

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.09.2017

CORAM

THE HON'BLE MR. JUSTICE R.SUBBIAH
and
THE HON'BLE MR. JUSTICE P.VELMURUGAN

C.M.A.Nos.890 of 2013 and 2109 of 2017
and
MP.No.1 of 2013 and
CMP.Nos.11518 and 11178 of 2017

CMA.No.890/2013

The Divisional Manager
National Insurance Co. Ltd.
Puducherry.

..Appellant/7th Respondent

..vs..

1. R.Jayalakshmi
2. R.Kavitha
3. R.Nirmala
4. G.Thangammal ..Respondents 1 to 4/Petitioners
5. K.Rajavel
6. The United India Insurance Company Ltd.
13-A, Nethaji Road,
Manjakuppam, Cuddalore.

- D.Arumugam (died)
7. A.Sivasubramanian
8. A.Arunmozhi
9. A.Chitti Babu

..Respondents 5 to 9 /
Respondents 1 to 6

(Respondents 5,7to 9 are
exparte in Lower Court)

CMA.No.2109/2017

United India Insurance Co. Ltd.
No.13-A, Nethaji Road
Manjakuppam,
Cuddalore.

..Appellant /2nd Respondent

..vs..

1. R.Jayalakshmi
2. R.Kavitha
3. R.Nirmala
4. G.Thangammal ...Respondents 1 to 4/Petitioners
5. K.Rajavel ...5th Respondent/1st Respondent
- D.Arumugam (died)
6. A.Sivasubramaniyan ...6th Respondent/4th Respondent
7. A.Arunmozhi ...7th Respondent/5th Respondent
8. A.Chitti Babu ...8th Respondent/6th Respondent
9. The Divisional Manager,
National Insurance Company Ltd.
Puducherry. ...9th Respondent/7th Respondent

(R3 and R7 impleaded as per order
in I.A.No.1584 of 2009 dated 26.11.2010)
R4 to R6 impleaded as per order in
I.A.No.1258 of 2010 dated 26.11.2010)

COMMON PRAYER: Civil Miscellaneous Appeals have been filed under
Section 173 of the Motor Vehicles Act, against the judgment and
decree dated 03.08.2012 passed by the Motor Accidents
Claims Tribunal (Principal District Judge), Cuddalore in
MCOP.No.2391 of 2006.

CMA.No.890 of 2013

For Appellant : Mr.R.Ravichandran
For R1 to R4 : Ms.Ramya V. Rao
For R6 : Mr.S.Arun Kumar
For R5, 7 to 9 : Exparte before the Tribunal

CMA.No.2109 of 2017

For Appellant : Mr.S.Arun Kumar
For R1 to R4 : Ms.Ramya V. Rao
For R9 : Mr.R.Ravichandran
For R5 to 8 : Exparte before the Tribunal

COMMON JUDGMENT

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

These two appeals have been directed against the award and
decree dated 03.08.2012 passed by the Motor Accident Claims
Tribunal (Principal District Judge) at Cuddalore ('the Tribunal')

for brevity) in MCOP.No.2391 of 2006.

2.While CMA.No.890 of 2013 has been filed by M/s.National Insurance Company Limited, Puducherry, which is the seventh respondent before the Tribunal, CMA.No.2109 of 2017 has been filed by M/s.United India Insurance Company Limited, Cuddalore, which is the second respondent before the Tribunal, questioning the 50% liability as well as the quantum of compensation awarded by the Tribunal.

3.Both these appeals are arising out of the one and the same award, the same are disposed of by a common judgment.

4.For the sake of convenience, the parties are referred to as per their rank in MCOP.No.2391 of 2006 before the Tribunal.

