

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08-10-2015

Coram

THE HONOURABLE MR. JUSTICE B.RAJENDRAN

C.M.A. Nos. 3089 and 3090 of 2003

CMA No. 3089 of 2003

1. R. Chandrasekaran
2. National Insurance Company Limited
Salem .. Appellants/Respondents 1 and 2

Versus

1. D. Suseela
2. Minor. Udayakumar]
3. Minor. Prabhu]
Minors rep. by her mother and
Natural Guardian D.Suseela
4. V.K. Ramasamy
5. K. Viswanathan
6. The Oriental Insurance Company Limited
Pune-Bangalore Road
Chithradurga District .. Respondents/Petitioners 1to4/
Respondents 3 & 4

CMA No. 3090 of 2003

1. R. Chandrasekaran
2. National Insurance Company Limited
Salem .. Appellants/Respondents 1 and 2

Versus

1. R. Shanmugam
2. K. Viswanathan
3. The Oriental Insurance Company Limited
Pune-Bangalore Road
Chithradurga District.. Respondents/Petitioner/Respondents 3&4

CMA No. 3089 of 2003:- Appeal filed under Section 173 of The Motor Vehicles Act 1988 against the Judgment and Decree dated 18.02.2003 and made in M.A.C.T.O.P. No. 127 of 2002 on the file of Motor Accidents Claims Tribunal (Additional District Judge) Namakkal.

CMA No. 3090 of 2003:- Appeal filed under Section 173 of The Motor Vehicles Act 1988 against the Judgment and Decree dated 18.02.2003 and made in M.A.C.T.O.P. No. 128 of 2002 on the file of Motor Accidents Claims Tribunal (Additional District Judge) Namakkal.

For Appellants : Mrs. N.B. Surekha in both the appeals

For Respondents : Mr. T.S. Baskaran for RR1 to 4
in CMA No. 3089 of 2003
R1 in CMA.No.3090/2003

Mr. R. Sivakumar for R6 in CMA 3089/03
R3 in CMA 3090/03.

COMMON JUDGMENT

The respondents 1 and 2 in MACTOP No. 127 and 128 of 2002 on the file of the Motor Accident Claims Tribunal (Additional District Judge) Namakkal are the appellants in these two appeals. The appellants are aggrieved by the common decree and judgment dated 18.02.2003 passed by the Tribunal in the above said MACTOP Nos. 127 and 128 of 2002.

2. The facts leading to the institution of MACTOP No. 127 of 2002 filed by the respondents 1 to 4 herein, are as follows:-

According to the claimants/respondents 1 to 4 herein, on 16.02.1995 at about 2.30 pm when the deceased Dharmaraj was travelling in the Ambassador Car bearing Registration No. CAR 551 in Salem to Trichy Main Road near Pottaikodai Valavu, the driver of the lorry bearing Registration No. TN-27-E-3399 drove the vehicle in a rash and negligent manner and hit against the Ambassador Car. In the impact, the Car dashed against a Tamarind Tree due to which the driver and occupants of the Car, 4 in number, have sustained grievous injury all over their body. Immediately, the injured were taken to Government Hospital, Salem and thereafter to a private hospital. In spite of the treatment extended, Mr. Dharmaraj, one of the occupants of the Car, died on the same day of the accident. The first respondent is the wife, second and third respondents are the minor children and the fourth respondent is the father of the deceased Dharmaraj. According to the claimants, the deceased was 35 years old at the time of accident. The deceased was a landlord having 30 acres of wet land in Adivala, Karnataka

State and doing agricultural operation. The deceased earned Rs.4,00,000/- per year by raising commercial crops in the lands owned by him. The deceased was the sole bread winner in the family and on his death, the claimants were deprived of the financial support as well as moral support extended by the deceased. In such circumstances, the claimants have filed the claim petition claiming a sum of Rs.25,00,000/- for the death of the deceased.

3. The facts leading to the institution of MACTOP No. 128 of 2002 filed by the first respondent herein is as follows:-

The claimant/first respondent herein travelled in the Ambassador Car bearing Registration No. CAR 5511 and he sustained grievous injuries in his left femur and all over the body in the accident that took place on 16.02.1995. According to the first respondent/claimant, he was 35 years old at the time of accident. Immediately after the accident, he was admitted in Government Mohan Kumaramangalam Hospital, Salem from where he was referred to S.K.S. Hospital, Salem for better treatment. On 20.02.1995, the claimant was discharged and on the same day, he was re-admitted at Medical Centre and Hospital Limited, Coimbatore from where he was discharged on 06.03.1995. According to the claimant, he was a landlord having 30 acres of wet land in Adivala, Karnataka State where he is cultivating commercial crops through which he earns Rs.4,00,000/- per year. In such circumstances, the claimant has filed the claim petition claiming a sum of Rs.5,00,000/- for the injuries sustained by him.

