IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 12-10-2015

CORAM

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
AND
THE HONOURABLE MR.JUSTICE M.VENUGOPAL

C.M.A.Nos.3047 of 2009 & 907 TO 912 OF 2012

Branch Manager/Divisional Manager,
The United India Insurance Co.Ltd.,
T.K.M.Complex,
Katpadi Road,
Vellore-4. ... Appellant/2nd Respondent (in all CMAs)

-Vs-

C.M.A.No.3047 of 2009

1.Kuppan
2.Minor Subbulakshmi
3.Minor Jayasree
4.Papammal ... Respondents 1 to 4/Claimants
5.Gnansekharan ... 5th Respondent/1st Respondent

Respondents 2 & 3 are minors,
rep.by Father and Natural Guardian Kuppan

C.M.A.No.907 of 2012

1.Padma
2.Kamala ... Respondents 1 & 2/Claimants
3.Gnanasekaran ... 3rd Respondent/1st Respondent

C.M.A.No.908 of 2012

1.Padma ... 1st Respondent/Claimant
2.Gnanasekaran ... 2nd Respondent/1st Respondent

C.M.A.No.909 of 2012

1.Padma ... 1st Respondent/Claimant
2.Gnanasekaran ... 2nd Respondent/1st Respondent

C.M.A.No.910 of 2012

1.Gandhimathi
2.Padma
3.Uma
4.Arun @ Hari ... Respondents 1 to 4/Claimants 1 to 4
5.Gnanasekaran ... Respondent/1st Respondent

C.M.A.No.911 of 2012

1.Gandhimathi ... 1st Respondent/Claimant
2.Gnanasekaran ... 2nd Respondent/1st Respondent

C.M.A.No.912 of 2012

1.Jaikumar
2.Chandrasekaran
3.Narayanan
4.Mathavan ... Respondents 1 to 4/Claimants 1 to 4
5.Gnanasekaran ... 5th Respondent/1st Respondent

Prayer in C.M.A.No.3047 of 2009 : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988, as against the Decree and Judgment dated 17.06.2009 passed in M.C.O.P.No.427 of 2008 on the file of Motor Accidents Claims Tribunal, Chief Judicial Magistrate, Vellore.

Prayer in C.M.A.Nos.907 to 912 of 2012 : Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act 1988, as against the Decree and Common Judgment dated 26.07.2011 passed in M.C.O.P.Nos.495 to 500 of 2008 on the file of the District Judge, Motor Accident Claims Tribunal, Tiruvannamalai.

For Appellant : Mr.S.Arun Kumar (in all CMAs)

For respondents : Mr.C.Prabakaran for R1 to 4 in CMA.3047 of 2009

R5 - Served : No Appearance

Mr.R.Ashraf Khan for R1 in CMAs.907,908,909 & 911/12

R1 to 4 - in CMAs.910 & 912 of 2012

R2 in CMAs.908,909 & 911 of 2012
R3 in CMA.907 of 2012 : Exparte
R5 in CMAs.910 & 912 of 2012

R2 in CMA.907 of 2012 : Not Ready
No Appearance

COMMON JUDGMENT

Judgment of the Court was delivered by S.Manikumar,J.

On account of the rash and negligent driving of the driver of the Tata Sumo vehicle, bearing registration No.TN-09-Y6996, an accident has occurred on 24.04.2008, in which, driver Ananda Babu died. There were 13 passengers in the vehicle. 10 were adults and 3 children. Apart from the driver, five died. Two sustained injuries. Legal representatives of the claimants have filed M.C.O.P.No.495 of 2008, 496 of 2008, 498 of 2008 and 500 of 2008, on the file of the Motor Accident Claims Tribunal (District Judge), Tiruvannamalai. The two injured persons also filed M.C.O.P.Nos.497 of 2008 and 499 of 2008, respectively, on the file of the same Tribunal. Legal representatives of one of the deceased have filed M.C.O.P.No.427 of 2008, on the file of Chief Judicial Magistrate, Vellore. Claim Petitions filed on the file of the learned District Judge were tried together and disposed of by a common judgment and decree in M.C.O.P.Nos.496 to 500 of 2008, dated 26.07.2011, by fixing liability on the United India Insurance Company Limited, to pay the compensation, and, accordingly, quantified the same with interest, at the rate of 7.5% per annum, from the date of claim till deposit. Details of the claim made by the legal representatives/injured, in each of the claim petitions are tabulated hereunder :

