

Madras High Court

Kuralvani vs Kathirvelan on 31 March, 2021

C.M.A(MD)

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 31.03.2021

CORAM:

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA
AND
THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

C.M.A(MD)No.614 of 2020

1.Kuralvani
2.Minor Dhanya Sri
3.Minor Monik

... Appellants/Claimants

(Minor Appellants 2 & 3 are rep.
by their mother/first appellant)

Vs.

1.Kathirvelan

2.The Divisional Manager,
United India Insurance Company Limited,
Office at Katpadi, Ramanas,
No.84, 14th East Cross Street,
Gandhi Nagar,
Vellore 632 006. ... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 08.11.2019 made in M.C.O.P.No.680 of 2017 on the file of the Motor Accident Claims Tribunal, Special District Court, Thanjavur.

For Appellants : Mr.I.Pinaygash

For R 2 : Mr.B.Rajesh Saravanan

JUDGMENT

(Judgment of the Court was delivered by PUSHPA SATHYANARAYANA,J.) The Civil Miscellaneous Appeal has been preferred challenging the award, dated 08.11.2019 passed in M.C.O.P.No.680 of 2017 on the file of the Motor Accident Claims Tribunal, Special District Court, Thanjavur.

2.In the said M.C.O.P, the appellants/claimants 1 to 3 are the wife and children of the deceased-Palaniyappa. The Tribunal had awarded a sum of Rs.30,89,430/- on various heads.

3.The brief facts relevant for the consideration of the above case is that on 02.03.2017, when the deceased-Palaniyappa @ Palani Ayya was proceeding in a two-wheeler bearing Registration No.TN-49- AQ-8217 from Boothalur Thirukattupalli road to Vanarankudi, the driver of the lorry bearing Registration No.TMY-7590 drove the vehicle in a rash and negligent manner, dashed against the two-wheeler. Due to said impact, the deceased sustained head injuries and died on 05.03.2017. Hence the appellants/claimants, as legal heirs of the deceased, has filed this claim petition claiming a compensation of Rs. 1,50,00,000/-.

<http://www.judis.nic.in> C.M.A(MD)No.614 of 2020

4.Resisting the claim petition, the second respondent/Insurance Company has filed a counter affidavit contending that the accident had occurred due to the carelessness and negligence on the part of the deceased and the deceased had not possessed any valid driving licence and the quantum of compensation as claimed by the claimants is highly excessive and without any basis.

5.Before the Tribunal, on the side of the claimants, P.W.1 to P.W.3 were examined and Ex.P1 to Ex.P25 were marked. On the side of the respondents, no witness was examined and Ex.R1 was marked and also Ex.X1 to Ex.X3 were marked.

6.The Tribunal, after considering the oral and documentary evidence, held that the accident had occurred due to the drunken driving of the deceased and also because of the rash and negligent driving of the driver of the first respondent and fixed the liability at 50:50. Further, the Tribunal had held that since the deceased has not possessed valid driving licence, 10% has to be deducted towards the award amount. The Tribunal further held that the second respondent/Insurance Company is liable to pay compensation to the claimants and had awarded a total compensation of Rs.33,62,700/- under various heads.

<http://www.judis.nic.in> C.M.A(MD)No.614 of 2020

7.The learned counsel appearing for the appellants/claimants would submit that the Tribunal had erroneously held that the deceased had contributed to the accident as he was drunk at the time of accident and apportioned the liability as 50:50. The Tribunal also had erroneously deducted 10% of

the compensation amount for the reason that the deceased has only LLR.

8.The learned counsel appearing for the second respondent/Insurance Company would submit that the Tribunal, after considering the evidence available on record, had fixed the liability as 50:50 and also deducted 10% towards LLR awarded the compensation, which needs no interference.

9.Heard the learned counsel appearing on either side and perused the materials available on record.

10.The Civil Miscellaneous Appeal is preferred on two folds. One is challenging the deduction of the compensation by 50% on the ground of drunken driving leading to the accident and also 10% deduction of the award amount for driving the vehicle having only a Learner Licence (LLR) without the assistance of another person. <http://www.judis.nic.in> C.M.A(MD)No.614 of 2020

11.The deceased was 39 years old on the date of the accident and he was a B.T Assistant in a Government School. The accident occurred on 02.03.2017 at 11.00 a.m., which is a working day and in normal circumstances, a Teacher is not expected to take alcohol and go to School. The Tribunal had placed reliance on Ex.P.8 and Ex.P.25, which is the post-mortem report. The post-mortem report of the deceased, dated 05.03.2017 states that rigor mortis was present all over the body, except in abdomen and lower limbs and the findings of the post-mortem report is as follows:-

