IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.04.2017

CORAM

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

C.M.A.Nos.1153 and 1154 of 2016
C.M.P.Nos.11186, 11187 and 16443 of 2016

Royal Sundaram Alliance Insurance Co. Ltd.,
No.6, 1st Floor, Lattice Bridge Road,
Adyar, Chennai - 600 020. .. Appellants in both C.M.As./
2nd Respondent

Vs

1. K.Kumar

2. Shri Bhagyalakhmi Enterprises,
No.19, Vinayaga Nagar, Nemili Road,
Sriperumbudur, Kancheepuram 602 105.

3. M/s.F.I.H. India Ltd.,
formerly called Foxconn India Ltd.,
A-11 and A-12, Sipcot Industrial Park,
Irunkattukottai, Sriperumbudur Taluk,
Kancheepuram District. .. Respondents in both appeals/
petitioner/Respondents 1 & 3

Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, against the judgment and decree, made in M.C.O.P.No.4194 and 4281 of 2011, dated 23.11.2015, on the file of the Motor Accident Claims Tribunal (IInd Court of Small Causes) Chennai.

For Appellant	:	Mr.S.Manohar
For 1st Respondent	:	Mr.K.Suriyanarayanan
For CMDA	:	Mr.N.Sampath

COMMON JUDGMENT

(Judgment of this Court was made by S.MANIKUMAR)

Civil Miscellaneous Appeals are filed, against the common judgment and decrees, made in M.C.O.P.No.4194 and 4281 of 2011, dated 23.11.2015, on the file of the Motor Accident Claims Tribunal (IInd Court of Small Causes) Chennai.

2. Short facts leading to the appeals are as follows:

That on 09.09.2011, about 19.00 Hours, when the respondent/claimant and his wife, K.Bhavani, were proceeding in a Motorcycle, bearing Registration No.TN 02 M 8698, on ICF Konnur High Road, near Kamala Vinayagar Temple, North Colony, in front of Door No.313, Chennai, from West to East, a bus, bearing Registration No.TN 21 AF 6057, owned by the 2nd respondent and insured with the appellant-Insurance Company, proceeding in the same direction, driven by its driver, in a rash and negligent manner, came from behind, hit the motorcycle and due to which, both the rider and pillon rider were thrown out, and sustained grievous injuries. In this regard, a case in Cr.No.361/TM1/2011, has been registered against the driver of the bus, for the offence, under Section 337 IPC. (2 Counts), on the file of the V5 Thirumangalam Police Station, Traffic Investigation Division. Inspite of intensive treatment in ICF Hospital and Railway Hospital, Perambur, wife of the respondent/claimant succumbed to the injuries. Contending inter alia that K.Bhavani, W/o.K.Kumar, was working as Accounts Assistant, in the Office of FA & CAO, Joint Office, Ayanavaram, Chennai-23 and due to her sudden demise, the respondent/claimant has lost her contribution, love and affection, husband has filed M.C.O.P.No.4281 of 2011, on the file of the Motor Accident Claims Tribunal (IInd Court of Small Causes) Chennai, claiming compensation of Rs.1,00,00,000/-, under various heads.

3. In the accident, the respondent/claimant has also sustained grievous injuries, viz., pelvic fracture - compression type, superior and inferior pubic rami fracture and left sacral ala fracture. Contending inter alia that on the date of accident, he was a Chief Planner in Chennai Metropolitan Development Authority, Egmore, Chennai, the respondent/claimant has filed M.C.O.P.No.4194 of 2011, on the file of the Motor Accident Claims Tribunal (IInd Court of Small Causes) Chennai, claiming compensation of Rs.20,00,000/-, under various heads.

4. M/s.Royal Sundaram Alliance Insurance Company Ltd., Chennai, appellant herein, has filed separate counter affidavits, in both the claim petitions, denying negligence, attributed to the bus driver. According to the Company, the accident occurred due to the rash and negligent riding of the motorcyclist, Kumar. Without prejudice to the above, the Company has disputed the age, avocation and income of both the respondent/claimant, the deceased and the compensation claimed under various heads.

