

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.03.2016

C O R A M

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

C.M.A.Nos.3049, 3050, 3051, 3052 and 3053 of 2012
and M.P.Nos.1 to 1 of 2012

C.M.No.3049 of 2012

The Divisional Manager
The New India Assurance Co.Ltd
42, Big Street
Vasavi Complex, TiruvannamalaiAppellant/2nd respondent

Vs

1.Minor Nila
rep. By N.F.G.Egambaram
2.K.Sasikala
3.J.Latha
4.C.Varadarajan
5.The Divisional Manager
National Insurance Co.Ltd
110, J.N.Street, Pondy Respondents/Petitioner /
Respondents

Civil Miscellaneous Appeal No.3049 of 2012 filed against the judgment and decree made in M.A.C.T.O.P.No.190 of 2008 (S.C.M.C.O.P.No.260 of 2006) on the file of the Motor Accidents Claims Tribunal (Additional Subordinate Judge) at Tindivanam dated 15.09.2010.

C.M.A.No.3050 of 2012

The Divisional Manager
The New India Assurance Co.Ltd
42, Big Street
Vasavi Complex, Tiruvannamalai ..Appellant/2nd Respondent

Vs

1.Egambaram
2.Minor Nila
rep. By NFG Egambaram

3.Pavunu
4.K.Sasikala
5.J.Latha
6.C.Varadarajan
7.The Divisional Manager
National Insurance Co.Ltd
110, J.N.Street, Pondy

...Respondents/Petitioner /
Respondents 1,3,4 & 5

Civil Miscellaneous Appeal No.3050 of 2012 filed under Section 173 of the Motor Vehicles Act, 1989, against the judgment and decree made in MACTOP No.248 of 2008 (SCMCOP.No.313 of 2006) on the file of the Motor Accidents Claims Tribunal (Additional Subordinate Judge) at Tindivanam, dated 15.09.2010.

C.M.A.No.3051 of 2012

The Divisional Manager
The New India Assurance Co.Ltd
42, Big Street, Vasavi Complex,
Tiruvannamalai

..Appellant/2nd Respondent

Vs

1.R.Santhi
2.Minor R.Kavitha
3.Minor R.Arunkarthik
rep. By N.F.guardian mother R.Santhi
4.G.Lakshmi
5.K.Sasikala
6.J.Latha
7.C.Varadarajan
8.The Divisional Manager
National Insurance Co.Ltd
110, J.N.Street, Pondy

..Respondents/Petitioner/1,3,4 & 5

Civil Miscellaneous Appeal No.3051 of 2012 filed against the judgment and decree made in MACTOP.No.245 of 2008 (S.C.M.C.O.P.No.165 of 2006) on the file of the Motor Accidents Claims Tribunal (Additional Subordinate Judge) at Tindivanam, dated 15.09.2010.

C.M.A.No.3052 of 2012

The Divisional Manager
The New India Assurance Co.Ltd
42, Big Street
Vasavi Complex, Tiruvannamalai

..Appellant/2nd Respondent

Vs

1.Egambaram
2.Minor Nila
rep. By N.F.Guardian Egambaram
3.Pavunu
4.K.Sasikala
5.J.Latha
6.C.Varadarajan
7.The Divisional Manager
National Insurance Co.Ltd
110, J.N.Street, Pondy. ..Respondents/Petitioner 1,3,4 & 5

Respondents

Civil Miscellaneous Appeal No.3052 of 2012 filed against the judgment and decree made in MACTOP No.246 of 2008 (S.C.M.C.O.P.No.258 of 2006) on the file of the Motor Accidents Claims Tribunal (Additional Subordinate Judge) at Tindivanam, dated 15.09.2010.

