

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.09.2017

CORAM

THE HON'BLE MR. JUSTICE R.SUBBIAH  
and  
THE HON'BLE MR. JUSTICE A.D.JAGADISH CHANDIRA

C.M.A.Nos.1669, 1686 and 1840 of 2014  
and  
MP.Nos.1, 1 and 1 of 2014

The Manager  
Reliance General Insurance Company Ltd  
Rais Tower, Plot No.2504  
IInd Floor, 2<sup>nd</sup> Avenue,  
Anna Nagar, Chennai - 600 040. ..Appellant/2nd Respondent  
in all the appeals

..vs..

1. Antim Kumar Das ..1st Respondent/Petitioner  
2. Gnanaraj ..2nd Respondent/1st Respondent

COMMON PRAYER: Civil Miscellaneous Appeals have been filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 11.01.2013 passed by the Motor Accidents Claims Tribunal, Principal District Judge, Thiruvallur in MCOP.Nos.11, 12 and 13 of 2011 respectively.

For Appellant : Mr.S.Arukumar  
For R1 : Mr.G.Karthikeyan

COMMON JUDGMENT

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

All the three appeals are arising out of the common order dated 11.01.2013 passed by the Motor Accident Claims Tribunal (Principal District Judge) Tiruvallur ('the Tribunal' for brevity) in MCOP.Nos.11, 12 and 13 of 2011 respectively. As such, the same are disposed of by this common judgment.

2.Questioning the liability of the insurance company to pay compensation as well as the quantum of compensation awarded by the Tribunal, all these appeals have been preferred by the Reliance General Insurance Company Ltd, Anna Nagar, Chennai-600 040 ('the insurance company' for short). The respondents 1 and 2 in all these appeals are the claimant and the owner of the

vehicle, which involved in the accident that occurred on 03.10.2010.

3.The facts leading to the filing of the claim petitions are that on 03.10.2010, the first respondent/claimant along with his wife Nandhini @ Nandhini Das and daughter Charvee Das came from Delhi to Chennai by flight. After landing Chennai airport, they hired a taxi bearing Regn.No.TN10 B 3110 to go to Pondicherry. At around 1.30pm, when they were proceeding in the taxi, near Muttukkadu Boat Club the driver of the taxi drove it in a rash and negligent manner and dashed against a bus belonging to the State Express Transport Corporation bearing Regn.No.TN01 N 9129, which came from the opposite direction, due to which, the wife and daughter of the first respondent died on the spot and the first respondent sustained grievous injuries. Pursuant to the same, a case in Crime No.981 of 2010 was registered by the Sub Inspector of Police, Neelankarai Police Station, against the driver of the taxi for the offences under sections 279, 337 and 304(A) (2 counts) IPC and the same was subsequently closed, as the action dropped, due to the death of the taxi driver in the accident. Thereafter, the first respondent herein filed three claim petitions: (i)MCOP.No.11 of 2011 seeking compensation of Rs.45,00,000/- for the death of his wife Nandini @ Nandhini Das; (ii)MCOP.No.12 of 2011 seeking compensation of Rs.10,00,000/- for the death of his daughter Charvee Das aged about 14 years; and (iii)MCOP.No.13 of 2011 seeking compensation of Rs.40,00,000/- for the grievous injuries sustained by him in the accident.

4.The claim petitions were resisted by the appellant insurance company by filing a separate counter, wherein, it is stated that the accident was caused, as a result of collision between the two vehicles viz., the taxi and bus and hence, the driver of the bus bearing Regn.No.TN01 N 9129 and the State Express Transport Corporation are also the necessary parties. Further, the appellant insurance company disputed the compensation claimed by the first respondent under various heads in all the claim petitions, as the same are highly excessive.

5.Before the Tribunal, on the side of the first respondent/claimant, five witnesses, including the first respondent, were examined as P.W.1 to P.W.5 and thirty four documents were marked as Exs.P1 to P34. On the side of the appellant insurance company, one C.Sabhapathy was examined as R.W.1 and the driving licence of the driver of the offending vehicle was marked as Ex.R1. After examining the same, the Tribunal came to a conclusion that the accident took place due to the rash and negligent driving of the driver of the taxi bearing Regn.No.TN10 B 3110 belonging to the second respondent herein and insured with the appellant insurance company. Holding

so, the Tribunal awarded a sum of Rs.40,64,584/- (MCOP.No.11/2011), Rs.3,05,000/- (MCOP.No.12/2011) and Rs.6,14,843/- (wrongly stated as Rs.6,19,843/- in MCOP.No.13/2011) as compensation to the first respondent/claimant. Aggrieved over the same, the appellant insurance company is before this Court with the present appeals.

