

IN THE COURT OF THE VIth JUDGE, COURT OF SMALL CAUSES

(MOTOR ACCIDENTS CLAIMS TRIBUNAL)

CHENNAI

PRESENT: THIRU. S. MUTHU MURUGAN, B.A., B.L., LL.M.,

VIth Judge(FAC)

Wednesday, this the 18th Day of September 2024

MCOP No. 1123/2015

CNR No. TNCH09-003907-2015

1. S. Jayanti Bai,
W/o. V. Srinivasa Rao,
Aged about 48 years,
2. S. Suresh (Minor rep by mother and next friend Jayanthi bai)
S/o. V. Srinivasa Rao,
Aged about 15 years,
3. S. Vaishnavi (Minor rep by Mother and next friend Jayanthi bai)
D/o. V. Srinivasa rao,

All are Residing at No. 98,
Harikrishna naidu street,
Varadharajapuram, Ambattur,
Chennai – 600 053.

...Petitioners

Vs.

1. Velayutham,
No. 3/12, 3rd street,
Saraswathy nagar, Thiruvottiyur,
Chennai – 600 019.

2. Shriram general Insurance company,
Represented by its branch manager,
Mookambikai complex, 2nd floor,
No. 4, Lady desikachari road,
Alwarpet, Mylapore, Chennai – 4.

...Respondents

This petition came up on **05.08.2024** for final hearing before me in the presence of **Mr. A. Babu**, Counsel for the petitioner and **Mr. Michael Marie Antony**, Counsel for the 2nd respondent **but the 1st respondent called absent and set exparte**. Upon hearing both sides and on perusing the case records and having stood over for consideration till this date, this court delivered the following.

AWARD

This claim petition has been filed under Section 166 of Motor Vehicles Act, 1988 claiming compensation of Rs.22,40,000/- with interest and costs.

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

The petitioners submitted that on 07.12.2013 at about 5.45 pm when the deceased was riding his TVS XL motorcycle bearing Reg. No TN 20 AQ 1923 on the left side of the road of 3rd main road, Ambattur estate near Elbaro engineering company from south to north direction. At that time the Ashok Leyland lorry bearing Reg. No. TN 01 Q 7565 driven by its driver in rash and negligent manner and dashed against the deceased motorcycle thereby causing this accident. Since the accident happened due to the negligence of lorry driver so the respondents being the owner and insurer of the lorry are liable to pay compensation to the petitioners for the death of the deceased.

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

The second respondent denied the allegations in the claim petition as false, and the petition is not maintainable either on law or facts and put the petitioner to strict proof of the allegations in the claim petition. The company denied the relationship of the petitioners with the deceased and insurance of the lorry by them. Further denied the age, occupation and income of the deceased, the place, date and time of accident. The compensation claimed by the petitioners is very high and without any reasonable basis. The company denied the allegations in column no.23 and denied the rash and negligence of the lorry driver. Since the accident involved two vehicles the petitioners ought to have impleaded the owner and insurer of the deceased ridden vehicle. The company denied the valid insurance to the lorry, other documents and license to the driver. In the event of award, if any the interest rate shall be at par with the nationalized bank interest. With the above the second respondent prayed to dismiss the claim petition.

4. Evidence:

In evidence the 1st petitioner examined as PW1 and marked eleven documents as Ex. P1 to Ex. P11 and Mr. Kishore, Manager in Pickfab engineers private limited examined as PW2 through him Ex.P12 and Ex.P13 marked and then Mr. Annadurai, Sub-Inspector of police examined as PW3 through him Ex.P14 and Ex.P15 marked and Abdul kadhar, who lodged FIR examined as PW4 with this the petitioner side evidence was closed.

On the second respondent side the Superintendent in RTO office Ganapathi examined as RW1 and his evidence three documents marked as Ex.R1 to Ex.R3 with this both side evidence was closed.

5. The Points for determination are:

1)	Whether the accident occurred due to the rash and negligence driving of the 1 st respondent/lorry driver?
2)	Whether the 1 st respondent/lorry driver was having valid driving license and whether the said vehicle was covered under valid insurance and proper documents, as contemplated under the M.V. Act at the time of accident?
3)	Whether the petitioner is entitled to get compensation if so, what should be the quantum of compensation, and by whom it is payable?