5. In the additional counter, M/s.Royal Sundaram Alliance Insurance Company Ltd., Chennai, appellant herein, has stated that the vehicle, bearing Registration No.TN 21 AF 6057, was leased to M/s.Foxconn India Ltd, 3rd respondent herein, to carry

their employees and necessary permit has been obtained, vide Permit No.328/TN21/PSV/2010, issued by the Regional Transport Authority, RTO, Kancheepuram, to ply on the route, from Kancheepuram to Vellore, for the period between 03.08.2010 and 02.08.2015. According to the Company, the accident occurred on K.H. Road, near ICF Kamala Vinayagar Koil Street, ICF, which is within Chennai District and that there was no valid permit to operate the bus and hence, they are not liable to indemnify the owner of the vehicle, the 2nd respondent herein.

6. As facts and evidence are common, both the claim petitions were taken up together. Before the Tribunal, Mr.K.Kumar, respondent/claimant examined himself as PW.1. PW.2, is the Doctor, who clinically examined the respondent/claimant, with reference to the medical records and issued the disability certificate. PW.3, is the Senior Section Officer, Finance Department, Southern Railways. Ex.P1 - FIR, Ex.P2 - Rough Sketch, Ex.P3 - Charge Sheet, Ex.P4 - Postmortem Certificate, Ex.P5 - Death Certificate, Ex.P6 - Legalheir Certificate, Ex.P7 - AR Copy, Ex.P8 - Discharge Summary, Ex.P9 - Driving Licence of the respodent/claimant, Ex.P10 - X-Ray with report, Ex.P11 - Disability Certificate, Ex.P12 - Authorization letter of Mr.Rajkumar, Ex.P13 - Copy of the particulars of service of the deceased, Ex.P13 - Copy of the particulars of service of the deceased, Ex.P14 - Employment and retirement particular of the deceased and Ex.P15 - Pay Drawn particulars of the deceased from June' 2011, has been marked.

7. On behalf of the appellant-Insurance Company, General Manager of the 2nd respondent-Company and an Executive of the Insurance Company have been examined as RWs.1 and 2 respectively. Documents, Ex.R1 - Driving Licence of the driver of the bus, Ex.R2 - Permit, Ex.R3 - Insurance Policy, Ex.R4 - RC Book, Ex.R5 - Private service vehicle permit, Ex.R6 - Tax Card, Ex.R7 - Form AIR, Ex.R8 - Copy of the Claim Form, Ex.R9 - Insurance Policy and Ex.R10 - Legal notice, dated 12.06.2013, have been marked on the side of the appellant-Insurance Company.

8. On evaluation of pleadings and evidence, the Claims Tribunal held that the driver of the bus, bearing Registration No.TN 21 AF 6057, owned by the 2nd respondent and insured with the appellant-Insurance Company, was negligent in causing the accident. Though permit was granted to operate the bus from Kancheepuram to Vellore and at the time of accident, the offending vehicle was operated in Chennai, without any permit and hence, the Tribunal has directed the appellant-Insurance Company to pay the compensation to the respondent/claimant, in both the cases and recover the same, from the 2nd respondent herein. Upon considering the documentary evidence, the Claims Tribunal has quantified the compensation, in both the claim petitions, as follows:

In M.C.O.P.No.4194 of 2011

Loss of earning for 50% disability	: Rs.1,50,000/-
Loss of Income for 3 months	: Rs.2,88,000/-
Transportation	: Rs. 15,000/-
Extra-Nourishment	: Rs. 10,000/-
Attendant Charges	: Rs. 50,000/-
Damages to clothes and articles	: Rs. 2,000/-
Medical Expenses	: Rs. 15,000/-
Pain and suffering	: Rs.1,00,000/-
Loss of amenties	: Rs. 20,000/-
Total	: Rs.6,50,000/-

In M.C.O.P.No.4281 of 2011

Loss of dependency	: Rs.63,64,800/-
Loss of consortium	: Rs. 1,00,000/-
Loss of love and affection	: Rs. 1,50,000/-
Funeral Expenses	: Rs. 25,000/-
Total	: Rs.66,39,800/-

9. Though several grounds have been raised, Mr.S.Manohar, learned counsel appearing for the appellant-Insurance Company confined his submission, only to the finding, fastening liability on the Company to pay compensation to the accident victims and the quantum of compensation. Hence, there is no need to advert to the aspect of negligence.

