

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :23.03.2017

CORAM

The Hon'ble Mr.Justice Nooty Ramamohana Rao
and
The Hon'ble Mr.Justice S.M.Subramaniam

C.M.A.Nos.737 & 951 of 2014

C.M.A.No.737 of 2014

1.M.Munuswamy
2.M.Sowmiya (Minor)
3.M.Pradeesha (Minor)
(Minors rep. by father & n.f.M.Munuswami)
4.P.Murugesan @ Selvam
5.M.Saroja
6.K.Sedngeni
7.S.Sakunthala ... Appellants/Petitioners
Vs.

1.K.Srinivasan
2.National Insurance Co.,Ltd.,
Divisional Office
No.43/53, Rajah Muthiay Road
Periamet, Chennai 600 003.
Service at:
National Insurance Co.,Ltd.,
Motor Third Party Claims Cell
No.751, Anna Salai, Chennai 600 002.

3.A.Annamalai
4.ICICI Lombard General Insurance Co. Ltd.,
Arihand Plaza, No.84/85 Waltax Road
Chennai 600 003 Service at:

ICICI Lombard General Insurance Co. Ltd.,
Chotabhai Rowers
No.140, Nungambakkam High Road
Chennai 600 006. .. Respondents/Respondents

C.M.A.No.951 of 2014

M.Pradeesha (Minor) rep.

by father & n.f.M.Munuswami .. Appellant/Petitioner

-vs-

1.K.Srinivasan

2.National Insurance Co.,Ltd.,
Divisional Office
No.43/53, Rajah Muthiay Road
Periamet, Chennai 600 003. Service at:
National Insurance Co.,Ltd.,
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No.751, Anna Salai, Chennai 600 002.

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Arihand Plaza, No.84/85 Waltax Road
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Chotabhai Rowers
No.140, Nungambakkam High Road
Chennai 600 006.

(1st and 3rd respondents were set exparte in the Trial Court)
.. Respondents/Respondents

1.

Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988, against the judgments and decrees dated 31.10.2013 made in MACTOP Nos.1677 & 1678 of 2011 on the file of the II Motor Accident Claims Tribunal (Court of Small Causes), Chennai.

In both C.M.As.

For Appellants :Mrs.P.T.Salim Fathima
For Respondents :No appearance for R1 & R3
Mr.R.Ravichandran-R2
Mrs.R.Sree Vidhya - R4

C O M M O N J U D G E M E N T

Nooty Ramamohana Rao, J.,

Both these Civil Miscellaneous Appeals are directed against the common Judgment rendered on 31st October, 2013, by the II Motor Accident Claims Tribunal (Court of Small Causes), Chennai, in MACTOP Nos.1677 & 1678 of 2011.

2.MACTOP No.1677 of 2011 has been preferred, claiming compensation in a sum of Rs.32 lakhs for the death of Mrs.M.Sudha Hari in a motor accident, which was caused on 22nd August, 2010, at about 22.45 hours and MACTOP No.1678 of 2011, has been preferred claiming a sum of Rs.36 lakhs for the injuries sustained by the minor claimant, in the very same accident referred to supra.

3(i) The case as set up by the claimants is that, on 22nd August, 2010, at about 22.45 hours, when the deceased as well as the claimants in O.P.No.1678 of 2011, along with 15 others were proceeding in a TATA ACE bearing Registration No.TN-02-AH-3907 on Tambaram-Maduravoyal bye pass road, the accident was caused by the TATA ACE ramming into the rear portion of a Truck bearing Registration No.TN-45-AM-2251, which was left stationary in the middle of the road on the Porur lake bridge, without flashing any signal or indication relating to its break down whatsoever.

(ii)The deceased succumbed to grievous injuries sustained by her, while receiving treatment in the Hospital. Therefore, the Claim Petition was filed, seeking a compensation of Rs.32 lakhs. The minor claimant in MACTOP No.1678 of 2011, has sustained multiple grievous injuries and hence compensation amount of Rs.36 lakhs was claimed.

(iii)Since both the Claim Petitions are arising out of one and the same accident and the respondents are also common, both the Claim Petitions were tried together and were decided by the common Judgment. Hence, it is only appropriate that both these Civil Miscellaneous Appeals were tried by us today.

4.On behalf of the claimants three witnesses were examined and the documents Exs.P1 to P14 were marked. Three witnesses were also examined, by the Insurance Company, which contested the case.

5.The first respondent in Claim Petition, is the owner of the Truck bearing Regn.No.TN-45-AM-2251, which was insured by

the second respondent-Insurance Company. The third respondent is the owner of TATA ACE Van bearing Regn. No.TN-02-AH-3907 and that vehicle is insured by the fourth respondent. P.W.1-husband of the deceased though was not travelling in the TATA ACE Van, narrated of his knowledge about the accident and as to how the deceased succumbed to the injuries.

