

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.04.2017

CORAM:

THE HONOURABLE MR.JUSTICE NOOTY.RAMAMOHANA RAO
and

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A.Nos.925 to 928 of 2014 and
M.P.Nos.1 to 1 of 2014

The New India Assurance Company Ltd.,
45, Moore Stret, Chennai 600 001.

.. Appellant in all CMAs

/versus/

1.Minor Andrew Paul
(rep. By Muthumalai grand mother)

.. R1 in C.M.A.Nos.925 to 927/2014

2.D.Pandian .. R2 in C.M.A.Nos.925, 927 &
928/2014 & R4 in CMA 926/2014

(R2/R4 set exparte in the lower Court
Hence notice is dispense with)

3.P.D.Gopalakrishnamurthy .. R3 in C.M.A.Nos.925, 927 &
928/2014 & R5 in CMA 926/2014

(R3/R5 set exparte in the lower Court
Hence notice is dispense with)

4.ICICI Lombard General Insurance Co., Ltd.,
Waltax Road, Chennai 600 002.

.. R4 in C.M.A.Nos.925, 927 &
928/2014 & R6 in CMA 926/2014

Common Prayer: Civil Miscellaneous Appeals filed against the
common award and decree dated 25.10.2013 passed in
M.C.O.P.Nos.825 to 828 of 2010, on the file of the Motor
Accident Claims Tribunal, Poonamallee, II Additional District
Court, Tiruvallur at Poonamallee.

For Appellant : Mr.R.Sivakumar
(in all CMAs)

For Respondents : Mr.K.Varadha Kamaraj
(R1 in CMAs 925,
927 & 928/14 &
R1 to R3 in
CMA 926/2014)

(R4 in CMAs 925, :Mrs.R.Sree Vidhya
927 & 928/14 &
R6 in
CMA 926/2014)

(R2 & R3 : Exparte
CMA No.925,
927 & 928/14 &
R4 & R5 in
CMA 926/2014)

COMMON J U D G M E N T

NOOTY.RAMAMOHANA RAO,J.

All these four Civil Miscellaneous Appeals are preferred by the New India Assurance Company Limited, the Insurer of a private Tourist Bus bearing Registration No.TN.23.AQ.6789.

2.The facts which are not in dispute are as follows:

(i) One Sri.Ramesh @ Ramakrishnamoorthy, his wife Sumithra @ Dexy Sunitha, their son Alen Paul, and their Domestic Help by name Uma were travelling in a Maruti Alto Car bearing Registration No.TN 02 R 9456, from Chennai to Bangalore on 23.05.2010. While they were on the stretch between Vellore and Ambur near about a Bus Stop, one half of the National Highway was closed for attending to certain maintenance works and consequently the road traffic on National Highway No.46 from North to South is diverted to the other half of the National Highway. It appears, the employees of National Highway Authority of India (NHAI) were helping the traffic flowing from North to South to get diverted on to the other half of the road to enable them to continue their further onward journey.

(ii) Just about that time, the Car driven by Mr.Ramesh has completed the task of entering the other half of the National Highway, and then there was a head on collision between the Car and the bus bearing Registration No.TN.23.AQ.6789. Shri.Ramesh, his wife and their minor son Alen Paul died in the accident and the other occupant of the Car Uma sustained grievous injuries,

but, survived the accident. Hence, Andrew Paul, the other surviving son of Mr.Ramesh and Mrs.Sumithra, maintained two separate Claim Petitions viz. M.C.O.P.No.825 of 2010, seeking compensation of Rs.4,00,000/- (Rupees four lakhs only) and M.C.O.P.No.827 of 2010, seeking compensation of Rs.7,00,000/- (Rupees seven lakhs) for the death of his mother Sumithra @ Dexy Sunitha. He also maintained M.C.O.P.No.826 of 2010, along with his paternal grand parents, seeking compensation of a sum of Rs.20,00,000/- (Rupees twenty lakhs) for causing the death of Sri.Ramesh. The injured Uma also maintained M.C.O.P.No.830 of 2010, seeking compensation of Rs.3,00,000/- (Rupees Three lakhs only) for the injuries sustained by her. Thus, all the four M.C.O.Ps were clubbed together and tried by the Motor Accidents Claims Tribunal, Poonamallee-cum-II Additional District Judge, Tiruvallur at Poonamallee. They stand disposed of by the Common Award dated 25th October 2013. It is as against the said Common Award, the present four Civil Miscellaneous Appeals have been preferred.

