

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.01.2016

CORAM

THE HONOURABLE MR. JUSTICE T.RAJA

C.M.A. Nos.3695 to 3697 of 2011

The Branch Manager,
ICICI Lombard General Insurance
Company Limited,
Branch Office,
Swarnambikai Plaza,
1st floor, Omalur Main Road,
Near News Bus Stand,
Salem - 636 009.

... Appellant in all CMAs

Vs

1.Sowtha
2.Minor Vijayakumar
3.Minor Lavanya
4.Minor Ajaykumar
5.Kaveriyammal
6.Dhanakaran
7.M.Kaliammal
(R7 set exparte in lower court)

(Minors rep.by their mother Sowtha
1st respondent)

... Respondents in CMA.No.3695/11

1.Mathalaimary
2.Minor Louiskumar
3.Minor Vimalraj
4.Theresiammal
5.Gnanamanickam
6.M.Kaliammal
(R6 set exparte in lower court)

(Minor rep. by mother
1st Respondent herein)

.. Respondents in CMA.No.3696/11

1.Anthoniyammal
2.Minor Devaperiyal
3.Minor Joseph @ Lawrance Joseph
4.M.Kaliammal .. Respondents in CMA.No.3697/11
(R4 set exparte in lower court)
(Minor rep. by N.F. 1st Respondent herein)

C.M.A.No.3695 of 2011 is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 07.08.2010, made in MCOP No.230 of 2009 on the file of the Motor Accident Claims Tribunal (Principal District Judge), Dharmapuri.

C.M.A.No.3696 of 2011 is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 07.08.2010, made in MCOP No.231 of 2009 on the file of the Motor Accident Claims Tribunal (Principal District Judge), Dharmapuri.

C.M.A.No.3697 of 2011 is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 07.08.2010, made in MCOP No.263 of 2009 on the file of the Motor Accident Claims Tribunal (Principal District Judge), Dharmapuri.

For appellant
in all CMAs : Ms.R.Sreevidhya

For R1 to R6 in CMA No.3695/11,
for R1 to R5 in CMA No.3696/11
and for R1 to R3 in CMA No.3697/11 : Mr.R.Selvakumar

COMMON JUDGMENT

Aggrieved by the common judgment and decree passed by the learned Tribunal, the appellant / ICICI Lombard General Insurance Company Limited, Salem, have filed the present applications.

2. On 11.09.2008, the deceased Selvaraj along with his two friends were proceeding in a Yamaha bike bearing Registration No.TN-34-D-7893 towards Kottaipai Bairahalli. The said vehicle was driven by the deceased Sahai Deva and that the deceased Kolandai Raj and Selvaraj were travelled as a pillion rider. While they were travelling near Dr.Ramadosh Hr. Secondary School, Solakottai, one Mahendra Milk Van bearing Registration No.TN-29-AB-1400 driven by its driver in a rash and negligent manner coming from the opposite direction, dashed against the said Yamaha bike. Due to such an accident, all the riders of the bike were thrown out from the vehicle and they died on the spot. One M.Kaliammal/first respondent before the Tribunal is the owner of the vehicle and that the said Milk van was insured with the appellant herein - Insurance company. Claimants of the respective deceased filed their respective claim petitions in MCOP Nos.230, 231 and 263 of 2009 before the Tribunal.

3. The Tribunal, after perusing the oral and documentary evidence placed before it, came to the conclusion that the said accident had occurred only due to the rash and negligent driving of the driver of the Milk van and by observing

so, it has awarded a sum of Rs.5,80,000/- in MCOP No.230/2009, Rs.6,11,000/- in MCOP No.231/2009 and Rs.5,37,000/- in MCOP No.263/2009. Aggrieved against the said award, the appellant-Insurance Company have filed the present applications before this Court.

4. Learned counsel appearing for the appellant Insurance Company submitted that a close reading of an FIR shows that three persons were travelling on one bike, which is impermissible in law, therefore, due to overload, naturally, the driver of the two-wheeler might have lost the control of the bike, which has resulted as fatal accident. However, without taking note of such fact, the learned Tribunal, on the basis of an FIR filed against the driver of the Milk van, has fixed the negligence on the part of the driver of the Milk van and thereby fixed the liability on the part of the Insurance Company to pay the compensation, therefore, entire compensation awarded by the learned tribunal is liable to be set aside.

5. Heard the learned counsel appearing on either side and perused the materials available before this Court.

6. It is seen from the deposition of P.W.4-Mohan Kumar, an eye witness, that the deceased along with two others were proceeding in a bike slowly on the extreme left side of the road, however, the driver of the Milk van coming from the opposite side with one headlight dashed against the deceased bike and due to such an accident, riders of the bike died on the spot. It is further seen from the Ex.A1-FIR that the said accident had occurred only due to the rash and negligent driving of the driver of the Milk van insured with the appellant Insurance Company. Thus, the learned trial Court has rightly fixed the negligence on the part of the driver of the milk van by going through the entire documents as stated above.

