

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.09.2017

CORAM: THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

C.M.A.No.3747 of 2011 & MP.No.1 of 2011
and
C.M.A.No.2658 of 2012 & MP.No.1 of 2012

CMA.No.3747 of 2011

The National Insurance Company Limited,
No.7, Rajaji Street, Post Box No.19
Gobichettipalayam
Erode District.

...Appellant/3rd respondent

Vs.

1.P.Mohanasundaram

2.Minor Sasidharan

Rep. by his father 1st respondent

...1&2 Respondents/Petitioner 1&2

3.K.S.Subramaniam

4.A.Palaniappan

5.S.Gopal

6.P.Shanmugham (Died)

7.Pappathi alias Saraswathi

8.N.Sundaramoorthy ...3to8Respondents/Respondents 1&2 & 4to7

(Respondents 7to8 are legal heirs
of 6th respondent herein as per
order dated 11.3.2010 in I.A.No.231/2010)

CMA.No.2658 of 2012 :

The National Insurance Company Limited,
No.197, Raja Veethi
Gobichettipalayam.

.. Appellant/3rd Respondent

Vs.

1.Gopal

2.K.S.Subramaniam

...1st Respondent/Petitioner

...2nd&3rd Respondent/
1st&2nd Respondent

3.A.Pazhaniappan

4.K.Sathasivam

5.K.Sivaselvam

6.The Branch Office

United India Insurance Company Limited

Mettur Road, Erode.

..Respondents 4to6/
Respondents 4 to6

Prayer in CMA.No.3747 of 2011:- Civil Miscellaneous Appeal filed against the decree and judgment passed in MACT OP.No.95 of 2008 dated 02.2.2011 on the file of the Motor Accident Claims Tribunal, Additional District Judge, Fast Track Court No.I, Erode District.

Prayer in CMA.No.2658 of 2012:- Civil Miscellaneous Appeal filed against the decree and judgment passed in MACT OP.No.346 of 2008 dated 19.03.2012 on the file of the Motor Accident Claims Tribunal, Additional District Judge, Fast Track Court No.4, Bhavani, Erode District.

CMA.No.3747 of 2011 :

For Appellant : Ms.N.B.Surekha

For Respondents : Mr.Naveen Kumar Murthi for R1 & R2

For R3 to R5, R8: R6 died: [Notice served - No appearance]

CMA.No.2658 of 2012 :

For Appellant : Ms.N.B.Surekha

For Respondents: Mr.D. Balachandran for R1

R2 to R6 : Notice served No. Appearance

JUDGMENT

The insurance company of a lorry bearing No.TD S 1789 that ran berserk on 25.6.2007, hit a two wheeler from behind and leading to a chain reaction of the said motorcycle, it hit another oncoming motorcycle, has come forward with these appeals challenging (a) the award passed in MACT OP.No.95 of 2008 on the file of Fast Track Court No.I, Erode District, in favour of the claimants, who are the legal representatives of the victim of the motor cycle that the lorry had hit first (b) the compensation awarded to the other injured -motorcyclist who sought compensation in MACT OP.No.346 of 2008, on the file of Fast Track Court No.4, Bhavani, Erode District, owing to the said accident.

2. On 25.6.2007 at about 9.45 a.m. a certain Sadasivam was riding his motorcycle TN Q 4646 with his sister Sivaselvi on the pillion, when the lorry bearing No.TD S 1789 belonging to K.S.Subramanian, the first respondent before the Tribunal and insured with the appellant dashed against the motor cyclist from behind. As a consequence, Sivaselvi, the pillion rider was dragged by the lorry for about 12 mtrs. before killing her on the spot. The motorcycle itself lost control and it skidded fast to hit the oncoming motorcycle driven by a certain Gopal, the fifth respondent in CMA.No.3747 of 2011 and first respondent in CMA.No.2658 of 2012. Seeking a compensation for the loss/injuries suffered, as the case may

be, the husband and minor son of Sivaselvi preferred MACT OP.No.95 of 2008 before MACT, Erode and injured Gopal preferred MACT OP No.346 of 2008. Both these petitions however were not jointly tried, and different awards were passed on different dates by two separate courts.

3. In the claim petition filed consequent to the death of Sivaselvi, her legal representatives have claimed Rs.6.0 lakhs as compensation, and the Tribunal however has awarded Rs.4,34,000/- payable with interest at 7.5%. In MACT OP No.346 of 2008, Gopal had sought a compensation of Rs.1.0 lakh and he was awarded Rs.15,000/- with interest at 7.5% per annum. In these appeals, the appellant, the insurer of the offending lorry has impugned these awards on the grounds of (a) finding on negligence (b) the quantum.

4. It emerges from evidence that the lorry had hit the motorcycle from behind and the motorcycle in which Sivaselvi was travelling as pillion and there is no material on record to suggest the contra. Therefore, this Court is not satisfied that there exists a case for the appellant for this Court to interfere to dislodge the finding of negligence against the driver of the lorry.

5. So far as the quantum awarded to the legal heirs of Sivaselvi involved in CMA.3747 of 2011 is concerned, the Tribunal has fairly fixed Rs.3,000/- as Sivaselvi's monthly contribution to the family, deducted 1/3 from that and considering her age at 36, the Tribunal has applied a multiplier of 16 and arrived at Rs.3,84,000/- towards loss of support to the family. For loss of consortium for Sivaselvi's husband, Rs.20,000/- was awarded and Rs.25,000/- was awarded to the minor son of Sivaselvi for loss of love and affection, and another Rs.5,000 for funeral expenses and thus it awarded a total compensation of Rs.4,34,000/- payable with interest at 7.5%.

6. The appellant is not able to pinpoint where exactly the Tribunal had misapplied any principle of law as applicable.

7. This Court finds the compensation awarded in MACT OP.No.95 of 2008 (C.M.A.No.3747 of 2011) is just fair and reasonable and does not call for interference.

8. So far as CMA.2658 of 2012 is concerned, Gopal was riding the motorcycle from the opposite direction and was nowhere in the line of motion, either of the lorry or of the motorcycle that the lorry had hit first. The lorry hitting the motorcycle before it has triggered a chain reaction and Gopal became a victim of this when the first mentioned motorcycle hit him. Necessarily the lorry driver has to take the blame for this accident too and this is rightly decided, notwithstanding the fact that this was decided separately by a different Tribunal. So far as compensation is concerned, only Rs.15,000/- is awarded to the claimant, which is just

unreasonable and unfair. Thus, this Court finds no merits and this appeal is also dismissed.

9. Accordingly, both the appeals in CMA.No.3747 of 2011 and CMA.No.2658 of 2012 are dismissed and the awards of the Tribunal is confirmed. The appellant is directed to deposit the compensation amount as it was determined by the Tribunal in both the petitions with accrued interest at 7.5% per annum, whereupon the claimants/claimant as the case may be, are permitted to withdraw the same forthwith. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

ds

To:

1.The Additional District Judge
Motor Accident Claims Tribunal
Fast Track Court No.1,
Erode District.

2.The Additional District Judge
Motor Accident Claims Tribunal
Fast Track Court No.4
Bhavani
Erode District.

3. The Section Officer,
V.R.Section,
High Court, Madras.

+ 2 cc to M/s. N.B. Surekha, Advocate Sr.65889, 65889
+ 1 cc to M/s. D. Balachendran, Advocate Sr.65816

C.M.A.No.3747 of 2011
and
C.M.A.No. 2658 of 2012

MP (CO)

FU(07/03/2018)

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