10. As regards liability, it is the main contention of the appellant-Insurance Company that the Claims Tribunal, having found that the bus, bearing Registration No.TN 21 AF 6057, was operated in Chennai District, without a valid permit, ought to have exonerated the Company from paying compensation to the respondent/claimant, in both the claim petitions. He further contended that as the owner and lessee of the said vehicle have violated both the policy and permit conditions respectively, the Company has no legal obligation to indemnify them.

11. Admittedly, at the time of accident, the vehicle was operated in Chennai District, though permit was issued to ply in the route, Kancheepuram to Vellore. The said fact has been proved by the appellant-Insurance Company, by producing documents, such as, Ex.R5 - Permit, Ex.R6 - Tax Card and Ex.R7 - Motor Vehicles Inspector's Report. Ex.R10 - Notice though issued to the respondents 2 and 3 herein to produce any valid permit to ply the bus in Chennai region, there was no reply.

12. Though the 2nd respondent herein is stated to have operated in Chennai, as a empty vehicle, for the purpose of changing one of its deflated tyres in the garage, upon perusal of the Motor Vehicles Report, marked as Ex.P17, the Claims Tribunal has noticed that in Column No.18 of the Report, the Motor Vehicles Inspector has mentioned that the condition of tyres as "Satisfactory" and also mentioned that, "the accident was not due to any mechanical defect of the vehicle". The Claims Tribunal has directed the appellant-Insurance Company to pay compensation to the accident victims and then, recover the same from Shri.Bhagyalakshmi Enterprises, Sriperumbudur, Kancheepuram, 2nd respondent herein. Contention raised in the appeals is that the right of recovery ought to have granted against the person in possession of the vehicle, at the time of accident, viz., M/s.F.I.H. India Ltd., (Formerly called Foxconn India Ltd.,) Irunkattukottai, Sriperumbudur Taluk, Kancheepuram District, third respondent herein.

13. Section 2(30) of the Motor Vehicles Act, 1988, defines the word, "Owner", which means a person in whose name a motor vehicle stands registered, and where such person is a minor, the guardian of such minor, and in relation to a motor vehicle which is the subject of a hire-purchase, agreement, or an agreement of lease or an agreement of hypothecation, the person in possession of the vehicle under the agreement.

14. The abovesaid said provision makes it clear that a person in whose name, a motor vehicle stands registered, is the owner of the vehicle and where motor vehicle is the subject of hire-purchase agreement or an agreement of hypothecation, the person in possession of the vehicle under that agreement is the owner.

15. In Rajasthan State Rd. Trpt, Corporation v. Kallash Nath Kothari reported in 1997 ACJ 1148 (SC), when the vehicle was in possession of RSRTC, under agreement between the owner of the vehicle and RSRTC, the Tribunal and High Court of Rajasthan committed no error in fastening the liability on RSRTC to pay the compensation to the heirs of the deceased passengers.

16. In HDFC Bank Ltd., v. Rehsma and others reported in 2015 ACJ 1, the Hon'ble Supreme Court held as follows:

> "24. In Purnya Kala Devi a three-Judge Bench has categorically held that the person in control and possession of the vehicle under an agreement of hypothecation should be construed as the owner and not alone the registered owner and thereafter the Court has adverted to the legislative intention, and ruled that the registered owner of the vehicle should not be held liable if the vehicle is not in his possession and control. There is reference to Section 146 of the

Act that no person shall use or cause or allow any other person to use a motor vehicle in a public place without insurance as that is the mandatory statutory requirement under the 1988 Act. In the instant case, the predecessor-in-interest of the appellant, Centurian Bank, was the registered owner along with Respondent 2. Respondent 2 was in control and possession of the vehicle. He had taken the vehicle from the dealer without paying the full premium to the insurance company and thereby getting the vehicle insured. The High Court has erroneously opined that the financier had the responsibility to get the vehicle insured, if the borrower failed to insure it. The said term in the hypothecation agreement does not convey that the appellant financier had become the owner and was in control and possession of the vehicle. It was the absolute fault of respondent 2 to take the vehicle from the dealer without full payment of the insurance. Nothing has been brought on record that this fact was known to the appellant financier or it was done in collusion with the financier. When the intention of the legislature is quite clear to the effect, a registered owner of the vehicle should not be held liable if the vehicle is not in his possession and control and there is evidence on record that Respondent 2, without the insurance plied the vehicle in violation of the statutory provision contained in Section 146 of the 1988 Act, the High Court could not have mulcted the liability on the financier. The appreciation by the learned Single Judge in appeal, both in fact and law, is wholly unsustainable."

