IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 13/4/2017

CORAM

The Honourable Mr.JUSTICE S. MANIKUMAR
and
The Honourable Mr.JUSTICE M. GOVINDARAJ

Civil Miscellaneous Appeal Nos.2193 to 2195 of 2016

C.M.A.No.2193/2016:-

Royal Sundaram Alliance Insurance
Company Limited, 47, Whites Road,
Chennai 600 014. ... Appellant in all the appeals/
Respondent No.2 in all MCOPs

Vs.

1. Kevin Maxwell (Minor),
rep. By his grand Mother and next friend G.Malliga,
No.25/28, Dr.Thomas Road, T.Nagar,
Chennai 600 017.

2. Muthulakshmi ... Respondents in
C.M.A.No.2193 of 2016/
Petitioner and 1st Respondent
in (M.C.O.P.No.1458 of 2012)

a n d

1. Kevin Maxwell (Minor)
rep. By his grand mother and
next friend G. Malliga

2. G. Malliga

3. Muthulakshmi ... Respondents in
C.M.A.No.2194 of 2016
Petitioner and 1st Respondent
in(M.C.O.P.No.1543 of 2012)

a n d

1. M. Mohan

2. Vasantha

3. Muthulakshmi

4. Kevin Maxwell (minor)
rep. By his grandmother
Malliga. ... Respondents in C.M.A.No.2195 of 2016
Petitioners,Respondents 1 and 3 in(M.C.O.P.No.2483 of 2013)

Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 5th day of March, 2016, made in M.C.O.P.Nos.1458, 1543 of 2012 and 2483 of 2013, on the file of Motor Accident Claims Tribunal (II Court of Small Causes) of Madras.

For Appellant : Mr.S.Manohar

For Respondents 1 in C.M.A.No.2193 of 2016, Respondents 1 and Respondents 2 in C.M.A.No.2194 of 2016 and Respondent 4 in C.M.A.No.2195 of 2016 : Mr.K.Varadha Kamaraj

COMMON JUDGMENT

In the accident, which occurred, on 23/1/2012, at 23.30 hours, involving a motorcycle, bearing Registration No.TN09BL-3862, and a van, bearing Registration No.TN22CW-7519, insured with Royal Sundaram Alliance Insurance Company Limited, Rajasekar, his wife Suganthi sustained injuries and they died on the spot. A 11 months old baby, viz., Kevin Maxwell, who travelled, along with his parents, sustained fracture and injury in the eye.

2. For the injuries, medical expenses, disability and other heads, grandmother/next friend of minor Kevin Maxwell, filed M.C.O.P.No.1458 of 2012, (C.M.A.No.2193 of 2016), claiming compensation of Rs.2,00,000/-.

3. For the death of Suganthi, legal representative/Kevin Maxwell (minor) and his grandmother filed M.C.O.P.No.1543 of 2012 (C.M.A.No.2194 of 2016), claiming compensation of Rs.15,00,000/-, under various heads.

4. Parents of the deceased Rajasekar filed M.C.O.P.No.2483 of 2013 (C.M.A.No.2195 of 2016), claiming compensation of Rs.25,00,000/-, under various heads.

5. As all the three claim petitions arose out of the same accident, M.C.O.P.Nos.1458 of 2012, 1543 of 2012 and 2483 of 2013 were tried together and disposed of, by a common judgment and decree, dated 5th March 2016.

6. In so far as the claim in M.C.O.P.No.1458 of 2012 (C.M.A.No.2193 of 2016), relating to minor Kevin Maxwell is concerned, considering the nature of injuries, treatment, disability, assessed at 55% by the Doctor, the Tribunal awarded compensation of Rs.2,75,000/-, with interest, at the rate of 7.5% from the the date of claim till deposit, as hereunder:-

Heads	Rs.
Transportation, Nourishing food and Miscellaneous expenditure	Rs. 25,000.00
Medical expenses	Rs. 15,000.00
Future medical expenses	Rs. 10,000.00
Attender charges	Rs. 10,000.00
Disability	Rs.1,65,000.00
Damages for pain, suffering and trauma	Rs. 30,000.00
Loss of amenities	Rs. 20,000.00
TOTAL	Rs.2,75,000.00