7. With regard to the liability, since the negligence has been proved on the part of the driver of the milk van, the appellant Insurance Company has to pay the compensation as the said vehicle has been insured with them. Further, the learned Tribunal, by applying the principles of pay and recovery, directed the appellant Insurance Company to pay the entire compensation to the claimants of the deceased and thereafter to recover the same from the owner of the Milk van / first respondent before the tribunal. Thus, this Court is not able to see any prejudice for payment of the entire award amount to the claimants and thereafter to recover the same from the owner of the Milk van.

8. At this juncture, it is the contention of the learned counsel appearing for the claimants that by applying the ratio laid down by the Hon'ble Apex Court in the case of Rajesh and others v. Rajbir Singh and others reported in ((2013) 9 SCC

54, this Court may award a compensation towards loss of consortium and loss of love and affection, for, at the time of accident, the deceased in MCOP No.230 of 2009 was only 38 years old, left behind his wife, three children and his parents. In MCOP No.231 of 2009, the deceased was only 32 years old, left behind his wife, two children and his parents. In MCOP No.263 of 2009, the deceased was only 32 years old at the time of accident, left behind his wife and two of his children.

9. In such circumstances, it is more appropriate to refer to the judgment of the Rajesh's case (cited supra). For better appreciation, paragraph 17 thereof is extracted below:

"17. The ratio of a decision of this Court, on a legal issue is a precedent. But an observation made by this Court, mainly to achieve uniformity and consistency on a socio-economic issue, as contrasted from a legal principle, though a precedent, can be, and in fact ought to be periodically revisited, as observed in Santosh Devi. We may therefore, revisit the practice of awarding compensation under conventional heads: loss of consortium to the spouse, loss of love, care and guidance to children and funeral expenses. It may be noted that the sum of Rs.2500 to Rs.10000 in those heads was fixed several decades ago and having regard to inflation factor, the same needs to be increased. In Sarla Verma case, it was held that compensation for loss of consortium should be in the range of Rs.5000 to Rs.10000. In legal parlance, consortium is the right of the spouse to the company, care, help, comfort, guidance, society, solace, affection and sexual relations with his or her mate. That non-pecuniary head of damages has not been properly understood by our courts. The loss of companionship, love, care and protection, etc., the spouse is entitled to get, has to be compensated appropriately. The concept of non-pecuniary damage for loss of consortium is one of the major heads of award of compensation in other parts of the world more particularly in the United States of America, Australia, etc. English Courts have also recognized the right of a spouse to get compensation even during the period of temporary disablement. By loss of consortium, the Courts have made an attempt to compensate the loss of spouse's affection, comfort, solace, companionship, society, assistance, protection, care and

sexual relations during the future years. Unlike the compensation awarded in other countries and other jurisdictions, since the legal heirs are otherwise adequately compensated for the pecuniary loss, it would not be proper to award a major amount under this head. Hence, we are of the view that it would only be just and reasonable that the courts award at least rupees one lakh for the loss of consortium."

10. In the cases on hand also, the first respondent herein in all the appeals have lost their husband at their young age and that the loss of husband definitely would cause physical loss as well as trauma to her. The children also are deprived of the love, care and guidance of their father and that the mother is basically dependent upon her son during the later part of the age is left with no assistance. Therefore, on taking note of such undisputed facts of the case and also taking note of the ratio laid down by the Hon'ble Apex Court in Rajesh's case (cited supra), it is the duty of this Court to award just compensation, though the claimants have not filed any appeal for enhancement. Accordingly, a sum of Rs.1,00,000/- is awarded in each case towards loss of consortium and a sum of Rs.25,000/- each is hereby awarded towards loss of love and affection of the deceased children in each case.

11. In fine, the appellant Insurance company is directed to pay a sum of Rs.7,55,000/- in MCOP No.230 of 2009, Rs.7,61,000/- in MCOP No.231 of 2009 and Rs.6,87,000/- in MCOP No.263 of 2009. The appellant Insurance Company is directed to pay the above said entire compensation, less the amount already deposited if any, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit, the claimants are permitted to withdraw the entire compensation along with the accrued interest thereon, by moving appropriate application.

12. With the above said observations, all the Civil Miscellaneous Appeals stand dismissed. No Costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

rkm

To

The Principal District Judge,
Motor Accidents Claims Tribunal
Dharmapuri.

+ 1 cc Mrs.R.Sreevidhya, Advocate Sr.5346
+1 cc to Mr.R. Selvakumar, Advocate SR.5149 & 5150

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KK (CO)
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