6. ANSWER FOR POINT No.1:

6.1. The petitioners submit that on 07.12.2013 at about 5.45 pm when the deceased was riding his TVS XL motorcycle bearing Reg. No TN 20 AQ 1923 on the left side of the road of 3rd main road, Ambattur estate near Elbaro engineering company from south to north direction. At that time the Ashok Leyland lorry bearing Reg. No. TN 01 Q 7565 driven by its driver in rash and negligent manner and dashed against the deceased motorcycle thereby causing this accident.

6.2. In this regard a police complaint was lodged by PW4 Abdul Kadhar to Poonamallee Traffic investigation wing. On which the Ex. P1, FIR has been registered in FIR No.1744/PH3/2013 u/s. 279, 304(A) IPC against the first respondent/lorry driver. But the 1st respondent did not come forward to contest this petition as against the FIR (or) accusation of the petitioners and the second respondent side did not adduce any evidence to disprove the negligence of the 1st respondent/lorry driver. Further 2nd respondent did not dispute the negligence, PW3 and PW4 deposed about the negligence of the lorry driver. Considering the

same this court is of view that the accident was happened due to the negligence of the 1st respondent lorry driver. Accordingly, this point is answered.

7. ANSWER FOR POINT No.2:

In this point the first step is to find out the driving license of the 1st respondent/lorry driver, Further the petitioner side marked the driving license of the first respondent/lorry driver as Ex.P10, however the 2nd respondent side did not raise any dispute with respect to the driving licence. Further the petitioner side marked the registration certificate and insurance policy of the 1st respondent lorry as Ex.P11 and Ex.P9. Apart from that the second respondent insurance company did not raise any objection with respect to the registration certificate and insurance policy of the lorry belongs to the first respondent. Considering the same this court is of the view that the lorry involved in the accident was under the cover of insurance at the time of accident. Accordingly, the point is decided.

8. ANSWER FOR POINT No.3:

(i) Cause of Death:

The accident was happened on 07.12.2013 and the deceased was died on the same day. The postmortem certificate marked as Ex.P3, it would show that the deceased was died due to the shock and hemorrhage due to multiple injuries in road accident. So it is proved that the deceased was died due to the accident injuries.

ii) Dependency to the deceased:

The petitioners stated that, they are the wife, son, daughter of the deceased. In support to their claim the petitioner side marked legal heirship certificate issued by the Ambattur, Tahsildar as Ex.P4 on perusal of the same it would show that the petitioners are the only available legal heirs of the deceased as such they are the dependents of the deceased so entitled to get the compensation.

iii) Age of the deceased

The petitioners in their claim petition alleged that the deceased was aged 48 at the time of the accident, in the Ex.P3 postmortem of the deceased his age was mentioned as 48. Considering the same his age fixed as **48 years** at the time of Accident.

iv) Monthly income of the deceased:

In the claim petition, it has been stated that at the time of the accident, the deceased was working as Foreman in pick fab engineers private limited and earned Rs. 10,000/- per month, Further the petitioner side marked salary certificate as Ex.P5. Hence this tribunal inclined to fix monthly income of the deceased. Considering the age of the deceased and year of accident, prevailing working atmosphere his monthly income fixed at the same as Rs. 10,000/- per month.

v) Future Prospectus

As per the Judgment of Hon'ble Apex court reported in **2017 (2) TNMAC 609** between *National Ins. Co. Ltd. Vs. Pranay Sethi and others* the Future prospects to be added. As decided in that case the future prospectus for the age group of between 40 to 50 is 25% which will come to a sum of Rs.2500/- (10,000x 25/100) so the total monthly income is Rs. 12500/-. Thus, the annual income of the deceased fixed as Rs.**150000/-** (12500 X 12).

vi) Deduction for personal and living expenses of the deceased:

As per judgment of the Honble Supreme Court in *Sarla Verma and Ors. Vs. Delhi Transport Corporation and Ors.* reported in **2009 (2) TNMAC 1**, The dependents to the deceased are three persons, hence 1/3 has to be deducted for the personal and living expenses of the deceased. Therefore, 1/3 of the amount Rs. **1,50,000/-**, a sum of Rs. 50000/- deducted from the annual income of the deceased so the balance **Rs.1,00,000/-** (Rs. **1,50,000/-** -Rs.50000) is the contribution to the dependents of his family per annum.

vii) Multiplier and total loss of dependency:

After the deduction of the personal and living expenses of the deceased now there is need to calculate the loss of dependency. In this process the multiplier is significant as per judgment of the Honble Supreme Court in *Sarla Verma and Ors. Vs. Delhi Transport Corporation and Ors.* reported in **2009 (2) TNMAC 1**, since the age of the deceased was 48 at the time of death the multiplier for the age group of 46-50 will be M-13. Therefore, the total loss of dependency is arrived as **Rs. 1300000/-** (Rs. **100000x 13**).

viii) Loss of Consortium:

As per the judgment of Honourable Apex court in **New India Assurance company vs Somwati in Civil appeal No:3093/2020** dated 7-9-2020 and **Magma General Insurance Co.Ltd., Vs. Nanu Ram Alias Chuhru Ram and others reported in 2018(2) TNMAC 452 (SC)**, it has been decided that no compensation can be granted under the head of Love and affection and the dependents of the family are only entitled for the compensation under the head of loss of consortium according to their relationship under the head of spousal consortium, parental consortium, filial consortium. As per the Judgment of Hon'ble Apex court reported in **2017 (2) TNMAC 609** between **National Ins. Co. Ltd. Vs. Pranay Sethi and others**, each of the petitioners entitled each for Rs.40,000/- towards loss of spousal consortium, parental and filial consortium.

ix) Loss of Estate:

As per the Judgment of Hon'ble Apex court reported in **2017 (2) TNMAC 609** between **National Ins. Co. Ltd. Vs. Pranay Sethi and others**, the petitioners are entitled to **Rs.15,000/-** under the head of "Loss of Estate".

x) Funeral Expenses:

As per the Judgment of Hon'ble Apex court reported in **2017 (2) TNMAC 609** between **National Ins. Co. Ltd. Vs. Pranay Sethi and others** the petitioners are entitled to **Rs.15,000/-** under the head of "**Funeral expenses**".

xi) Medical Expenses:

The petitioner side did not mark the medical bills for the treatment of the deceased, so no amount was awarded towards medical expenses.

Summing up the above said amount under various heads are as follows

Loss of dependency	Rs. 13,00,000/-
Loss of Consortium	Rs. 1,20,000/-
Loss of Estate	Rs. 15,000/-
Funeral Expenses	Rs. 15,000/-
Medical bills	Nil
Total	Rs. 14,50,000/-

9. In view of the above discussion and calculation arrived in the above paras in various head, this tribunal comes to the decision that a sum of **Rs. 14,50,000/-** would be a just compensation to the death of deceased in road accident.

10. In the result, this petition is partly allowed that,

(i)	An award of Rs. 14,50,000/- (Rupees Fourteen Lakhs Fifty Thousand only) is passed in favour of the petitioner with interest at 7.5% p.a. from the date of petition, viz. 07.02.2015 to till the date of payment payable by the 2 nd respondent with costs.
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(ii)	There will be no interest for the default period if any.
(iii)	The compensation amount shall be deposited into this court Bank Account in the name of Registrar (MACT), Court of Small Causes, Chennai Account No. 7103261207 IFSC No. IDIB000M157 Indian Bank, Madras High Court Branch, Chennai within two months.
(iv)	Out of the total award amount the 1 st petitioner/wife of the deceased entitled to Rs. 8,50,000/- and the 2 nd petitioner/son of the deceased entitled to Rs.3,00,000/- and the 3 rd petitioner/daughter of the deceased entitled to Rs. 3,00,000/-. Further, it is directed to deposit the amount for the period of 3 years. The minors petitioners share shall be deposited in fixed deposit in any one of the nationalized bank till they attains majority.
(v)	On petition for payment of the above said initial amount excluding, costs, Advocate fees and bank charges due and payable to the petitioner/claimant which shall be transferred to 1 st petitioner bank account no. 019601000036306, Indian overseas bank, Ambattur branch, IFSC No. IOBA0000196 through RTGS (or) NEFT as furnished by them.
(vi)	The petitioner has paid a sum of Rs. 384/- towards Court fee. As per this award, the Court fee is Rs.13873.50. The Advocate fee is fixed at Rs.21500/-. The Additional Court fee of a sum of Rs. 13489.50