5.The brief facts, which are necessary for disposal of both these appeals, are as follows:

The claimants, who are the respondents 1 to 4 herein, are the wife, daughters and mother of the deceased Ramalingam. It is their case before the Tribunal that on 30.07.2006, at about 1.45pm, while the deceased was travelling in a car bearing Regn.No.TN46-A-7777 owned by one D.Arumugam (died), whose legal heirs are the respondents 7 to 9 in CMA.No.890 of 2013 and the respondents 6 to 8 in CMA.No.2109 of 2017 and insured with M/s.National Insurance Co. Limited (appellant in CMA.No.890/2013 and the ninth respondent in CMA.No.2109/2017), on the extreme left side of the road, near Melmampattu Bus stop, a tanker lorry bearing Regn.No.TN07-F-3411 owned by the fifth respondent in both the appeals and insured with M/s.United India Insurance Co. Ltd (appellant in CMA.No.2109 of 2017 and sixth respondent in CMA.No.890/2013) came in a rash and negligent manner from opposite direction at a hectic speed and dashed against the car and thereby caused the accident, due to which, the said Ramalingam who travelled along with one Natarajan, in the car, sustained fatal injuries. Immediately, he was taken to the Government Hospital, Panruti hospital and he succumbed to the injuries. Hence, the claimants filed a claim petition before the Tribunal, seeking compensation of Rs.50,00,000/- as against the owners as well as the insurers of the offending vehicles.

6.The claim petition was resisted by M/s.National Insurance Co. Ltd. stating that the accident was caused only due to the rash and negligent driving of the driver of the lorry bearing Regn.No. TN07 F 3411 insured with M/s.United India Insurance Co. Ltd. and not due to the rash and negligent driving of the driver of the car bearing Regn.No.TN46-A-7777 insured with them, whereas, M/s.United India Insurance Co. Ltd filed its counter stating that when the driver of the tanker lorry was

driving the vehicle in a moderate speed observing traffic rules, the driver of the car, who was coming from the opposite direction in a rash and negligent manner, suddenly dashed against the lorry and thus caused the accident, as such, the driver of the lorry is not responsible for the accident. Therefore, they are not liable to pay compensation to the claimants.

7. In order to prove the claim on the side of the claimants, the wife of the deceased was examined as PW1, besides examining one Krishnamurthy, who was the eyewitness to the occurrence and Mr. Balachandran, Deputy Chief Manager, NLC, Neyveli, to prove the occupation and income of the deceased, as P.W.3 and P.W.4 respectively and Exs.P1 to P10 documents were marked. On the side of the Insurance companies, the respective Investigating Officers of M/s. United India Insurance Co. Ltd and M/s. National Insurance Company Ltd were examined as R.W.1 and R.W.2 and Exs.R1 to R5 were marked.

8. The Tribunal, after analysing the entire evidence adduced by the parties, came to the conclusion that the accident had occurred due to the rash and negligent driving of the drivers of the lorry as well as the car and fixed the negligence at 50% each on the drivers of both the vehicles and accordingly, fastened the liability on the insurers of both the vehicles. Holding so, the Tribunal awarded a sum of Rs.39,31,761/- as compensation, with interest at 6% per annum payable to the claimants, the details of which are as follows:

Loss of income	-	Rs.38,40,291/-
Future prospects	-	Rs. 36,470/-
Loss of love and affection (Rs.10,000/- each)	-	Rs. 40,000/-
Loss of consortium to the first claimant	-	Rs. 10,000/-
Funeral expenses	-	Rs. 2,500/-
Ambulance charges	-	Rs. 2,500/-
Total	-	Rs.39,31,761/-

Aggrieved over the same, the present appeals have been filed by the respective insurance companies.

9. Mr. Arun Kumar, learned counsel for the appellant in CMA.No.2109/2017 and the sixth respondent in CMA.No.890/2013 M/s. United India Insurance Company Limited, vehemently contended that the Tribunal erred in holding that the accident had occurred due to the rash and negligent driving of the drivers of