4. The insurance company resisted the claim petitions contending that the driver of the lorry is not responsible for the accident and he has not driven the vehicle in a rash and negligent manner, as alleged. The accident was due to the rash and negligent manner in which the Car was driven by its driver. The monthly earnings projected by the deceased as well as the injured at Rs.4,00,000/- per annum is disputed.

5. As far as M.C.O.P. No. 127 of 2002 (C.M.A. No. 3089 of 2003) is concerned, the Tribunal found that the first respondent in the claim petition is the owner of the lorry which was insured with the second respondent. The third respondent is the owner of the Car, which was insured with the fourth respondent. The Tribunal, on appreciation of the oral and documentary evidence concluded that the driver of the lorry is responsible for the accident and therefore, the respondents 1 and 2 herein are jointly and severally liable to pay the compensation to the claimants. As far as the earning capacity of the deceased Dharmaraj, the Tribunal found that the claimants have not filed any documentary evidence to prove that the deceased was earning Rs.4,00,000/- per year. From the deposition of PW1, wife of the

deceased Dharmaraj, the Tribunal concluded that the deceased might have earned Rs.60,000/- per year. Accordingly, by applying multiplier '17' and after deducting 1/3rd amount towards personal expenses of the deceased, arrived at a sum of Rs.6,80,000/- towards loss of income. The Tribunal further awarded Rs.10,000/- towards loss of consortium to the wife/first respondent. A further sum of Rs.10,000/- each was awarded to the two minor children towards loss of love and affection. Thus, a total sum of Rs.7,10,000/- with interest at the rate of 9% per annum was awarded to the claimants in MCOP No. 127 of 2002. The compensation amount of Rs.7,10,000/- was directed to be paid by the respondents 1 and 2 in the claim petition, who are appellants in CMA No. 3089 of 2003.

6. As far as MCOP No. 128 of 2002 (CMA No. 3090 of 2003) is concerned, the Tribunal has taken note of the fact that the claimant/injured was admitted in hospital for about 15 days as in-patient. The Tribunal has also taken note of the disability assessed by the Doctor at 30% under Ex.P8. Therefore, the Tribunal awarded a sum of Rs.30,000/- towards disability, a sum of Rs.10,000/- towards Pain and Suffering and Rs.20,000/- towards Medical Expenses. Resultantly, the Tribunal awarded a sum of Rs.60,000/- towards compensation to the claimant/injured in MCOP No.128 of 2002. The amount of Rs.60,000/- was directed to be paid by the respondents 1 and 2 in the claim petition, who are appellants in this appeal.

7. The claimants have not filed any appeal seeking enhancement of the compensation amount. The aforesaid two appeals were filed by the insurance company not questioning their liability to pay the compensation amount, but the quantum of compensation amount awarded by the Tribunal.

8. The learned counsel appearing for the appellant would contend that the claimants in CMA No. 127 of 2002 (CMA No. 3089 of 2003) have not produced any documentary evidence to prove the earnings of the deceased Dharmaraj. While so, the Tribunal erred in arriving at a sum of Rs.60,000/- per annum to award a sum of Rs.6,80,000/- towards loss of income. The multiplier adopted by the Tribunal is wrong and it is not befitting to the age of the deceased. The learned counsel for the appellant/insurance company would contend that the accident occurred in the year 1995 and therefore, the interest awarded at the rate of 9% per annum is excessive. In any event, the amount awarded by the Tribunal in both the cases are excessive and it warrants interference by this Court.

9. The learned counsel appearing for the claimants in CMA No. 3089 of 2003 would contend that even though the claimants claimed that the deceased was earning Rs.4,00,000/- per year, the Tribunal has taken only a sum of Rs.60,000/- per annum as

income of the deceased. In other words, the Tribunal has taken a sum of Rs.5,000/- per month as income of the deceased especially taking note of the fact that the deceased was carrying on agricultural activities in the lands measuring 30 acres. The Tribunal has further awarded a sum of Rs.10,000/- towards loss of consortium to the wife/first respondent as she was 30 years old at the time of accident. The Tribunal further awarded Rs.10,000/- each to the minor children for having lost their father at the tender age. It is further stated that the Tribunal has not even awarded funeral expenses for the cremation of the deceased and it ought to have awarded some amount towards the same. The Tribunal has also not awarded any amount towards transportation especially when the deceased was taken to Government Hospital, Salem and thereafter to a private hospital, where he was declared dead. In any event, the compensation awarded by the Tribunal in MCOP No. 127 of 2002 is a fair and reasonable compensation which warrants no interference by this Court. Accordingly, the learned counsel for the claimants/respondents 1 to 4 in CMA No. 3089 of 2003 prayed for dismissal of the appeal.