C.M.A.No.3053 of 2012

The Divisional Manager
The New India Assurance Co.Ltd.,
42, Big Street
Vasavi Complex, Tiruvannamalai ..Appellant/2nd Respondent

-Vs-

1.Minor Nila
rep. By NFG Egambaram
2.K.Sasikala
3.J.Latha
4.C.Varadarajan
5.The Divisional Manager
National Insurance Co.Ltd
110, J.N.Street, Pondy. ..Respondents/Petitioner
1,3,4, & 5 Respondents

Civil Miscellaneous Appeal No.3053 of 2012 filed against the judgment and decree made in MACTOP.No.247 of 2008 (S.C.M.C.O.P.No.259 of 2006) on the file of Motor Accidents Claims Tribunal (Additional Subordinate Judge) at Tindivanam dated 15.09.2010.

For appellant :Mr.M.Krishnamoorthy
in all the Appeals

For respondents :Mr.S.Arunkumar for R5
in CMA.Nos.3049 & 3053/2012
Mr.K.Rajasekaran for R1
in CMA.3049 & 3053/2012
and R1 to R3 in CMA.3050 &
3052/2012 and
R1 to R4 in CMA No.3051 of 2012

COMMON JUDGMENT

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

The New India Assurance Company Limited filed the above appeals, challenging the compensation granted by the Tribunal.

2. The Motor Accident which occurred on 16.01.2016 at 2.30 p.m., at T.V.Nagar, G.S.T.Road, Tindivanam resulted in four fatal cases and 1 injury case. As per the claim petitions filed before the Tribunal, it is stated that while the four deceased viz., D.Rani @ Jayalakshmi, G.Ravi, Minor Premkumar, Dhandapani and one injured Minor Nila were travelling in a Car bearing Reg.No.32-A-7755, near T.V.Nagar, G.S.T.Road, Tindivanam, a Tourist bus bearing Reg.No.AP 10 U 5623 insured with the appellant herein, came behind the car in a rash and negligent manner and without looking the road traffic, hit the car bearing Reg.No.32-A-7755. In the impact, the car was dragged to several meters and hit a Milk Tanker Lorry bearing Reg.No.TN-33-P- 7641. In the resultant accident, all the above stated four persons died and Minor Nila injured. The following table gives the details of the persons injured/deceased, their name, age, occupation, the relationship with the claimants and the amount of compensation claimed by them.

Sl .N o.	Nature of injury	Name,age and Occupation of the injured/ deceased	Relationship between the injured/deceased and the claimants	Amount of compensation claimed.
1	Fatal	D.Rani @ Jayalakshmi, 35 years, Dance Teacher.	Claimant -Minor Nila, daughter of the deceased	Rs.25,00,000/-

Sl .N o.	Nature of injury	Name,age and Occupation of the injured/ deceased	Relationship between the injured/deceased and the claimants	Amount of compensation claimed.
2	Fatal	G.Ravi, 36 years, driver, business and agriculturist.	Claimants-R.Santhi, Minor R.Kavitha, Minor R.Arunkarthik, Govindasamy Naidu, G.Lakshmi - Wife, minor daughter, minor son, father and mother of the deceased	Rs.15,00,000/-
3	Fatal	Premkumar, 2 years old child.	Claimants-Egambaram, Minor Nila, Pavunu - Paternal Uncle, sister and grand mother of the deceased.	Rs.5,00,000/-
4	Injury	Minor Nila, 11 years, student.	Claimant-Minor Nila	Rs.5,00,000/-
5	Fatal	Dhandapani, 40 years, Assistant Manager in Cable @ Wireless, DBS Office, Business Centre, Nungambakam, Chennai-34.	Claimants-Egambaram, Minor Nila, Pavunu- brother, daughter and mother of the deceased	Rs.1,50,00,000 /-

3. Since all the five claims arise out of the same accident, they were taken up together by recording evidence in common and a common Award was passed.