Legal Representatives of the deceased/ injured in	Age of the deceased/injured	Avocation & Monthly income	Nature of injuries	Disability assessed	Amount claimed
CMA.907/12 (MCOP.495/08) (Fatal)	36 Years	Accountant Manager, L & T Company, earning Rs.45,000/-	--	--	Rs.1,00,00,000/-
CMA.908/12 (MCOP.496/08) (Fatal)	10 Years	School Student	--	--	Rs.10,00,000/-
CMA.909/12 (MCOP.497/08) (Injury)	35 Years	Branch Manager, Bank of Baroda, Vellore, earning Rs.15,000/-	Moderate head injury, fracture of pelvic griddle.	45%	Rs.10,00,000/-
CMA.910/12 (MCOP.498/08) (Fatal)	58 Years	Retired from the Department of Ministry of Communication and Telecommunication and getting a pension of Rs.6,000/-	--	--	Rs.15,00,000/-

Legal Representatives of the deceased/ injured in	Age of the deceased/injured	Avocation & Monthly income	Nature of injuries	Disability assessed	Amount claimed
CMA.911/12 (MCOP.499/08) (Injury)	55 years	Tailor and earning Rs.6,000/-	(1) Galleazi fracture dislocation right radius, (2) Closed fracture both bones left forearm with Segmental Radius, (3) Closed 4th and 5th Metacarpal base fracture disabetes mellitus.	50%	Rs.10,00,000/-
CMA.912/12 (MCOP.500/08) (Fatal)	50 years	Postal Agent, owing Tailoring Institute and taking tuition and earning Rs.15,000/-	--	--	Rs.20,00,000/-
CMA.3047/09 (MCOP.427/08) (Fatal)	32 years	Self-employed and earning Rs.9,000/-	--	--	Rs.25,00,000/-

2. As regards the claim made in M.C.O.P.No.427 of 2008 on the file of Chief Judicial Magistrate, Vellore, by the legal representatives of the deceased therein, liability has been fastened on the insurance company, and the amount quantified is Rs.4,60,000/-.

3. In so far as the claim made by the legal representatives of the deceased driver Ananda Babu, under the

workmen's compensation claim, the same is stated to have been settled. Being aggrieved by the finding of the Claims Tribunal, fastening liability on the United India Insurance Company Limited, the appellant herein, to pay the compensation to the legal representatives of the deceased/injured, 7 appeals have been filed. The details are as follows :

Legal Representatives of the deceased/ injured in	Amount awarded
CMA.907/12 (MCOP.495/08) (Fatal)	Rs.55,94,600/-
CMA.908/12 (MCOP.496/08) (Fatal)	Rs.2,56,000/-
CMA.909/12 (MCOP.497/08) (Injury)	Rs.1,90,490/-
CMA.910/12 (MCOP.498/08) (Fatal)	Rs.3,06,000/-
CMA.911/12 (MCOP.499/08) (Injury)	Rs,2,83,000/-
CMA.912/12 (MCOP.500/08) (Fatal)	Rs.5,19,000/-
CMA.3047/09 (MCOP.427/08) (Fatal)	Rs.4,60,000/-

4. As the challenge to the awards is on the same grounds, all the appeals are taken up together and disposed of by this common judgment.

5. The main contention of the appellant insurance company is that the Tata Sumo car is authorised to carry only nine passengers, besides, one driver. But, on the fateful day, i.e., 24.04.2008, thirteen persons travelled in the vehicle for attending the betrothal of their relative, in violation of the policy condition, and, therefore, the Claims Tribunals have grossly erred in fastening the liability on the appellant-insurer, to pay compensation to the legal representatives of the deceased/injured. The appellant has

also contended that the Tribunals have failed to note that there were sixteen claims, out of which, six were filed at Tiruvannamalai, and seven were pending at Vellore; in such circumstances, the Tribunals should have followed the decision of the Hon'ble Apex Court in National Insurance Company Limited v. Anjana Sarma and others, reported in 2007 (4) CTC 593. The quantum of compensation awarded to the legal representatives of the deceased/insured has also been challenged.

6. Record of proceedings shows that while admitting C.M.A.Nos.907 to 912 of 2012, this Court in M.P.No.1 of 2012, by an order, dated 23.04.2012, in C.M.A.No.907 of 2012 (M.C.O.P.No.495 of 2008 on the file of District Judge, Tiruvannamalai), has directed the insurance company, appellant herein, to deposit 50% of the award amount and permitted one of the claimants to withdraw 25% of her share from the deposit made, with proportionate interest and costs.