the lorry as well as the car and the insurers of both the vehicles are liable to pay the compensation equally. Learned counsel inviting the attention of this Court to Ex.R1-rough sketch, demonstrated that at the time of accident, the car bearing Regn.No.TN46-A-7777 insured with M/s.National Insurance Company was proceeding from North to South direction and the tanker lorry bearing Regn.No.TN07-F-3411 was coming from the opposite direction with normal speed. At that time, the driver of the car drove the vehicle in a rash and negligent manner and dashed against the lorry, which resulted in the accident. Learned counsel further inviting the attention of this Court to the evidence of R.W.1- Investigating Officer of M/s.United India Insurance Co. Limited, submitted that the accident had occurred only due to the rash and negligent act committed by the driver of the Car. Under such circumstances, the Tribunal ought to have fastened the entire liability on the part of the driver of the car and ought to have exempted the insurer of the tanker lorry to pay compensation to the claimants. With regard to quantum of compensation, learned counsel submitted that in the absence of any evidence to prove the age of the deceased as 50 years at the time of accident, the Tribunal erred in applying the multiplier of 13, while calculating the compensation under the head "loss of income", based on Ex.P3 post mortem certificate of the deceased. In this regard, a letter dated 20.04.2013 issued by the employer of the deceased was also produced in CMP.No.11518 of 2017, to receive as an additional document, which would show that the deceased was aged about more than 55 years at the time of accident, as such, the correct multiplier to be applied is '9'. Therefore, learned counsel prayed that the compensation awarded by the Tribunal under the head "loss of income" has to be recalculated by applying the correct multiplier and the total compensation awarded to the claimants has to be reduced.

10.Mr.R.Ravichandran, learned counsel for the appellant in CMA.No.890 of 2013 and the ninth respondent in CMA.No.2109 of 2017 -National Insurance Company submitted that it is incorrect to state that the accident had occurred only due to the rash and negligent driving of the driver of the car. In this regard, learned counsel placed reliance on the very same Ex.R1 rough sketch relating to the place of occurrence. According to the learned counsel, at the time of accident, the car was proceeding from North to South direction on the eastern side of the Road and it was the lorry, which was driven by its driver in a rash and negligent manner, dashed against the car and pushed the same to the western side corner and hence, the insurer of the lorry alone is liable to pay compensation to the claimants. Thus, the learned counsel prayed that 50% liability fixed on the insurer of the car by the Tribunal is liable to be

set aside.

11. Mrs. Ramya V. Rao, learned counsel for the claimants submitted that as per the letter issued by the employer of the deceased, the deceased was born on 21.03.1951 and he was aged about 55 years and 4 months on the date of accident and as such, he is falling under the age group of 51 to 55 years. If that is so, the correct multiplier to be adopted, while assessing the compensation under the head "loss of income" is '11'. Therefore, the learned counsel prayed that by applying the multiplier '11', the compensation awarded by the Tribunal under the head "loss of income" has to be recalculated and the total compensation has to be enhanced.

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

13. There is no dispute with regard to the date, time and place of the accident. What was disputed by the respective insurance companies is with regard to the fixation of negligence at 50% each on the drivers of the respective vehicles and the multiplier adopted by the Tribunal, while determining the compensation under the head "loss of income".

14. It is the specific contention of the learned counsel for M/s. United India Insurance Co. Ltd that the accident had occurred only due to the rash and negligent driving of the driver of the car. To fortify the said contention, he relied on Ex.R1-Rough sketch and the evidence of R.W.1-Investigating Officer of their company. Placing reliance on the very same Ex.R1 rough sketch and the evidence of R.W.2 Investigating Officer of National Insurance Co., the learned counsel for M/s. National Insurance Co. contended that the driver of the car is not at all responsible for the accident and it was the lorry, which was driven by its driver in a rash and negligent manner, dashed against the car and caused the accident. However, this Court is of the view that Ex.R1- Rough sketch was not prepared by the police authorities and it was prepared by the Investigating officer of M/s. United India Insurance Company. Similarly, R.W.1 and R.W.2, who are the Investigating Officers of the respective Insurance companies, are not belonging to the Police Department. Therefore, in the absence of any independent and concrete evidence to show that the driver of the lorry or the driver of the car alone was responsible for the accident, the contention raised by the respective insurance companies cannot be accepted by this Court. Accordingly, the finding of the Tribunal that the accident is one of head-on-collision due to the rash and negligent act of the drivers of both the vehicles and fixing the negligence at 50% each on both the

drivers of the vehicles, is hereby confirmed. Accordingly, the direction given by the Tribunal to the respective insurance companies to pay the compensation equally to the claimants, is hereby sustained.