4. In support of the claim, before the Tribunal, the first claimant Minor Nila in M.C.O.P.No.190 of 2008 was examined as P.W.1. The first claimant Santhi in M.C.O.P. No.245 of 2008 was examined as P.W.2. Dr.Ponnappan was examined as P.W.3. One Mr.Kalyana Sundaram, said to be an occurrence witness was examined as P.W.4. One Mr.Manoj Kumar was examined as P.W.5. Exhibits P.1 to P.21 were marked and the details of which are as follows:-

Exhibits	Details
Ex.P.1	16.01.2006-Certified copy of F.I.R., in Cr.No.50/06 U/s.279, 338, 304(A) IPC.
Ex.P.2	20.01.2006-Certified copy of M.V.I.Report (A.P.10 U 5623).
Ex.P.3	19.01.2006-Certified copy of M.V.I.Report (T.N.32 A 7755).
Ex.P.4	17.01.2006-Certified copy of M.V.I.Report (T.N.33-P-7641)
Ex.P.5	16.01.2006-Certified copy of Post Mortem Certificate of deceased Rani.
Ex.P.6	16.01.2006-Certified copy of Post Mortem Certificate of deceased Premkumar.
Ex.P.7	16.01.2006-Certified copy of Accident Register of Nila.
Ex.P.8	21.02.2006-Wound Certificate of Nila issued by Soundarapanidan Bone and Joint Hospital.
Ex.P.9	16.01.2006-Post Mortem Certificate of deceased Dhandapani (certified copy)
Ex.P.10	25.09.2003-Saral Form of deceased Dhandapani in the year 2003-2004.
Ex.P.11	30.10.2004-Saral Form of deceased Dhandapani in the year 2004-2005.
Ex.P.12	11.04.2005-Income Tax Certificate (Form 16) of deceased Dhandapani for the year 2005-2006.
Ex.P.13	30.04.2008-Income Tax Certificate (Form 16) of deceased Dhandapani for the year 2006-2007.
Ex.P.14	--Xerox copy of Pan Card in the name of deceased Dhandapani.
Ex.P.15	18.01.2006-Condolence letter.
Ex.P.16	16.01.2006-Certified copy of Post Mortem Certificate of deceased Ravi.
Ex.P.17	02.11.2009-Disability Certificate of Minor Nila issued by Dr.Ponnappan.
Ex.P.18	-- X-ray of Minor Nila.
Ex.P.19	09.08.1999-Appointment order of deceased Dhandapani.
Ex.P.20	-- Company profile.
Ex.P.21	02.02.2009-Salary Certificate of deceased Dhandapani.

5. On the side of the Appellant/Insurance Company, one Mr.Pichandi, Investigator of the appellant/Insurance company was examined as R.W.1. Ex.R.1-Investigation Report was marked.

6. The Tribunal, on an analysis of evidence and the materials placed before it, pointed out that the driver of the Tourist bus suddenly swerved the bus forcefully and hit the back side of the car and in the said impact, the car dragged into several meters and went on the wrong side and dashed against a Milk Tanker Lorry. On such finding, the Tribunal held that the Tourist Bus owner namely, K.Sasikala and the insurer of the bus viz., New India Assurance Company are jointly and severally liable to pay compensation to the claimants. The compensation granted under each MCOP is tabulated as follows:-

MCOP Nos/CMA.Nos.	Amount granted by the Tribunal	Interest component
O.P.No.190/2008, CMA.No.3049/2012	Rs.2,76,000/-	7.5%
O.P.No.248/2008, CMA.No.3050/2012	Rs.54,23,370/-	7.5%
O.P.No.245/2008, CMA.No.3051/2012	Rs.5,52,000/-	7.5%
O.P.No.246/2008, CMA.No.3052/2012	Rs.2,50,000/-	7.5%
O.P.No.247/2008, CMA.No.3053/2012	Rs.42,000/-	7.5%

7. It is represented by Mr.S.Arunkumar, learned counsel for the National Insurance Company Limited that the appellant herein/The New India Assurance Company raised a ground that the accident occurred due to the rash and negligent driving of the driver of the Milk Tanker Lorry that dashed against the car and thus the liability to be fixed on the owner and insurer of the Milk Tanker Lorry bearing Reg.No.TN 33 P 7641 and thus, the National Insurance Company Limited was brought on record as party respondent. He further submitted that solely due to the rash and negligent driving of the Tourist Bus driver, the accident occurred and therefore, there is no justification in apportioning the liability on the insurer of the Milk Tanker Lorry. To substantiate the said plea, the learned counsel relied on First Information Report and the evidence of P.W.4, who was an independent eyewitness.