7. As regards the claim in M.C.O.P.No.1543 of 2012 (C.M.A.No.2194 of 2016), taking note of the contention that the deceased was doing Office Management and tailoring work and earning a salary of Rs.10,000/- and following the decision rendered in Sarla Verma Vs. Delhi Transport Corporation {(2009 (2) TN MAC - 1 (SC), the Tribunal added 50% of the monthly income as the future prospects, applied 18 multiplier and computed the loss of contribution to the family as Rs.21,60,000- (Rs.10,000/- x 12 x 18). Tribunal quantified the compensation as Rs.24,85,000/-, with interest, at the rate of 7.5.% p.a., as hereunder:-

Heads	Amount
Loss of pecuniary benefits	Rs.21,60,000

Heads	Amount
Loss of love and affection	Rs. 2,00,000
Loss of Estate and expectation of life	Rs. 1,00,000
Funeral expenses	Rs. 25,000
Total	Rs.24,85,000

8. As regards the claim in M.C.O.P.No.2483 of 2013 (C.M.A.No.2195 of 2016), the deceased aged about 24 years, was stated to be a Plumber and earned Rs.15,000/- p.m. Ex.P.33 salary certificate has been marked to support avocation and income. Neither the employer nor his authorised representative has been examined to support the same. The Tribunal fixed the monthly income as Rs.15,000/-. Added up 50% of the income under the head future prospects, computed the loss of contribution as Rs.30,60,000/- (Rs.15,000/- x 12 x 17).

9. The Tribunal quantified the compensation as Rs.34,85,000/- with interest at the rate of 7.5% p.a., from the date of claim till deposit.

Heads	Amount
Loss of pecuniary benefits	Rs.30,60,000.00
Loss of love and affection	Rs. 3,00,000.00
Loss of Estate & Loss of Expectation of life	Rs. 1,00,000.00
Funeral expenses	Rs. 25,000.00
Total	Rs.34,85,000.00

10. Being aggrieved by the liability fastened, Royal Sundaram Alliance Insurance Company Limited, Chennai, has filed the appeals, contending inter alia that when the driver of offending vehicle, Eicher in TN22CW-7519, insured with the Company, did not possess a valid and effective driving license, at the time of accident, the Tribunal ought to have exonerated the Insurance Company from payment of compensation.

11. M/s. Royal Sundaram Alliance Insurance Company Limited, Chennai/appellant herein further contended that the Tribunal has erred in awarding higher compensation of Rs.1 lakh for Loss of estate and loss of expectation of life. It is also contended that in so far as M.C.O.P.No.1458 of 2012 is concerned, in the

absence of examination of either the employer or his representative, the Tribunal has erred in fixing higher income, for the purpose of computing the loss of contribution to the family.

12. On the aspect of liability, it could be seen from the impugned judgment that though Royal Sundaram Alliance Insurance Company Limited/appellant herein has raised a plea that the driver of Eicher Lorry bearing Registration No.TN22CW-7519, did not possess a valid and effective driving license, and sought for exoneration from payment of compensation, the Tribunal has rightly pointed out that the appellant/Insurance Company has not examined any official from the Transport Department. Defence taken has not been substantiated. On the aspect as to whether the Tribunal was right in fastening liability on Royal Sundaram Alliance Insurance Company Limited/appellant herein, directing payment of compensation to the third party accident victims, it is worthwhile to consider few decisions.