6.The learned counsel for the appellant insurance company made the following submissions:

(i)In the accident, two vehicles viz., the taxi and bus, were involved. However, the owner of the taxi alone was arrayed as party to the claim petitions and the State Express Transport Corporation was not impleaded as party to the proceedings. In such circumstances, the Tribunal ought to have dismissed the claim petitions for non-joinder of necessary parties.

(ii)Though the accident had occurred, as a result of collision of two vehicles, when the driver of the bus is one of the tort feasers, the Tribunal erred in holding that the driver of the taxi insured with the appellant insurance company is alone responsible for the accident.

(iii)with regard to quantum of compensation awarded by the Tribunal under various heads, the same is highly excessive, exorbitant and arbitrary and hence, the same has to be reduced.

7.Per contra, learned counsel for the first respondent/claimant submitted that the Tribunal, on consideration of the oral and documentary evidence adduced by the parties, fixed the liability on the appellant insurance company and awarded the compensation to the claimant, which is just, fair and reasonable and which warrants no interference by this Court.

8.We have carefully considered the submissions made by the learned counsel on either side and also perused the records placed before us.

9.The challenge made in these appeals by the appellant insurance company is on two aspects: viz., (i) liability to pay compensation; and (ii)quantum of compensation awarded by the Tribunal.

Liability:

10.On a perusal of the order, we find that the criminal case was registered against the taxi driver alone, who, according to the Tribunal, drove the vehicle, in which, the first respondent along with his wife and daughter travelled, in a rash and negligent manner and dashed against the bus belonging to the State Express Transport Corporation and thereby, caused the accident, due to which, the wife and daughter died on the spot

and the first respondent sustained grievous injuries. However, the case was closed as action dropped, since the driver of the taxi died in the accident. Now, the main grievance of the learned counsel for the appellant insurance company is that when two vehicles were involved in the accident, the claim petition ought to have been filed by impleading the State Express Transport Corporation also. But, in the instant case, the owner of the taxi and its insurer were alone impleaded. Further, the driver of the bus was one of the tortfeasors. As such, the Tribunal ought to have dismissed the claim petitions for non-joinder of necessary parties.

10.1 Opposing the same, learned counsel for the first respondent/claimant submitted that though two vehicles were involved in the accident, the accident happened as a result of composite negligence, as such, the claim can be made against both or any one of the tortfeasors. In support of his contention, he placed reliance on the decision of the Hon'ble Supreme Court reported in 2015(1) TNMAC 801 (SC) (Khenyei v. New India Assurance Company Ltd. and others), wherein, it is held at para 18 as follows:

18. This Court in Challa Bharathamma & Nanjappan (supra) has dealt with the breach of policy conditions by the owner when the insurer was asked to pay the compensation fixed by the tribunal and the right to recover the same was given to the insurer in the executing court concerned if the dispute between the insurer and the owner was the subject-matter of determination for the tribunal and the issue has been decided in favour of the insured. The same analogy can be applied to the instant cases as the liability of the joint tortfeasor is joint and several.

In the instant case, there is determination of inter se liability of composite negligence to the extent of negligence of 2/3rd and 1/3rd of respective drivers. Thus, the vehicle - trailer-truck which was not insured with the insurer, was negligent to the extent of 2/3rd. It would be open to the insurer being insurer of the bus after making payment to claimant to recover from the owner of the trailer-truck the amount to the aforesaid extent in the execution proceedings. Had there been no determination of the inter se liability for want of evidence or other joint tortfeasor had not been impleaded, it was not open to settle such a dispute and to recover the amount in execution proceedings but the remedy would be to file another suit or appropriate proceedings in

accordance with law. What emerges from the aforesaid discussion is as follows:

(i) In the case of composite negligence, plaintiff/claimant is entitled to sue both or any one of the joint tort feasons and to recover the entire compensation as liability of joint tort feasons is joint and several.

(ii) In the case of composite negligence, apportionment of compensation between two tort feasons vis a vis the plaintiff/claimant is not permissible. He can recover at his option whole damages from any of them.

(iii) In case all the joint tort feasons have been impleaded and evidence is sufficient, it is open to the court/tribunal to determine inter se extent of composite negligence of the drivers. However, determination of the extent of negligence between the joint tort feasons is only for the purpose of their inter se liability so that one may recover the sum from the other after making whole of payment to the plaintiff/claimant to the extent it has satisfied the liability of the other. In case both of them have been impleaded and the apportionment/ extent of their negligence has been determined by the court/tribunal, in main case one joint tort feason can recover the amount from the other in the execution proceedings.