3.Heard Mr.R.Sivakumar, learned counsel for the appellant, Mr.Varadha Kamaraj, learned counsel for the 1st respondent in C.M.A.Nos.925, 927 & 928 of 2014 and respondents 1 to 3 in C.M.A.No.926 of 2014, Mr.R.Sree Vidhya, learned counsel for the 4th respondent in C.M.A.No.925,927 & 928 of 2014 and 6th respondent in C.M.A.No.926 of 2014.

4.On behalf of the claimants, four witnesses have been examined and 28 documents viz. EXs.P1 to P28 have been exhibited. On behalf of the respondents, no one was examined and no document has been exhibited either.

5.The lone surviving inmate of the car driven by Ramesh, Ms.Uma, who was severely injured, but survived the accident, was examined as P.W.2, while P.W.1 was the mother of the deceased Ramesh. The Ortho Surgeon, who has examined the injured Uma and certified about the extent of disability suffered by her, was examined as P.W.3. P.W.4 is the Officer in-charge of Human Relations of Jet Airways, in which organisation, the deceased Ramesh was working, has been examined to establish the earnings of the deceased Ramesh.

6. The driver of the bus which was involved in the accident was the one who went to Ambur Police Station, Vellore District, lodged a complaint and the F.I.R. was marked as EX.P1. Unfortunately, the driver of the bus who lodged the EX.P1-F.I.R., was not even examined on behalf of the appellant, before the Claims Tribunal. In the F.I.R. it has been clearly mentioned that the employees of NHAI, were organising the diversion of the motor traffic which was flowing from North to

South, near about Ambur bus stop. However, none of those NHAI employees have been summoned or examined.

7.EX.P4 is the Salary Certificate, which disclosed that the total earnings per month of the deceased Ramesh @ Ramakrishnamurthy were Rs.12,772/- and his contribution to the Provident Fund was Rs.360/- per month. Under Section 10 of the Income Tax Act, Conveyance Allowance of Rs.9,600/- per month paid to Ramesh @ Ramakrishnamurthy and the Uniform Allowance of Rs.3,600/- per annum were exempted. Thus, a sum of Rs.13,200/- P.M. was exempted under Section 10 of the Act, from Tax liability. Under Chapter VI of the Income Tax Act, a further sum of Rs.20,349/- was exempted. With the result, total annual Income of the deceased Ramesh @ Ramakrishnamurthy worked out to Rs.1,16,320/-, was below the taxable minimum amount and hence, no Income Tax was deducted at source.

8.The Tribunal has considered that the deceased Ramesh could have contributed $\frac{2}{3}$ rd of his income to the family and he would have spent $\frac{1}{3}$ rd of his earnings for his maintenance and upkeep, which is fair and reasonable and thus after deducting $\frac{1}{3}$ rd out of Rs.12,772/-, the income per month of the deceased Ramesh @ Ramakrishnamurthy has been worked out to Rs.8,515/- and the annual income thus arrived at been multiplied by factor 16, as the deceased Ramesh @ Ramakrishnamurthy was only 37 years of age. Thus, the total loss of earnings was worked out to be Rs.16,34,880/-.

9.The Tribunal has erroneously denied compensation towards future prospects on the ground that the claimants are receiving compensation in the other Claim Petitions. In fact in SARALA VERMA v. DELHI TRANSPORT CORPORATION [2009 (2) TN MAC 1 (SC)], the Hon'ble Supreme Court has clearly pointed in paragraph No.24, that if the deceased was having a permanent job and if he was less than 40 years old, an addition of 50% of the actual salary towards future prospects should be added.

10.The learned counsel for the appellant was right in pointing out that as per the Judgment rendered in SARALA VERMA (cited supra), the multiplier which has been clarified in NEW INDIA ASSURANCE COMPANY LTD. v. CHARLIE [(2005) 10 SCC 720], was accepted as appropriate, should have been '15' for a person in the age group of 36 to 40. Whereas the Tribunal has erroneously taken the multiplier 16 as specified in the second column in the Table annexed to the Second Schedule of the Motor Vehicles Act. Therefore, while computing the compensation, the multiplier 15 should have been adopted and 25% towards future prospects, should also have been provided.

11. Though Jet Airways, is a Private Company, with which the deceased was working is not a Government Company, but yet, it would be reasonable for one to expect that the deceased Ramesh @ Ramakrishnamurthy would have earned a minimum of 30% of hike over and above his earnings at the time of accident in future. On a conservative scale, a minimum of 25% hike towards future prospects deserve to be provided, because the deceased was working as a part of the Aircraft Maintenance crew and such qualified crew would get employment with one Airways or the other, particularly, when the services in the Air Travel Sector are ever increasing. That apart, from the annual income 10% has been deducted towards income tax and thus the loss of income has been worked out as Rs.14,71,392/-. On this amount, 25% hike should have been provided towards future prospects. Since the driver of the car Mr. Ramesh @ Ramakrishnamurthy, was also found to be negligent to the extent of 20%, for causing the accident, out of the total compensation amount, 20% of the compensation amount was denied. It is that area of contributory negligence, which gave rise in principle to the above Appeals.

