

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.03.2016

CORAM

THE HONOURABLE MR.JUSTICE R.SUDHAKAR
and
THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

C.M.A. Nos. 451 & 452 of 2016
and

C.M.P.Nos.3408, 3409 & 3410 of 2016

IFFCO - TOKIO General Insurance Co. Ltd.,
Sundaram Street, Indusind Bank Upstairs
Opp. New Bus Stand
Avinashi Taluk.

... Appellant/ 3rd Respondent
in both CMAs

vs.

1. Ramathal
2. Rajeswari
3. Minor Anjali
4. Munian

(Minor rep. by her mother
and natural guardian
-1st respondent)

... Respondents 1 to 4 in C.M.A
No.451/2016/ Petitioners in
MCOP No.126 of 2013.

4. Paramasivam

5. Duraisamy

... Respondents in C.M.A No.451/2016/
Respondents 1 & 2 in MCOP No.126/13

1. Govindaraj,

2. Paramasivam

3. Duraisamy

... Respondents in C.M.A No.452/2016/
Petitioner and Respondents 1 & 2
in MCOP 128/13

These Civil Miscellaneous Appeals are filed under Section 173 of the Motor Vehicles Act, 1988 against the Award and decree dated 10.07.2015 passed in M.C.O.P.Nos. 126 & 128 of 2013 respectively on the file of the Motor Accidents Claims Tribunal (I Additional District Judge) Tirupur.

For Appellant : Mr. N. Vijayaraghavan

COMMON JUDGMENT

(Judgment of the Court was delivered by R.SUDHAKAR, J.)

The Insurance Company is on appeal challenging the Common Judgment dated 10.07.2015 passed in M.C.O.P.Nos. 126 & 128 of 2013 on the file of the Motor Accidents Claims Tribunal (I Additional District Judge) Tirupur.

2. On 20.01.2013 at about 9.30 p.m., when the deceased Pattan aged about 42 years, was riding his Two Wheeler bearing Registration No. TN 49 U 9794, near Natchipalayam Pirivu, on the Trichy to Kovai Main Road, with one Mr.Govindaraj as a pillion rider, the lorry bearing Registration No. TN 39 Q 9000, insured with the appellant Insurance Company, driven in a rash and negligent manner, overtook the two wheeler, came in front and suddenly stopped the lorry and hence the deceased could not control the two wheeler and hit on the backside of the lorry, due to which, the deceased / rider sustained fatal injuries and died on the spot. The pillion rider Govindaraj, sustained grievous injuries and was taken to the hospital. The claimants in M.C.O.P NO.126/2013, who are wife, children and father of the deceased have filed a claim for compensation for a sum of Rs.20,00,000/-. The claimant in M.C.O.P No.128/2013, who is the injured, has filed a claim for Rs.3,00,000/-.

3. Since both the cases arise under the one and the same accident, both the cases were tried and disposed of by the Tribunal together. Hence, both the appeals are taken up together for disposal.

4. In support of the claims, the wife of the deceased was examined as P.W.1; the injured claimant was examined as P.W.2 and one Murugesan, an eye witness was examined as P.W.3 and Exs.P-1 to Ex.P.6 were marked, the details of which are as follows:-

Ex.No.	Details
P1	Certified copy of the First Information Report
P2	Certified copy of Post Mortem Report
P3	Death Certificate
P4	Legal Heirship Certificate
P5	Discharge Summary
P6	Medical Bills - 9 Nos.

On behalf of the Insurance company, the M.V. Inspector was examined as R.W.1 and one P. Natesan as R.W.2. The details of the documents marked on their side before the Tribunal, are as follows:-

Ex.No.	Details
R1	Certified copy of Rough Sketch
R2	Certified copy of Accident Register
R3	Certified copy of wound certificate
R4	Certified copy of AIR
R5	Certified copy of AIR
R6	Certified copy of check report

5. The Tribunal based on the oral evidence of the witnesses, the F.I.R. and also taking note of the fact that the deceased was having valid driving licence to drive the two wheeler came to the conclusion that the driver of the lorry was rash and negligent and was responsible for the accident and consequently liability was fixed on the Insurance company. On this issue, learned counsel for the appellant has not placed any material to come to a different conclusion from that of the conclusion arrived at by the Tribunal.