17. In the above reported case, where the borrower of the vehicle was in control and possession of the vehicle and he plied the vehicle without obtaining insurance policy, caused the accident and it was held that the financier is not liable to pay compensation. However, in the present case, the vehicle has been leased out to M/s.F.I.H. India Ltd., (Formerly called Foxconn India Ltd.,) Irunkattukottai, Sriperumbudur Taluk, Kancheepuram District, third respondent herein and that the Company was in actual possession of the vehicle, on the date of accident. Therefore, the lessee is liable to pay compensation, when there is a insurance cover, the Company is liable to indemnify, as against third parties. In the light of the above decisions, pay and recover ought to have been granted, against M/s.F.I.H. India Ltd., (Formerly called Foxconn India Ltd.,) Irunkattukottai, Sriperumbudur Taluk, Kancheepuram District, third respondent herein, instead of Shri.Bhagyalakshmi Enterprises, Sriperumbudur, Kancheepuram, 2nd respondent herein and hence, the direction granted by the Tribunal is modified to pay the compensation to the victims and recover the same from the 3rd

respondent herein.

18. As regards quantum of compensation awarded in M.C.O.P.No.4194 of 2011, though the respondent/claimant has claimed that he was a Chief Planner in CMDA, Egmore, Chennai-8 and earned Rs.96,000/- per month, no document has been filed to substantiate the same. However, the Tribunal has accepted his version and taken the monthly income as Rs.96,000/-. In the accident, the respondent/claimant has sustained grievous injuries, viz., pelvic fracture - compression type, superior and inferior pubic rami fracture, left sacral ala fracture and took inpatient treatment in Southern Railway Hospital, Chennai, for the period from 09.09.2011 to 10.10.2011. Taking note of the same and the treatment for three months, the Tribunal has arrived the loss of income at Rs.2,88,000/- (Rs.96,000/- x 3).

19. PW.2, Doctor, who clinically examined the respondent/claimant, with reference to the medical records, has found that the respondent/claimant underwent treatment for multiple contusions, abrasions on right hand, right foot, both knees and punctured wound on 2nd and 3rd left space, blunt injury over pelvis, chest. Upon perusal of Ex.P10 - X-rays with report, the Doctor has found that the fracture at pelvis was malunited and the respondent/claimant found it difficult to sit, squat, lift weigh and sleep and also do the job. PW.2, Doctor, has assessed the partial permanent disability as 55% and issued Ex.P11 - Disability Certificate. Following the decision of this Court in National Insurance Co. Ltd., v. G.Ramesh reported in 2013 (2) TNMAC 583, the Claims Tribunal has awarded Rs.3,000/- per percentage and computed the disability compensation at Rs.1,50,000/- (Rs.3,000/- x 50%), which does warrant interference.

20. However, when there is no proof for avocation and income, the Claims Tribunal has fixed the monthly income of the respondent/claimant at Rs.96,000/- and determined Rs.2,88,000/- as loss of income for three months. Hence, this Court, vide order, dated 25.04.2017, directed Mr.N.Sampath, learned counsel appearing for CMDA, to get details with regard to loss of salary claimed by the respondent/clamant, for the months, September to December' 2011 and leave encashment particulars for 42 days.

21. Mr.K.Suryanarayanan, learned Counsel appearing for the respondent/claimant has filed an additional typed set of papers, containing the Income-Tax Returns for the Financial Years 2010-11 to 2012-13 and Pass Book statements from Indian Bank, from 30.08.2011 to 31.01.2012 and upon perusal of the same, it could be seen that CMDA has deposited salary of the respondent/claimant for the months of August' 2012 to December' 2012 and hence, there is no loss of income for the abovesaid period. Hence, compensation of Rs.2,88,000/- awarded by the Tribunal, towards loss of income for three months, cannot be countenanced and hence, the same is deleted.