7. Record of proceedings further shows that in M.P.Nos.1 to 1 in C.M.A.Nos.908 to 912 of 2012, by an order, dated, 23.04.2012, this Court has directed the insurance company to deposit the entire amount, with proportionate interest and costs. In M.P.No.1 of 2009 in C.M.A.No.3047 of 2009 (M.C.O.P.No.427 of 2008 on the file of Chief Judicial Magistrate, Vellore), by an order, dated 04.11.2009, this Court has directed the appellant to deposit the entire award amount with proportionate interest and costs, and, thereafter, in M.P.No.1 of 2011, by an order, dated 09.08.2011, permitted the first claimant to withdraw 50% of his share.

8. As stated supra, legal representatives of the deceased driver have not made any claim under the provisions of the Motor Vehicles Act. It is further stated that the claim made under workmen's compensation has ben settled.

9. The accident has occurred on 24.04.2008. Admittedly, 13 persons had travelled in Tata Sumo vehicle, bearing registration No.TN-09-Y6996. As per the permit conditions, ten persons, including the driver can travel. Perusal of the policy, pertaining to Tata Sumo vehicle, shows that it was valid between 28.04.2007 and 27.04.2008. The policy covers the date of accident. Liability of the insurer, as per the Private Car-Package also is extended to unnamed passengers, numbering eight, owner cum driver and WC. One Mr.C.Gnanasekaran is the owner of the vehicle. He is the first respondent in all the Claim Petitions. He has not travelled in the vehicle.

10. Though Mr.S.Arun Kumar, learned counsel for the appellant insurance company, submitted that the Claims Tribunal has grossly erred in fastening libaility on the insurer of Tata Sumo vehicle, contending, inter alia, that there is a violation of the policy condition by the owner of the vehicle, in allowing more number of persons to travel, and on the abovesaid ground sought for exoneration, this Court is not inclined to accept the said contention, for the reason that the package policy covers ten persons and, in the case on hand, before us, there are only seven appeals filed by the insurance company. The policy covers eight passengers. The claim made by the legal representatives of the deceased driver under the provisions of the Workemen's Compensation Act, is also covered by the package policy/WC employee. Thus, in the light of the policy, United India Insurance Company Limited, appellant herein, cannot make any case to absolve itself from payment of compensation to the legal representatives of the deceased/injured, who have preferred seven claim petitions (six before the District Judge, Tiruvannamalai, and one before the Chief Judicial Magistrate, Vellore).

11. Though Mr.S.Arun Kumar, learned counsel for the insurance company, submitted that the quantum of compensation awarded by the Claims Tribunals to the legal representatives of the deceased/injured is on the higher side and further contended that considering the nature of injuries and treatment, the compensation awarded under different heads requires to be reduced, going through the judgments under appeals with reference to each of the claims, this Court is not inclined to accept the same, for the reason that the Claims Tribunals, after considering the oral and documentary evidence, have properly adverted to the same, and, thus, arrived at the quantum of compensation in each case, reflecting the principle of just compensation.

12. Also, though Mr.S.Arun Kumar, learned counsel for the appellant, has submitted that there should be some reduction in the case of the claim in M.C.O.P.No.495 of 2008, we are not inclined to do so. In the said case, the claimants/petitioners are the widow and widowed mother of the deceased Illavarasan. According to Ex.P-2, Postmortem Certificate, the deceased Illavarasan was aged about 40 years. As there was no contra evidence, the Claims Tribunal determined the age of the deceased as 40 years and adopted multiplier '15'. Determination of age can be justified in terms of the judgments in Fakeerappa v. Karnataka Cement Pipe Factory, reported in 2004 (4) LW 20, and The Managing

Director, Tamilnadu State Transport Corporation, Madurai v. Mary [2005 (5) CTC 515]. As per Ex.P-8, the deceased was qualified in ICWA. Ex.P-9 is Form No.16, issued by L&T Infrastructure Development Projects Limited, Mount Poonamallee Road, Manapakkam, Chennai, wherein the deceased was working as a Secretary and his annual income, after deduction, was Rs.5,12,830/-. Ex.P-25 is the Salary Certificate issued by the Management of the company. P.W.5, Narendra Kumar, an employee of the Company, has deposed, that at the time of accident, the deceased was employed in their company as a Secretary, and as per the records maintained in their office, the deceased Illavarasan had acquired B.A., C.A., ICWA. His gross salary was Rs.78,860/-. Ex.P-7 is the Salary Certificate, issued by the company. P.W.5 has further deposed that as per the calculation on the basis of cost to the company, his salary would be revised according to performance and, had he been in service with reference to the said scheme,on and from October,2010, he would have earned a sum of Rs.1,10,280/- per month, and that his annual income would be Rs.13,23,000/-.