13. In ICICI Lombard General Insurance Company Vs. Annakkili, reported in 2012 (1) TN MAC 226, this Court, following the principles of law laid down by the Apex Court and the Hon'ble Division Bench judgments held that, payment of compensation to a third party victim or legal representatives of the deceased, as the case may be, is statutory and considering the interpretation given by the Supreme Court to Sections 147, 149 (4) and (5) vis-a-vis, the defences open to the Insurance Company under Section 149(2)(a)(ii) of the Motor Vehicles Act held that the very introduction of the words, "pay compensation to the third party and recover the same from the insured" in Section 149(4) and (5) of the Act, would reflect the divine intention of the legislature to protect the interest of the third parties, vis-a-vis inter-se disputes between the insured and insurer, and further held that the insurer cannot avoid its liability to pay compensation to a third party, but such avoidance can be made only, if willful breach of terms and conditions of the policy by the insured, by consciously and recklessly allowing the driver, who did not possess a valid and effective driving licence, to drive the vehicle and even if such breach is proved, payment of compensation to the third party victim cannot, at any stretch of imagination, be avoided by the Company and that the only remedy open to the insurer in law is to pay the compensation to the third party victims and recover from the insured. In view of the above, the insurer cannot be totally exonerated from payment of compensation to third party, but it can avoid its liability only to the insured.

14. Further, in yet another decision in S.Iyyapan v. United India Insurance Co. Ltd., reported in 2013 (7) SCC 62, the

Hon'ble Supreme Court, while dealing with a similar contention of a valid and effective driving licence, at Paragraph 17, held as follows:

> "Hence, in our considered opinion, the insurer cannot disown its liability on the ground that although the driver was holding a licence to drive a light motor vehicle but before driving light motor vehicle used as commercial vehicle, no endorsement to drive commercial vehicle was obtained in the driving licence. In any case, it is the statutory right of a third party to recover the amount of compensation so awarded from the insurer. It is for the insurer to proceed against the insured for recovery of the amount in the event there has been violation of any condition of the insurance policy."

15. In the light of the above discussion and decisions taken note of, there is no illegality in fastening the liability, on Royal Sundaram Alliance Insurance Company Limited, Chennai/appellant herein, to pay compensation to third party victims. Insurance Company cannot either be exonerated or right of recovery can be granted from the owner of Eicher Van, bearing Registration No.TN22CW-7519.

16. On the quantum of compensation, we directed the learned counsel appearing for both parties, Mr.S.Manohar, learned counsel appearing for Royal Sundaram Alliance Insurance Company Limited/appellant herein and Mr.K.Varadha Kamaraj, learned counsel for the legal representatives of the deceased/respondents, have agreed that compensation in

(i). C.M.A.No.2193 of 2016 (M.C.O.P.No.1458 of 2012) be fixed as Rs.1,75,000/-, with interest at the rate of 7.5% p.a., from the date of claim till deposit and costs.

Compensation awarded by the Tribunal	...	Rs.2,75,000.00
Compensation now determined	...	Rs.1,75,000.00
Reduction		Rs.1,00,000.00

(ii). in C.M.A.No.2194 of 2016 (M.C.O.P.No.1543 of 2012), since the mother of the legal representative was engaged in tailoring and office management, income was fixed as Rs.10,020/- and 50% was added under the head future prospects. On consenses, learned counsel for the parties have agreed that income be fixed as Rs.8,000/- and addition of 50% can be made for the purpose of computing the loss of contribution to the family. After reworking, compensation under the head loss of contribution to the family works out to Rs.17,28,000/-. (8,000 x 50% x 12 x 18 x 2/3).

Compensation now agreed upon by both the learned counsel works out to Rs.19,88,000/- with interest at the rate of 7.5% p.a., from the date of claim till deposit, as hereunder:-

Loss of contribution to the family	...	Rs.17,28,000
Loss of Love and affection	...	Rs. 2,00,000
Loss of estate	...	Rs. 10,000
Transportation	...	Rs. 25,000
Funeral Expenses	...	Rs. 25,000
		Rs.19,88,000

Compensation awarded by the Tribunal is	Rs.24,85,000/-
On appeal, compensation agreed upon is	Rs.19,88,000/-
Reduction	Rs. 4,97,000/-

(iii). C.M.A.No.2195 of 2016 (M.C.O.P.No.2483 of 2016):-

In C.M.A.No.2195 of 2016, learned counsel appearing for the parties agreed that the monthly income of the deceased be fixed as Rs.12,000/-, and addition of 50% be taken. Deletion under the head loss of love and affection and expectation of life can be made. Reasonable compensation be awarded under the head transportation and conventional damages. Deceased was aged 27 years. Therefore, 17 would be the proper multiplier. Dependants are two in number. Following the methodology, loss of contribution to the family works out to Rs.24,48,000/-.