8. Refuting the submissions made by the learned counsel appearing for the National Insurance Company Limited, the learned counsel for the appellant herein/The New India Assurance Company relied on the evidence of R.W.1 as well as Ex.R.1 and submitted that the driver of the Milk Tanker Lorry was also responsible for the accident.

9. Heard the learned counsel on either side and perused the available papers placed on record.

10. The point for consideration is as to whether the evidence of R.W.1 based on the report Ex.R.1 or the First Information Report and the evidence of P.W.4 to be relied on for fixing negligence on the insurer of two vehicles involved in the accident.

11. The Tribunal having considered the evidence on record had concluded that on the basis of the First Information Report, the driver of the Tourist Bus was the sole cause of the accident due to his rash and negligent driving and hence the said vehicle's owner and insurer/the appellant herein are jointly liable to pay compensation. The report of R.W.1 viz., Ex.R.1, could at best be self serving document which clearly shows that the driver of the Tourist Bus is at fault. The ground raised by the appellant in the above appeals in respect of fixing the apportionment of liability on the vehicle owner and insurer of the Milk Tanker Lorry could not be sustained. Accordingly, the issue as regards the apportionment of liability raised in these appeals is answered in negative against the appellant.

12. As far as the quantum of compensation granted to the claimants in respect of the death of Dhandapani to the tune of Rs.54,23,370/- is disputed by the appellant/New India Assurance Company Limited. The plea raised by the learned counsel for the appellant/Insurance Company is that the multiplier adopted by the Tribunal is on the higher side.

13. It is seen from the order of Tribunal that the deceased-Dhandapani's total yearly income was taken at Rs.5,42,338/- for the year 2006 to 2007; after deducting 1/3rd of his income towards his personal expenses, the pecuniary loss was worked out as Rs.3,61,558/-. The Tribunal adopted multiplier 15 and arrived at the total compensation at Rs.54,23,370/-.

14. On going through the above, we are inclined to reject the plea raised by the appellant as regards the higher multiplier adopted by the Tribunal, for the reasoning that there was no compensation granted on conventional heads namely loss of love and affection, funeral and transport expenses etc., and therefore, the compensation granted under the head pecuniary loss will supplant the conventional heads.

15. As far as the compensation granted in respect of the other fatal cases and of the injured claimant Minor Nila was not seriously disputed by the appellant. We are also of the view that the amount awarded by the Tribunal is very meagre on such cases and accordingly, the grounds of appeals challenging the quantum of compensation could not be sustained.

16. In the result, all the above Civil Miscellaneous Appeals are dismissed. The common award passed by the Tribunal is confirmed. Appellant is directed to deposit the entire award amount within two months from the date of receipt of a copy of this order. The major claimants are permitted to withdraw their respective share amount as ordered by the Tribunal. The share of minors are directed to be deposited in any nationalised bank till they attain majority. No costs. Consequently connected MPs are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1.The Motor Accidents Claims Tribunal
Additional District Judge, F.T.C.No.I,
Tindivanam.

2.The Section Officer,
VR Section,
High Court, Madras.

+4cc to Mr.K.Rajasekaran, Advocate,
S.R.No.17656,17657,17658,17659 & 17660

+1cc to Mr.S.Arunkumar, Advocate, S.R.No.17472

C.M.A.Nos.3049,3050, 3051, 3052 and 3053 of 2012

ug (CO)
srg (31/03/2016)