22. Compensation of Rs.15,000/- towards transportation, Rs.10,000/- towards extra-nourishment, Rs.50,000/- for attendant charges, Rs.15,000/- for medical expenses, Rs.1,00,000/- towards pain and suffering, Rs.20,000/- towards loss of amenities and Rs.2,000/- towards damages to clothes and articles, is reasonable and therefore, sustained. After deducting the compensation awarded towards loss of income for three months, this Court is inclined to modify the award as Rs.3,62,000/-, with interest at the rate of 7.5% per annum, from the date of claim, till deposit.

Compensation awarded by the Tribunal	: Rs.6,50,000/-
On appeal, compensation now determined	: Rs.3,62,000/-
Reduced compensation	: Rs.2,88,000/-

23. In M.C.O.P.No.4281of 2011, according to the respondent/claimant, his wife, K.Bhavani, aged 48 years, was working as an Accounts Assistant in the Office of FA & CAO, Joint Office, Ayanavaram, Chennai-23 and earned Rs.56,000/- per month. To prove the same, he has marked Exs.P13 - Service Register, Ex.P14 - Employment and Retirement related document and Ex.P15 - Pay slips for the months, June 2011 to August 2011. Upon perusal of the same, the Claims Tribunal has fixed the monthly income of the deceased as Rs.48,738/- and after adding 30% towards future prospects, determined the monthly contribution of the deceased as Rs.61,173/-. As the respondent/claimant is the sole dependant, the Claims Tribunal has deducted 1/3rd towards the personal and living expenses of the deceased and after applying '13' multiplier, to the age of the deceased, arrived at the loss of contribution to the family as Rs.63,64,800/- (Rs.61,173/- x 12 x 13 x 2/3). That apart, the Claims Tribunal has awarded Rs.1,00,000/- towards loss of consortium, Rs.1,50,000/- towards loss of love and affection and Rs.25,000/- towards funeral expenses. Altogether, the Claims Tribunal has awarded Rs.66,39,800/- with interest, at the rate of 7.5% per annum, from the date of claim, till deposit.

24. Legal representative of the deceased is none other than her husband, the respondent/claimant. The Tribunal has awarded Rs.1,00,000/- under the head, loss of consortium. Loss of love and affection is one of the componants of loss of consortium. 'Consortium' as per the Best v. Samuel Fox reported in 1952 AC 716 means, "Duty owned by a wife to her husband and vice versa, companionship, love and affection, comfort, mutual services, sexual intercourse, etc."

25. In Rajesh and others v. Rajbir Singh and others reported in 2013(3) CTC 883, the Hon'ble Apex Court, held as follows:

> "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 atleast Rupees one lakh for Loss of Consortium."

26. As rightly contended by the learned counsel for the appellant-Insurance Company, compensation of Rs.1,50,000/- awarded towards loss of love and affection, cannot be sustained, when he was already been compensated for loss of consortium. Therefore, compensation of Rs.1,50,000/- awarded to the respondent/claimant, is deleted. Compensation awarded under other heads, is reasonable. Modified compensation, after deletion of Rs.1,50,000/-, works out to Rs.64,89,800/-, with interest, at the rate of 7.5% per annum, from the date of claim, till deposit.

Compensation awarded by the Tribunal	: Rs.66,39,800/-
On appeal, compensation now determined	: Rs.64,89,800/-
Reduced compensation	: Rs. 1,50,000/-

27. In view of the above, the Civil Miscellaneous Appeals are partly allowed. There is reduction of compensation in both the appeals. It is represented that 50% of the award amount has already been deposited. Hence, the appellant-Insurance Company

is directed to deposit the balance compensation amount, with proportionate interests and costs, to the credit of M.C.O.P.No.4194 and 4281 of 2011, on the file of the Motor Accident Claims Tribunal (IInd Court of Small Causes) Chennai, within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the respondent/claimant is permitted to withdraw the same, in both the appeals, after making necessary applications before the Tribunal. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

skm

To

1.The Motor Accident Claims Tribunal
(II Court of Small Causes), Chennai.

2.The Section Officer
VR Section
High court Madras

+2 ccs to M/s.K.Suryanarayanan Advocate sr 36363,36362
+1 cc to M/s.S.Manohar Advocate sr 36461

C.M.A.Nos.1153 and 1154 of 2016

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