Petitioner is entitled to **Rs.12,03,000/-** and 2nd petitioner is entitled to **12,00,000/**. After the deposit of the compensation amount, the petitioners 1 and 2 are permitted to withdraw their 50% share amount with proportionate interest and costs directly from this court. The balance 50% share amount is ordered to be invested in any Nationalized Bank for the period of Three years. The petitioners 1 & 2 are directed to pay the balance court fees within 10 days from the date of this order. The advocate fee is fixed at Rs.31,000/-

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 16th day of November 2018.

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

Witnesses examined on the side of petitioners:

PW1 Veerraj

PW2 Vignesh Kumar

Document marked on the side of petitioners:

Ex.P1	10.05.2011	FIR	True copy
Ex.P2		Accident Register	True Copy
Ex.P3	25.05.2012	Death Certificate	Xerox Copy
Ex.P4		Post-mortem Certificate	Xerox Copy
Ex.P5		MV Report	True Copy
Ex.P6	--	Insurance policy	Xerox Copy
Ex.P7	--	+2 Mark sheet and certificate	Original
Ex.P8	--	Family Card	Xerox copy
Ex.P9	--	Aadaar Card	Xerox copy

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.