	shall be paid within 10 days.
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Dictated by me to the bench clerk and she directly typed it in the computer, after corrections pronounced by me in the open Court on this the 18th day of September 2024.

(S. MUTHUMURUGAN)
Vth JUDGE
COURT OF SMALL CAUSES
CHENNAI

LIST OF WITNESSES EXAMINED FOR THE PETITIONER: -

S.No.	DATE	NAME OF THE WITNESSES	REMARKS
PW1	21.10.2016	Jayanthi bai (1 st Petitioner)	Ex.P1-Ex.P11
PW2	27.02.2020	Kishore	Ex.P12 and Ex.P13
PW3	16.03.2020	Annadurai	Ex.P14 and Ex.P15
PW4	31.03.2022 and 13.04.2022	Abdul Kadhar	--

LIST OF EXHIBITS FOR THE PETITIONERS:-

Sl No.	Date	Document Particulars	Document Type
Ex.P1	07.12.2013	First Information Report	Photocopy

Ex.P2	--	Death certificate	Photocopy
Ex.P3	--	Post mortem certificate	Photocopy
Ex.P4	--	Legal heir certificate	Photocopy
Ex.P5	--	Deceased salary certificate	Original
Ex.P6	--	Driving licence of the deceased	Photocopy
Ex.P7	--	Petitioners Aadhaar card	Photocopy
Ex.P8	--	Bank pass book 1 st page of the 1 st petitioners	Photocopy
Ex.P9	--	1 st respondent's vehicle insurance policy	Photocopy
Ex.P10	--	1 st respondent's driver driving licence	Photocopy
Ex.P11	--	RC Book of the 1 st respondent vehicle	Photocopy
Ex.P12	--	Form – 22 extract	Photocopy
Ex.P13	--	Aadhar card of the PW2	Photocopy
Ex.P14	--	Arrest report	Photocopy
Ex.P15	--	Sketch	Photocopy

LIST OF WITNESS EXAMINED FOR THE RESPONDENTS:

S.No.	DATE	NAME OF THE WITNESSES	REMARKS
RW1	13.10.2022	Ganapathi	Ex.R1 – Ex.R3

LIST OF EXHIBITS MARKED FOR THE RESPONDENTS:

SI No.	Date	Document Particulars	Document Type
Ex.R1	--	Authorization letter	Original
Ex.R2	--	Fitness certificate details of 1 st respondent lorry	Photocopy
Ex.R3	--	Registration certificate details of 1 st respondent lorry	Photocopy

COURT DOCUMENT: Nil

(S. MUTHUMURUGAN)
VIth JUDGE(FAC)
COURT OF SMALL CAUSES
CHENNAI

OTHER PARTICULARS

Date of filing of the petition	13.01.2015
Date of Award	18.09.2024
Amount Claimed under Compensation	Rs. 22,40,000/-

Amount Awarded as Compensation	Rs.14,50,000/-
Total Court Fees	Rs. 13873.50/-
The Court Fee already paid	Rs. 384.00
Balance Court Fee to be paid	Rs. 13489.50

Costs List

<u>Cost Particulars</u>	<u>Amount</u>
Stamp duty for Award Amount	Rs. 13873.50
Vakalath	Rs. 5.00
Preparation of Summon Batta Charges	Rs. 40.00
Advocate Fees	Rs. 21500.00
TOTAL	Rs. 35418.50 /- (Rounded to 35419/-)

(Sd/-)
(S. MUTHUMURUGAN)
VIth JUDGE(FAC)
COURT OF SMALL CAUSES
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