13. The contention of the learned counsel for the claimant before the Tribunal was that the company, wherein the deceased was employed, was a Multi-national company, reputed for its name and fame, and that the deceased was a Graduate in B.A., and C.A., and ICWA., and as per the "Cost to the Company Policy" of increasing the salary to the deceased, would have earned Rs.13.23,000/-, per annum.

14. Ex.P-7 is the Salary Certificate, issued by L&T Infrastructure Development Projects Limited, Chennai, for the month of January,2008, shows the net income, after deductions, as Rs.35,623/- and the net taxable annual income as Rs.5,70,600/-.

15. Considering the educational qualifications of the deceased and the employment, as could be seen from the above referred to documents, the Claims Tribunal has observed that the deceased could have earned a sum of Rs.35,623/- per month after deductions, and rounded off the same to Rs.35,600/-. Following the decision of the Hon'ble Supreme Court in Sarala Verma v. Delhi Transport Corporation Ltd., reported in 2009 (2) TN MAC 1, and also a decision of this Court in United India Insurance Company Limited, represented by its Branch Manager, Tindivanam, v. Maragathavalli and Others, reported in 2010 (3) MLJ 657, and since the deceased was having a permanent job and aged 40 years, on the date of accident, the Claims Tribunal added 30%, towards future income

and fixed the monthly income of the deceased as Rs.46,280/-. Since there were only two dependants, the Tribunal has deducted 1/3rd towards the personal and living expenses. As per the decision in Sarala Verma's case, cited supra, the multiplier to be adopted for the persons, aged between 36 and 40 is, 15, and that the same has been adopted by the Tribunal. Accordingly, the Claims Tribunal calculated the loss of earning of the deceased at Rs.55,53,600/- (Rs.46280 x 12 x 15 x 2/3). In addition, the Tribunal has awarded Rs.20,000/- towards loss of consortium to the wife and Rs.10,000/- for loss of love and affection to the mother, which is less. The Tribunal also awarded Rs.10,000/-, for funeral expenses and transport charges and Rs.1,000/- towards damage to clothes and articles. Altogether, the Claims Tribunal has awarded a sum of Rs.55,94,600/- to the claimants, which award, in our considered opinion, by no stretch of imagination, can be said to be exorbitant, and, therefore, we confirm the same. Quantum of compensation awarded to the legal representatives of the deceased or the injured, as the case may be, cannot be said to be a bonanza or a windfall, exceeding the loss to the bereaved family, or the injured, while measured in terms of money.

16. In view of what is stated above, all these appeals stand dismissed. No costs. Consequently, the connected Miscellaneous Petitions are closed. The appellant/insurer is directed to deposit the balance amount, if any, to the credit of the respective claim petitions before the Claims Tribunals concerned, within a period of four weeks from the date of receipt of a copy of this order. On such deposit, the respondents/claimants are permitted to withdraw the award amount, as per the shares apportioned to them by the Claims Tribunals, less the amount already received by them, if any, by making necessary application before the Tribunals. Needless it is to state here, that the shares of the minors, if any, shall be deposited in any one of the Nationalised Banks, proximate to the residence of the guardians, until the minors attain majority, and the guardians are permitted to withdraw interest accrued thereon, once in three months.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

dixit

To

1.The Chief Judicial Magistrate,
The Motor Accident Claims Tribunal,
Vellore.

2.The District Judge,
The Motor Accident Claims Tribunal,
Tiruvannamalai.

3.The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to Mr.C.Prabakaran, Advocate, S.R.No.55876
+1cc to Mr.R.Ashraf Khan, Advocate, S.R.No.55737
+2cc's to Mr.S.Arun Kumar, Advocate, S.R.No.56221 & 56222

C.M.A.Nos.3047 of 2009
&
907 to 912 of 2012

KJI(CO)
CA(30/12/2015)