6.Since, P.W.1 was not present at the time when the accident took place, he may not be the best person to describe as to how the accident took place. P.W.2, is an independent witness, who, incidentally was riding a two wheeler ahead of the offending vehicle and as soon as the accident had occurred, he was found trying to help the injured. He is an un-interested independent witness. He deposed that around 10.45 p.m., on 22nd August, 2010, he was riding a motor cycle and another four wheeler was ahead of his motor cycle and they have noticed the stationary vehicle, a truck, stopped on the Porur Bridge and therefore after the four wheeler has just negotiated and passed the Truck and when P.W.2 was just trying to pass the stationary vehicle, the TATA ACE vehicle, which is following him, rammed into the stationary lorry from behind. He also deposed that several passersby have gathered there trying to organise help for the insured. In the meantime, two Policemen have also arrived and they have taken down his address and contacted him subsequently and recorded his statement. P.W.2, therefore, is not a chance witness or a witness who has been planted for the sake of making convenient statement to suit the interest of the claimants. He is a genuine eyewitness.

7.The evidence of P.W-2 inspires confidence in our mind. He clearly deposed that it was slightly drizzling at that hour and he could notice the stationary truck on one side of the road. Therefore, the four wheeler ahead of his two wheeler and himself slowed down and carefully negotiated the remaining road space for passing by the stationary truck. This evidence of P.W.2, clearly brings out that the TATA ACE Van bearing Regn No.TN-02-AH-3907, could not negotiate the remaining road space available for it to pass by the stationary truck and consequently, hit the truck from behind.

8.From the evidence of P.W.2, the following facts emerge clearly:

(i)The truck bearing Regn No.TN-45-AM-2251, has broken down. However, the Driver of that vehicle has not taken any precautionary measures to clearly indicate that the vehicle has broken down and hence is not moving. The truck driver ought to have indicated by switching on the parking lights on both sides of the truck, so that the vehicles that follow the said truck would get an indication that the truck has broken down and one should be careful while passing by it. That apart, he has also

not put any mark or a signals at a distance to indicate that the truck has broken down. If such a signal was put behind the Truck, the traffic that follows the truck could have possibly imagined that the said truck was stationary, but is not moving till such time they came to a close by range to it. Therefore, there was negligence attributable to the driver of the Truck bearing Regn.No.TN-45-AM-2251.

(ii)When it was drizzling, normally the passing by vehicles must take extra precaution, particularly, if they are travelling at a good speed, the speed must be cut down to avoid any possible loss of road grip or skidding off the road due to the presence of stagnant water or due to wet road surface. Sometimes, small pools of oil also get formed on road surface, due to their discharge from the vehicles which have used the same road earlier. They also offer a good reason for loss of appropriate road grip and hence when it was drizzling, all motor vehicle drivers are required to be extra cautious and are required to cut down the speed of their vehicles. In this respect, the driver of the TATA ACE Van bearing Regn.No.TN-02-AH-3907, is negligent.

(iii)We also noticed that P.W.1 has learnt that there were 15 people travelling in the TATA ACE Van bearing Regn.No.TN-02-AH-3907. Though P.W.1 is not an eye witness, the said statement of P.W.1 is taken into account only for the purpose of pointing out as to an additional factor for the TATA ACE Van vehicle driver to have failed to negotiate the available road space to pass by the Truck. It is also obvious that he suddenly realised that the truck ahead of him was not moving, but was stationary. By then, he was too close behind the Truck and could not bring to a halt his Van to avoid any collusion. Thus, the negligence on the part of the driver of Van bearing Regn.No.TN-02-AH-3907, is in equal measure.

9.In C.M.A.No.737 of 2014, we are only concerned with the enhancement of the quantum of compensation awarded by the Tribunal. Hence, for the present, we will confine to the quantum of compensation awarded and examine as to whether the compensation so awarded is just and reasonable or not.

10.P.W.1 marked Ex.P1, the attested copy of the F.I.R. in Crime No.1105 of 2010, registered by the Poonamallee Traffic Investigation Police. Ex.P2 is the Statement of Marks, Ex.P3 is the Provisional Certificate, Ex.P4 is the Programme Completion Certificate, all of whom vouch for the factum that the deceased has graduated from Tamil Nadu Open University by passing B.A. Degree Examination. Ex.P5, is the Call letter permitting the deceased to appear for a written examination for recruitment to clerical cadre in Bank of India, Ex.P6, is the Community Certificate, Ex.P7 is the Death Certificate, Ex.P8 is the report

about her death, Ex.P9 is the Postmortem Certificate of the deceased.

11.On the strength of Ex.P5, Call Letter, an argument was advanced before us by Ms.P.T.Salim Fathima, learned counsel that the deceased was in fact standing very bright chance for selection as a Clerk in Bank of India, which is a Nationalised Banking Company, and hence, under the head of future prospects appropriate calculation ought to have been carried out by the Tribunal, which it failed to do. The learned counsel would submit that the deceased being a responsible mother was not only contributing to the family, but she was also actively pursuing the prospects of her employment and in view of the bright chance which she had for being recruited as Clerk in a Nationalised Bank, the Tribunal in its assessment of quantum of compensation ought to have got guided by the salary and allowances which a Clerk in a Nationalised Bank would have been paid.