17. In terms of the consensus, compensation agreed upon by the parties, payable by the Royal Sundaram Alliance Insurance Company Limited, Chennai is Rs.28,08,000/-, with interest at the rate of 7.5% p.a., from the date of claim till deposit and costs and apportioned as hereunder:-

Loss of contribution to the family	...	Rs.24,48,000
Loss of love and affection (Rs.1 lakh awarded to the father of the deceased shall be apportioned to the mother)	...	Rs. 3,00,000
Loss of estate	...	Rs. 10,000
Funeral expenses	...	Rs. 25,000
Transportation	...	Rs. 25,000
		Rs.28,08,000

Compensation awarded by the Tribunal	...	Rs.34,85,000.00
Compensation now determined	...	Rs.28,08,000.00
Reduction		Rs. 6,77,000.00

18. Placing on record the above, Mr.S.Manohar learned counsel for Royal Sundaram Alliance Insurance Company Limited/appellant herein submitted that as per the directions of this Court, 50% of the award amount in each of the claim petitions, directed to be deposited has been complied with.

19. In view of the reduction in quantum of compensation as stated supra, Royal Sundaram Alliance Insurance Company Limited/appellant herein is directed to deposit the balance compensation amount with proportionate interest to the credit of M.C.O.P.Nos.1458 of 2012, 1543 of 2012 and 2483 of 2013 respectively, within a period of four weeks, from the date of receipt of a copy of this order.

20. In the result, these Civil Miscellaneous Petitions are allowed in part. Kevin Maxwell/claimant continues to be a minor. Therefore, compensation awarded to him, in all the

Appeals, shall be deposited in any of the Nationalised Bank, under the scheme of fixed deposit, initially for a period of three years. Grandmother and next friend/Mallika is permitted to withdraw the interest accrued, once in three months. No costs. Consequently, the connected Miscellaneous Petitions are closed.

mvs 13.04.2017

For Being Mentioned:

This civil Miscellaneous Petition having been listed under caption for being mentioned on 26.07.2017 pursuant to the order of this court dated 13.04.2017 and made herein in the presence of the aforesaid counsel on the either side the court made the following order:-

[Order of the Court was made by S.MANIKUMAR, J.]

Civil Miscellaneous Appeals are listed today, under the caption 'for being mentioned', on the grounds inter alia that in the common judgment dated 13.04.2017 made in CMA Nos.2193 to 2195 of 2016, apportionment of the amount determined by this Court, Rs.19,88,000/- with proportionate interest at the rate of 7.5% per annum, in respect of CMA No.2194 of 2016, has not been done and that the grand mother and next friend G.Malliga, has been permitted to withdraw only the interest, accrued on the share of the minor, once in three months.

2. On this day, Mr.K.Varadha Kamaraj, learned counsel for the respondents/claimants in CMA 2194 of 2016 submitted that award amount of Rs.19,88,000/- with proportionate interest at the rate of 7.5% per annum, determined by this Court, on appeal, be apportioned as hereunder.

Share of the minor/son-Kevin Maxwell	=	Rs.15,00,000/-
Share of the mother of the deceased	=	Rs. 4,88,000/-

3. As ordered earlier, interest accruing on the share of the minor, shall be permitted to be withdrawn by the grandmother of the minor/G.Malliga, once in three months. In all other aspects, the common order is sustained.

4. Registry is directed to issue a fresh order copy, forthwith.

ars 26.07.2017

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

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

2. The Record Keeper,
   VR Section,
   High Court, Madras-104.

+3ccs to Mr.S.Manohar, Advocate,
S.R.No.22611,22612 & 22613

+3ccs to Mr.K.Varadha Kamaraj, Advocate,
S.R.No.22625,22626 & 22627

+1cc to Mr.K.Varadhakamaraj,Advocate sr.53395

C.M.A.Nos.2193 to 2195 of 2016

NMI(CO)
CS/23/06/17
ss(10/8/2017)