6. Based on the oral and documentary evidence, the Tribunal granted the following amounts as compensation with interest at 7.5% per annum, in M.C.O.P NO.126/2013:-

Sl.No	Head	Amount granted by the Tribunal
1	Loss of dependency	Rs.13,10,400.00
2	Loss of Estate	Rs. 10,000.00
3	Loss of consortium to 1 st petitioner	Rs. 50,000.00
4	Loss of love and affection for the petitioners	Rs. 50,000.00
5	Funeral Expenses	Rs. 25,000.00
6	Transport Expenses	Rs. 10,000.00
	Total	Rs.14,55,400.00

The compensation granted by the Tribunal, with interest at 7.5% per annum, in M.C.O.P No.128/2013 is as follows :

Sl.No	Head	Amount granted by the Tribunal
1	Pain and Suffering	Rs. 50,000.00
2	Medical Expenses on bill	Rs. 10,049.00
3	Attendant charges	Rs. 10,000.00
4	Transport Expenses	Rs. 10,000.00
5	Nutrition	Rs. 10,000.00
	Total	Rs. 90,049.00

7. It is submitted by the learned counsel for the appellant Insurance Company that the Tribunal has erred in fastening the liability on the appellant, while the accident has occurred due to the rash and negligent driving of the deceased, under the influence of alcohol. The quantum of compensation granted to the claimants of the deceased/ respondents 1 to 4 in C.M.A. No.451 of 2016, has been questioned on the ground that the claimants have not produced any documentary evidence to substantiate the monthly income of the deceased. The Tribunal has also erred in granting the compensation to the injured claimant, since the accident has been caused only due to the rash and negligent driving of the deceased rider.

8. The Tribunal, based on the Apex Court's judgment in Sarla Verma's case, added 30% towards future prospects and in view of the large family that the deceased was supporting, deducted 1/4 towards his personal expenses, which appears to be justified. Considering the age of the deceased, at the time of accident, namely, 45 years, the Tribunal adopted 14 multiplier in consonance of the Apex Court's decision in Sarla Verma - vs. - Delhi Transport Corporation, 2009(2) TNMAC 1 (SC). Therefore, this Court finds no good reason to reduce the multiplier and the quantum of compensation awarded by the Tribunal, to the claimants in M.C.O.P No.126/2013, who are the dependents of the deceased, to the tune of Rs.14,55,500/-.

9. Insofar as the compensation granted by the Tribunal, to the injured, in C.M.A. No. 452/2016, also cannot be stated to be on the higher side. Considering the injuries sustained, a reasonable amount of Rs.50,000/- has been granted to the claimant for his pain and sufferings undergone and the actual medical expenses incurred by the appellant, as per the medical bills, have been granted towards medical expenses. The Tribunal cannot be found fault with the compensation granted under the other headings 'Attender charges', 'Transport Expenses' and 'Nourishment'. Therefore, the compensation of Rs.90,050/- granted to the injured claimant in M.C.O.P No.128/2013, by the

Tribunal cannot be interfered with.

10. There is no serious objection in respect of the interest granted at 7.5% per annum.

11. In the above circumstances, finding no merit, both the Civil Miscellaneous Appeals are dismissed.

12. The appellant Insurance Company is directed to deposit the entire award amount, with interest and costs, if not already deposited, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit being made, the major claimants are permitted to withdraw their respective shares as apportioned by the Tribunal. The 3rd respondent in C.M.A. No.451/2016, might have attained majority. Hence, after declaration of major on proper application, the 3rd respondent is permitted to withdraw her share amount, as ordered by the Tribunal. There will be no order as to costs. Connected miscellaneous petitions are also dismissed.

Sd/-
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

avr

To

The First Additional District Judge
(Motor Accidents Claims Tribunal), Tirupur.

+2 ccs to Mr.M.B.Gopalan Associates, Advocates, sr.13709 & 13708
+1 cc to Mr.Ma.P.Thangavel, Advocate, sr.13734

C.M.A. Nos. 451 & 452 of 2016
and

C.M.P.Nos.3408, 3409 & 3410 of 2016

tej co
kra 12.04.2016

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