12.In our humble opinion, the contention canvassed by the learned counsel for the appellants is not acceptable. Ex.P5, is only a Call Letter, permitting the deceased to appear for a competitive examination for recruitment to the post of 'Clerk' in a Nationalised Bank. All those persons who respond to a Notification, may not be called to appear for the written examination. But, equally, all those persons who are otherwise eligible to appear for the examination are likely to be called to appear for the written examination and all those persons who have appeared for the written examination will not get selected, either. Only to the limited extent of the posts/vacancies notified, the selection will be confined. Therefore, mere fact that the deceased was preparing to appear for the competitive examinations, particularly, for recruitment to the clerical cadre of Banks, does not ipso facto lead to an inference that she is likely to be recruited as such. At best, we can only infer that the deceased was very anxious to take to employment and thus contribute to her family individually, apart from contributing as a 'Home Maker'.

13.In the above context, when we examine the Award passed by the Tribunal, we have noticed that the Tribunal has taken her monthly income at Rs.9,000/- and after deducting 1/3rd thereof towards personal expenses, her contribution to the family per month was arrived at Rs.6,000/- and when the same was multiplied by 12 and also further multiplied by 17, since the deceased was of the age of 28 years, thus, calculated at the pecuniary loss at Rs.12,24,000/-.

14.In the absence of any specific yardstick with which one can draw comparison, we are of the opinion that it is reasonable to infer that the deceased would have contributed a sum of Rs.6,000/- per month, being a graduate. We are, therefore, of

the opinion that the assessment of pecuniary loss made by the Tribunal is reasonable and does not call for any upward revision at our hands.

15.The Tribunal had also awarded a sum of Rupees one lakh to the first claimant-husband of the deceased, towards loss of consortium, because the deceased was only 28 years of old, female. The funeral expenses of Rs.15,000/- was awarded, which is also a reasonable amount. Towards loss of love, affection and guidance, the husband as well as the two minor children were each awarded Rs.50,000/- totalling to a sum of Rs.1,50,000/-. A sum of Rs.50,000/- was also awarded towards the loss of estate and a further loss of expectation of life was also compensated by further sum of Rs.50,000/-. Thus, a total compensation of Rs.15,89,000/- has been awarded.

16.We have given our anxious consideration and in the absence of any reliable material on record, the compensation worked out by the Tribunal appears to be on a reasonable side. It was also fair and all the possible heads under which compensation to a Motor Accident victim can be granted have all been awarded. In our opinion, therefore, the award made in M.C.O.P.No. 1677 of 2004, does not call for any interference.

17.Insofar as C.M.A.No.951 of 2014, arising out of M.C.O.P.No.1678 of 2011, which in turn was instituted by a five year old Pradeesha, daughter of the deceased who was going to the Kindergarten, studying U.K.G. sought for compensation. Since she was severely injured, hospitalized at the Government Hospital as an inpatient for nearly two weeks and also based upon the assessment of the disability, the Tribunal has worked out the compensation payable as Rs.1,00,000/- for 50% of the partial permanent disability. The Tribunal has also awarded a sum of Rs.30,000/- towards pain and suffering, a sum of Rs.7,000/- towards loss of amenities, a sum of Rs.10,000/- for medical expenses, a sum of Rs.7,000/- towards transportation, a sum of Rs.7,000/- towards extra nourishment, a sum of Rs.10,000/- towards the attendant charges and for damage to the clothing a sum of Rs.1,000/-.

18.It is rather unfortunate that at such a young age, the claimant has suffered a grievous injury, which resulted in 50% of partial permanent disability. We can sympathise with the claimant. But, it will be difficult for us to hold that the compensation amount of Rs.1,00,000/- awarded by the Tribunal is grossly inadequate or insufficient. Considering the young age of the claimant, it is possible for her to retrieve some of the physical capacity after the trauma caused by the accident is got over. Persons with young age are more capable of bouncing back to a near normal situation once they get over the trauma left by the accident. We are, therefore of the opinion that the

compensation awarded to the claimant in this Claim Petition was fair and reasonable and also does not warrant any interference at our hands.

19. Since the respondents 1 & 3, have not appeared before us, we are not modifying the proportion in which they are required to share the compensation. On that score, there appears to be good reason to believe that TATA ACE Van driver is also equally responsible for causing the accident, if not slightly more than the Truck Driver, who left the truck stationary upon its break down, without taking any precautionary measures that too during night time.

20. For all the reasons, the common award of the Claims Tribunal in M.C.O.P.Nos.1677 & 1678 of 2011, dated 31st October, 2013, is confirmed in all respects.

21. In the result, both these Civil Miscellaneous Appeals are dismissed, as being devoid of merit. However, without cost.

-s/d-
Assistant Registrar(CSIV)

True Copy

Sub-Assistant Registrar

rpa

To

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

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

+2 ccs to M/s.M.SwamiKkannu Advocate sr 18853 & 18854

Common Judgement
in
C.M.A.Nos.737 &
951 of 2014

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