10. There is no representation for the first respondent/injured in CMA No. 3090 of 2003.

11. I heard the learned counsel for both sides and perused the material records. The insurance company admits their liability to pay the compensation amount but questions the quantum awarded by the Tribunal. At the first blush, it has to be mentioned that the Tribunal has awarded a meager amount of Rs.60,000/- in favour of the claimant/injured in MCOP No. 128 of 2002. For arriving at the sum of Rs.60,000/-, the Tribunal has taken into account the period of hospitalisation and the disability assessed by the Doctor at 30%. For 30% disability, the Tribunal awarded a sum of Rs.1,000/- per percentage of disability. The Tribunal further awarded Rs.10,000/- towards Pain and Suffering and Rs.20,000/- towards Medical Expenses. Having regard to the nature of injuries sustained by the claimant in MCOP No. 128 of 2002 (CMA No. 3090 of 2003), the period of hospitalisation and other facts and circumstances of the case, I feel that the sum of Rs.60,000/- awarded by the Tribunal is a fair and reasonable compensation which does not call for any interference by this Court.

12. As regards the MCOP No. 127 of 2002 (CMA No. 3089 of 2003), at the time of accident, the deceased Dharmaraj was 35 years old. The deceased claims to have been carrying out agricultural activities in a land measuring 30 acres. The Tribunal arrived at the monthly earning of the deceased at Rs.5,000/- per month even though the claimants claimed Rs.4,00,000/- as earnings of the deceased per year. The Tribunal has rightly held that there is no documentary evidence

forthcoming to substantiate that the deceased was earning Rs.4,00,000/- per year. Therefore, the Tribunal has rightly arrived at a sum of Rs.60,000/- per annum of the deceased i.e., Rs.5,000/- per month and applied the correct multiplier '17' inasmuch as the deceased died at the age of 35. After decuting 1/3rd expenses towards the personal expenses of the deceased, the Tribunal arrived at the loss of income of the deceased at Rs.6,80,000/-. The Tribunal taking into consideration the fact that the first respondent has lost her husband at the age of 30 years, awarded a sum of Rs.10,000/- towards loss of consortium. The Tribunal has also awarded Rs.10,000/- each towards loss of love and affection to the two minor children. As rightly pointed out by the learned counsel for the claimants/respondents 1 to 4 in CMA No. 3089 of 2003, the Tribunal has not awarded any amount towards funeral expenses and transportation charges and the Tribunal ought to have awarded amount under these headings. As the claimants did not file any appeal questioning the same, this Court is not inclined to award any amount towards funeral expenses and transportation charges. In any event, the amount awarded by the Tribunal in MCOP No. 127 of 2002 (CMA No. 3089 of 2003) is fair and reasonable compensation for the death of the deceased Dharmaraj and I do not find any reason to interfere with the same.

13. As regards interest awarded by the Tribunal, as rightly pointed out by the learned counsel for the appellants, the accident took place in the year 1995 and therefore, the Tribunal is not justified in awarding interest at the rate of 9% per annum. The appellants are therefore required to pay interest only at the rate of 7.5% per annum and not at the rate of 9% per annum as has been awarded by the Tribunal.

14. In the result, both the Civil Miscellaneous Appeals are dismissed except modifying the rate of interest from 9% awarded by the Tribunal to 7.5% per annum. No costs. The appellants are directed to deposit the compensation amount awarded by the Tribunal, if not already deposited, with interest at the rate of 7.5% per annum. On such deposit, the claimants in both the appeals are entitled to withdraw the compensation amount with accrued interest. At the time of filing the claim petition, the respondents 2 and 3 in MCOP No. 127 of 2002 were minors, aged 11 and 9 years respectively and by now they would have attained majority. On behalf of the respondents 1 and 2 in MCOP No. 127 of 2002 necessary petitions shall be filed before the Tribunal

for declaring them as major, if not already filed. On being declared major, the respondents 1 and 2 shall withdraw the compensation amount awarded in their favour, with accrued interest.

rsh

(Sd)
Assistant Registrar(CCC)

True Copy

Sub Assistant Registrar.

To

The Motor Accidents Claims Tribunal
(Additional District Judge)
Namakkal.

- + 2 ccs to Mr.T.S.Baskaran, Advocate SR 55012
- + 2 ccs to Mr.R.Sivakumar, Advocate SR 54959 & 54960
- + 2 ccs to M/s.N.B.Surekha, Advocate SR 55262 & 55263

tej(co)
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CMA Nos. 3089 & 3090/2003



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