12. The learned counsel for the appellant would strenuously urge that the assessment of contribution of negligence on the part of the car driver, was grossly erroneous by the Tribunal. The learned counsel would contend that the bus was travelling on the left side of the Highway proceeding from Bangalore to Chennai. It is the road traffic which is flowing from North to South i.e. travelling from Chennai to Bangalore, which is sought to be diverted near Ambur bus stop on to the right half of the National Highway. Thus, on that half of the National Highway on which traffic was flowing from Bangalore to Chennai, it would not have encountered the vehicular traffic in the opposite direction till the point of diversion arrived. Therefore, the learned counsel would contend that the contribution of negligence on the part of the driver of the car should have been not less than 50%, whereas, the Tribunal has erroneously computed it as 20%.

13. We are not impressed by the aforesaid contentions for the following reasons:

(i) Firstly, it is true that in normal circumstances the traffic flowing from South to North on the National Highway viz., Bangalore to Chennai would not have encountered any traffic on the opposite direction, as the vehicle of traffic in the opposite direction would have travelled on the other half of the National Highway. Once the bus driver was proceeding from Bangalore to Chennai, it is reasonable to expect that he would have encountered a little earlier to the place where the accident took place, traffic moving in the opposite direction. That would

explain the reason as to why the bus driver has confined himself to the left hand side of the road from South to North. In such a scenario, when one is approaching the actual point of diversion, causing merger of traffic in the opposite direction, there should have been a proper assessment on the part of the bus driver to look for sudden entry of vehicular traffic on the opposite direction and as to how much road space should be left for safe negotiation for the opposite traffic on the other half of the National Highway. In such a case, he should have been extra cautious by providing for adequate space for the traffic flowing from the opposite direction to enter that half of the road and then merge for onward journey. For all those who take the left turn on a Highway, there may not be any difficulty. But, for those who take right turn to join the other half of a Highway, they need a little more space of the road than the extreme left portion of the road made available. They will be entering some more road space beyond the left side of the road and proceed for a while and then adjust to the left hand side of the road. Therefore, right at the point of entry, due to diversion from one half of the National Highway to the other half, it may not be always possible for the road traffic so diverted to straight away travel on the left hand side alone. Thus, there is a clear error of judgment with regard to the road space required to be left for negotiating safely each vehicle.

(ii) Taking into account the point of collision, in our opinion, the Tribunal has arrived at a conclusion that both the drivers have contributed to the accident and in the absence of any contra material and going by the deposition of P.W.2, that it was the bus which was travelling at high speed, caused the accident, the Tribunal is justified in coming to the conclusion that the bus driver has contributed to the extent of 80%, for causing the accident. In that view of the matter, we find that the contentions canvassed by the learned counsel for the appellant, as not acceptable.

14. The appellant has not taken adequate care or steps to examine the driver of the offending bus or the NHAI workers who were helping the diversion of road traffic, coming from North to South i.e. from Chennai to Bangalore. That apart, the accident has taken place around 15.30 hours, by which time, there would have been great amount of visibility of the traffic coming from the opposite direction.

15. We are, therefore, of the view that the finding recorded by the Tribunal that the car driver's contribution was to the extent of 20% and that of the bus driver's contribution was to the extent of 80%, appears to be fair and reasonable one and in the absence of any material to the contra, we cannot upset such

a finding of fact. Hence, we have no hesitation to dismiss these Civil Miscellaneous Appeals.

16. Accordingly, to the extent of substituting the multiplier from 16 and applying 15 multiplier and providing 25% for future prospects, which is required to be provided as just and reasonable compensation, the Award in all other aspects stands affirmed.

Except to the modification mentioned above, the Appeals fail otherwise. Let a decree be drawn accordingly. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

rna/rpa

To

1. The learned Judge,
Motor Accident Claims Tribunal,
Poonamallee, II Additional District Court,
Tiruvallur at Poonamallee.

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

+1cc to Ms.R.Sree Vidhya, Advocate, S.R.No.21406
+4cc to Mr.K.Varadha Kamaraj, Advocate,
S.R.No.20862,20860,50859,20861

C.M.A.Nos.925 to
928 of 2014

RSI (CO)
RS (27/06/2017)

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