(iv) It would not be appropriate for the court/tribunal to determine the extent of composite negligence of the drivers of two vehicles in the absence of impleadment of other joint tort feasons. In such a case, impleaded joint tort feason should be left, in case he so desires, to sue the other joint tort feason in independent proceedings after passing of the decree or award."

10.2 We are of the view that the aforesaid decision would make it clear that in the case of composite negligence, the claimant is entitled to claim against both or any one of the joint tort feasons and to recover the entire compensation, as the liability of the joint tort feasons is joint and several. Therefore, the finding rendered by the Tribunal with regard to liability of the appellant insurance company alone to pay compensation to the claimant, cannot be found fault with and the same is hereby confirmed.

Quantum of compensation awarded by the Tribunal:  
CMA.No.1669/2014 against MCOP.No.11/2011:

11.The Tribunal awarded a sum of Rs.40,64,584/- against the claim of Rs.45,00,000/- for the death of the wife of the first respondent/claimant Nandini @ Nandhini Das, under the following heads:

|                                |   |                |
|--------------------------------|---|----------------|
| Loss of dependency             | = | Rs.40,49,584/- |
| Loss of consortium             | = | Rs. 10,000/-   |
| Transport and funeral expenses | = | Rs. 5,000/-    |
|                                |   | .....          |
| Total=                         |   | Rs.40,64,584/- |
|                                |   | .....          |

According to the first respondent/claimant, who was examined as P.W.1 before the Tribunal, the deceased was aged about 43 years on the date of accident and she worked as a Teacher in Birla Vidhya Nikethan, Pushpavihar, New Delhi and her monthly salary was Rs.30,648/-. His evidence was corroborated by P.W.3, who was an employee of the same school and by Ex.P14-pay slip for the months from July 2010 to September 2010 and Ex.P25-Identity card issued by the school. Similarly, the case of the first respondent/claimant that the deceased was 43 years old at the time of accident, was supported by Exs.P10-post mortem certificate, P11-death certificate, P13-Pan Card and P14-Passport. Apart from that, P.W.4, who was the auditor of the first respondent/claimant as well as the deceased, deposed in his evidence that the deceased was an Income Tax Assessee. Through him, Ex.P28 Income Tax returns for the years from 2008-2009 to 2010-2011, was marked. Based on the those oral and documentary evidence, the Tribunal has calculated the monthly income of the deceased from Rs.30,648/- to Rs.28,413/-, after deducting transport allowances and medical allowance. Considering the age of the deceased at 43 years, the Tribunal has adopted the multiplier '14'. After deducting Rs.600/- per month towards Income Tax and adding 30% towards future prospects, the Tribunal has determined the annual income of the deceased at Rs.4,33,883/-. After deducting 1/3<sup>rd</sup> amount towards personal expenses and applying the multiplier 14, the Tribunal has arrived at Rs.40,49,584/- (Rs.4,33,883 x 2/3 x 14) as compensation under the head "loss of dependency". That apart, the Tribunal has awarded Rs.10,000/- towards loss of consortium and Rs.5,000/- towards transport and funeral expenses. Thus, the Tribunal has awarded a sum of Rs.40,64,584/- as total compensation to the first respondent/claimant. However, the learned counsel for the first respondent/claimant, during the course of argument, submitted that the first respondent/claimant is willing to receive a sum of Rs.40,00,000/- instead of Rs.40,64,584/- as compensation. In view of the same, the award of the Tribunal in MCOP.No.11/2011 is hereby reduced to Rs.40,00,000/- by this Court.

CMA.No.1686/2014 against MCOP.No.12/2011:

12.The Tribunal awarded a sum of Rs.3,05,000/- against the claim of Rs.10,00,000/- for the death of daughter of the first respondent/claimant Charvee Das, who was aged about 14 years at the time of accident, under the following heads:

|                          |   |               |
|--------------------------|---|---------------|
| Pecuniary loss           | = | Rs.1,50,000/- |
| Non-pecuniary loss       | = | Rs. 75,000/-  |
| Loss of future prospects | = | Rs. 75,000/-  |
| Funeral expenses         | = | Rs. 5,000/-   |
|                          |   | .....         |
| Total                    | = | Rs.3,05,000/- |
|                          |   | .....         |