Other findings:

Contained 60 ml of thick greenish fluid, no specific smell, mucosa pale. Liver, spleen and kidneys: Normal on c/s- pale. Small Intestine: contained 40ml of bile stained fluid, no specific smell, mucosa pale. Urinary bladder: Empty, mucosa pale. Brain: As described. Spinal column: intact. From the above findings, it is found that in the stomach of the deceased there was 60 ml of thick greenish fluid without any specific smell. It is further found that intestine contains 40 ml of bile stained fluid without any specific smell. Further, the opinion as to the cause of the death as stated in the post-mortem certificate was that the deceased would appear to have died on complications of head injury due to injuries to vital structures of brain. <http://www.judis.nic.in> C.M.A(MD)No.614 of 2020

12.The learned counsel for the second respondent would place his reliance on the Accident Register to distort the contentions raised by the learned counsel for the appellants.

13.The accident register, dated 02.03.2017, was recorded by a Medical Officer, wherein, it is stated that ,U rf;futhfdj;jpy; Fonghijapy; Tly;ehzy; bkapd;nuhl;oy; yhhp nkhjpajpy;

14.Taking strength on the above statement recorded in the Accident Register, the learned counsel for the second respondent would contend that the deceased was under the influence of alcohol. Be that as it may, when the post-mortem has specifically mentioned that the fluids contained in the stomach and the intestine of the deceased body, the same could have been sent for testing. Besides, as the Doctor has specifically mentioned that the said fluids did not have any specific smell would go to show that the deceased was not under the influence of alcohol.

15.In the post-mortem/autopsy report no mention about presence of alcohol. When the Accident Register had mentioned about drunken driving, a chemical analysis for the content of alcohol should have been done. Having failed to prove that the accident occurred due <http://www.judis.nic.in> C.M.A(MD)No.614 of 2020 to the drunken driving of the deceased, contributory negligence of 50% cannot be attributed to the deceased.

16.From the sketch available, which is attached to the investigation report, also shows that the deceased was going from South to North on the left extreme of the road and the offending vehicle, namely, the lorry which was coming on the opposite direction hit against the deceased and he died. Therefore, even on that ground, the negligence cannot be attributed to the deceased.

17.As per Section 203 of the Motor Vehicles Act, 1988, breathe test is mandatory to prove an offence under Section 185 of the Motor Vehicles Act, 1988.

18.Section 185 of the Motor Vehicles Act, 1988, is reads as follows:-

185.Driving by a drunken person or by a person under the influence of drugs.-
Whoever, while driving, or attempting to drive, a motor vehicle,-

[(a) has, in his blood, alcohol exceeding 30mg. per 100 ml. of blood detected in a test by a breath analyser, or] <http://www.judis.nic.in> C.M.A(MD)No.614 of 2020

(b) is under the influence of a drug to such an extent as to be incapable of exercising proper control over the vehicle, shall be punishable for the first offence with imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both;

and for a second or subsequent offence, if committed within three years of the commission of the previous similar offence, with imprisonment for a term which may extend or two years, or with fine which may extend to three thousand rupees, or with both. As per the above Section, in a given case, breathe analyse test has to be performed. Even presuming that the deceased was brought to the hospital in a disoriented and unconscious condition, the blood report could have been taken, if not immediately atleast during post-mortem. The same was not done. Therefore, we presume that the deceased was not in a drunken state. It is a well known factor that alcohol leads to loss of co-ordination and it can also reduce the visibility of an object in front. It is also not the case of the second respondent/Insurance Company that the accident had occurred due to the rash and negligent driving of the deceased or that he did not have the control over his vehicle.

19.The next contention raised by the learned counsel for the appellants is that 10% was deducted from the compensation on the ground that the deceased did not possess the valid driving licence. He <http://www.judis.nic.in> C.M.A(MD)No.614 of 2020 had only Learners Licence (LLR). If it not the case of the second respondent that a person having LLR cannot ride on the road. Though it is stated that a person having LLR and riding or driving should have an Instructor with them, it does not disqualify a person from riding a vehicle. It may be open to the second respondent/Insurance

Company to take a defence that the driver of the insured vehicle was not having a valid licence at the time of the accident to absolve their liability from paying compensation. Therefore, the Tribunal ought not to have deducted 10% when the deceased was not disqualified from riding a two-wheeler when the LLR was in force.