The first respondent/claimant was examined as P.W.1 before the Tribunal. As per his evidence, the deceased was studying in VIII standard in Gyan Bharathi School, Sket, New Delhi and was aged about 14 years on the date of accident. To substantiate the same, the Identity Card and the bonafide certificate of the deceased issued by the school were marked as Exs.P18 and P19 respectively. In Ex.P22- Passport of the deceased, her date of birth was mentioned as 15.09.1996, which would go to show that she was 14 years old at the time of accident. The Tribunal relying on the judgment of the Hon'ble Supreme Court reported in 2009(1) TNMAC 593 (SC) (R.K.Malik and another v. Kiran Pal and others), awarded the compensation to the tune of Rs.3,05,000/- under the heads as referred to above. In our view, Rs.75,000/- awarded by the Tribunal under the head "loss of future prospects" appears to be on the higher side and hence, the same is hereby reduced to Rs.50,000/-. Except the same, there is no modification with regard to the award passed by the Tribunal. Accordingly, the compensation of Rs.3,05,000/- awarded by the Tribunal in MCOP.No.12/2011 is hereby reduced to Rs.2,80,000/- by this Court.

CMA.No.1840/2014 against MCOP.No.13/2011:

13.The Tribunal awarded a sum of Rs.6,14,843/- (wrongly mentioned as Rs.6,19,843/-) against the claim of Rs.40,00,000/- for the injuries sustained by the first respondent/claimant, under the following heads:

|                    |   |               |
|--------------------|---|---------------|
| Loss of income     | = | Rs.5,19,843/- |
| Pain and suffering | = | Rs. 15,000/-  |
| Extra nourishment  | = | Rs. 10,000/-  |
| Disability         | = | Rs. 70,000/-  |
|                    |   | .....         |
| Total=             |   | Rs.6,14,843/- |
|                    |   | .....         |

The first respondent/claimant/injured examined himself as P.W.1. He deposed that immediately after the accident, he was admitted as inpatient at Chettinad Hospital and treated from 03.10.2010 to 05.10.2010 and he was shifted to Apollo Multi Speciality Hospital for better treatment from 05.10.2010 to 08.10.2010. He was again shifted to Apollo Main Hospital and treated from 08.10.2010 to 08.11.2010. Thereafter, he has taken physiotherapy treatment for two months. P.W.1 further stated in his evidence that due to the injuries sustained by him, he is unable to sit in the office for long hours and work comfortably. P.W.2, who was a Senior Executive in M/s.Soma Isolux One Toll Way Private Limited, Gurgaon, deposed that the injured was working as a Team Leader since 03.04.2009 and getting the monthly salary of Rs.2,66,882/- and he did not attend the office from 03.10.2010 to 31.12.2010, due to which, he was on loss of pay to the tune of Rs.7,42,633/-. The pay slip and salary certificate of the injured were marked as Exs.P23 and P24 respectively. The income Tax returns of the injured was marked as Ex.P27 through P.W.4, who was the auditor of the first respondent/claimant. P.W.5/Doctor issued Ex.P30 disability certificate of the injured, as per which, he sustained 80% permanent disability. However, the Tribunal, considering the other medical records, has taken the disability at 70% and awarded a sum of Rs.70,000/- by fixing Rs.1,000/- per 1% of disability under the head "disability". That apart, taking note of the oral and documentary evidence, the Tribunal awarded a sum of Rs.15,000/- towards pain and suffering and Rs.10,000/- towards extra nourishment. Based on the evidence of P.W.2, the Tribunal has awarded a sum of Rs.5,19,843/- (after deducting 30% towards Income Tax from Rs.7,42,633/-) towards loss of income during the treatment period. Thus, the Tribunal has awarded a sum of Rs.6,14,843/- (wrongly mentioned as Rs.6,19,843/-) as total compensation to the first respondent/claimant. However, the learned counsel for the first respondent/claimant, during the course of argument, submitted that the first respondent/claimant is willing to receive a sum of Rs.5,89,843/- after deducting a sum of Rs.25,000/-, instead of Rs.6,14,843/- as compensation. In view of the same, the award of the Tribunal in MCOP.No.13/2011, is hereby reduced to Rs.5,89,843/- by this Court.

14. In view of the above, the appellant insurance company is directed to deposit the aforesaid modified compensation after deducting the amount already deposited, along with proportionate interest at 7.5% p.a, to the credit of the respective MCOP Numbers before the Tribunal, within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the first respondent/claimant is permitted to withdraw the entire compensation amount lying in the deposit.

15.In the result, all the Civil Miscellaneous Appeals are partly allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-  
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accidents Claims Tribunal  
Principal District Judge,  
Tiruvallur.

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

+ 1 cc to M/s. G. Karthikeyan, Advocate SR.65923

+ 3 ccs to M/s. S. Arunkumar, Advocate SR.65374, 65376, 65375

C.M.A.Nos.1669, 1686 and 1840 of 2014

CNR(CO)  
EU(23/11/2017)



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