20. With regard to the quantum, as per Ex.X3, the monthly salary of the deceased was fixed as Rs.50,400/- . It is not in dispute that the deceased was a Teacher in a Government Higher Secondary School, Poovaimanagar, Pudukottai District. As the deceased was 39 years old on the date of the death and he was a permanent employee, 50% of future prospects is added to his salary which would make it to Rs.75,600/- (Rs.50,400 + Rs.25,200). As the deceased had legal heirs, one-third is deducted from the monthly salary which would arrive at Rs.50,400/- and the annual income would arrive at Rs. 90,72,000/- (Rs.50,400 X 12 X 15). From the said amount, a sum of Rs.11,73,300/- is deducted towards income tax, the same would arrive at Rs.78,98,700/-.

<http://www.judis.nic.in> C.M.A(MD)No.614 of 2020

21. The Tribunal had awarded a sum of Rs.40,000/- towards loss of consortium to the first claimant, which needs no interference. As far as the loss of love and affection to the minor claimants 2 and 3 is concerned, the Tribunal had not awarded any sum. As per the decision in Magma General Insurance Co. Ltd., v. Nanu Ram & Others., reported in 2018 (1) TN MAC 452 (SC), the respondents 2 and 3 each are entitled to Rs.40,000/- which comes to Rs.80,000/- (Rs. 40,000 x 2=Rs.80,000/-).

22. The amounts awarded by the Tribunal under the other heads, viz., a sum of Rs.15,000/- towards funeral expenses is enhanced to Rs.25,000/- and a sum of Rs.15,000/- towards loss of estate is very reasonable and is confirmed.

23. Since the Tribunal had not awarded any sum under the head of 'transport expenses', a sum of Rs.10,000/- is awarded towards 'transport expenses'. Accordingly, the total compensation is arrived at a sum of Rs.83,35,000/-.

<http://www.judis.nic.in> C.M.A(MD)No.614 of 2020

24. The Award of the Tribunal is as follows:-

S.No	Description	Amount awarded by Tribunal (Rs)
1.	Loss of income	
2.	Deducted 50% towards negligence on the deceased	(90,72,
3.	Deducted towards income tax	
4.	Loss of income	(45,36,000
5.	Loss of consortium to the first respondent	

6.	Funeral expenses
7.	Loss of estate
8.	Total
9.	Deducted 10% towards Learned Licence
	Total

30

25.The modified award amount of this Court is as follows:-

S.No	Description	Amount awarded by Tribunal (Rs)
1.	Loss of income	
2.	Deducted 10% towards income tax	
3.	Loss of income	
4.	Loss of consortium to the first respondent	
5.	Loss of love and affection to the second and third claimants	
6.	Funeral expenses	
7.	Loss of estate	
8.	Transport expenses	
	Total	(90,72,000)

83

<http://www.judis.nic.in>

C.M.A(MD)No.61

26.In the result, the Civil Miscellaneous Appeal is allowed as follows:-

(i) The Award of the Tribunal is enhanced to Rs.83,35,000/- from 30,89,430/-.

(ii) The interest granted by the Tribunal at 7.5% per annum is confirmed.

(iii) The Award amount is apportioned as per the ratio of apportionment made by the Tribunal.

(iv) The second respondent-Insurance Company is directed to deposit the enhanced award amount together with accrued interest and costs to the credit of claim petition, less the amount already deposited, if any, within a period of eight weeks from the

date of receipt of a copy of this order.

(v) On such deposit being made, the first appellant/first claimant is permitted to withdraw her share in the award amount with proportionate accrued interest and costs, less the award amount withdrawn already. The share of the minor claimants/appellants 2 and 3 are permitted to be kept in any of the Nationalised Bank in interest bearing fixed deposits, initially for a period of three years, renewable thereafter, till they attain majority and the guardian/first appellant is permitted to withdraw the interest amount from the above said fixed deposit, once in three months and utilize the same for the welfare of the minor children.

No costs.

[P.S.N.,J] [S.K.,J.] 31.03.2021 Index :Yes/No Internet :Yes/No ps Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

<http://www.judis.nic.in> C.M.A(MD)No.614 of 2020 PUSHPA SATHYANARAYANA,J.

and S.KANNAMMAL,J.

ps To

1.The Motor Accident Claims Tribunal/ Special District Court, Thanjavur.

2.The V.R Section (Records), Madurai Bench of Madras High Court, Madurai.

C.M.A(MD)No.614 of 2020 31.03.2021 <http://www.judis.nic.in>