15. So far as the quantum of compensation awarded, the Tribunal fixed the age of the deceased as 50 years, based on Ex.P3 post mortem certificate and applied the multiplier '13'. As per the evidence of P.W.4, Deputy Chief Manager, NLC, Neyveli, who was examined to prove the occupation and income of the deceased and Ex.P9 -Identity Card and Ex.P10 -Salary certificate of the deceased for the month of December 2011, the Tribunal fixed the monthly income of the deceased at Rs.36,470/- per month. After deducting 10% of the salary towards Income Tax and 1/4th amount towards his personal expenses, the Tribunal assessed the annual income at Rs.2,95,407/-, which is not in dispute by the appellant insurance companies. Thereafter, applying the multiplier '13', the Tribunal determined the compensation at Rs.38,40,291/- under the head "loss of income". Though the learned counsel for M/s.United India Insurance Co. Limited placing reliance on the letter issued by the Employer of the deceased, seriously disputed the multiplier '13' adopted by the Tribunal, while awarding the compensation under this count, he ultimately agreed to the contention raised by the learned counsel for the claimants that the deceased was aged about 55 years and four months and he is falling in the age group of 51 to 55 years and the correct multiplier to be adopted is '11', in the light of the dictum laid down by the Apex Court in the decision reported in AIR 2009 SC 3104 (Sarla Verma and others v. Delhi Transport Corporation and another). In view of the same, we are inclined to apply the multiplier '11' for the purpose of recomputing the compensation under the head "loss of income". Accordingly, the loss of income works to Rs.32,49,477/- (Rs.2,95,407/- x 11) and the same is hereby awarded to the claimants.

16. As regards the compensation awarded towards conventional heads, the Tribunal awarded only a sum of Rs.10,000/- each towards loss of love and affection, Rs.10,000/- towards loss of consortium, Rs.2,500/- each towards funeral expenses and ambulance charges, which, in our view, are definitely on the lower side. The Hon'ble Supreme Court has observed that "it is the duty of the court to equate, as far as possible, the misery on account of the accident with the compensation so that the injured or the dependants should not face the vagaries of life on account of discontinuance of the income earned by the victim, and the court's duty is to award just, equitable, fair and reasonable compensation, irrespective of claim made". In the light of the same, we are inclined to enhance the compensation awarded by the Tribunal under the heads stated supra.

Accordingly, a sum of Rs.40,000/- awarded towards loss of love and affection is hereby enhanced to Rs.1,00,000/-. Similarly, a sum of Rs.10,000/- awarded towards loss of consortium to the first claimant is hereby enhanced to Rs.50,000/-. Likewise, a sum of Rs.2,500/- each towards funeral expenses and ambulance charges is hereby enhanced to Rs.20,000/- and Rs.5,000/- respectively. Considering the facts and circumstances of the case, a sum of Rs.36,470/- awarded towards future prospects by the Tribunal is just and reasonable and the same is hereby confirmed. Further, there is no modification with regard to the interest at 6% per annum, awarded by the Tribunal.

17. In view of the above, the compensation of Rs.39,31,761/- awarded by the Tribunal is modified as follows:

Loss of income	-	Rs.32,49,477/-
Future prospects	-	Rs. 36,470/-
Loss of love and affection (Rs.25,000/- each)	-	Rs. 1,00,000/-
Loss of consortium to the first claimant	-	Rs. 50,000/-
Funeral expenses	-	Rs. 20,000/-
Ambulance charges	-	Rs. 5,000/-
		
Total	-	Rs.34,24,477/-
		

Out of the above said award amount, the first claimant/wife is entitled to Rs.9,24,477/-; the claimants 2 and 3 being the daughters of the deceased, are entitled to Rs.9,00,000/- each; and the fourth claimant/mother is entitled to Rs.7,00,000/- and they are permitted to withdraw their respective shares, on due application. The appellant insurance companies in CMA.Nos.890/2013 and 2109 of 2017 are permitted to withdraw their respective excess amount along with the proportionate interest, lying in the deposit.

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

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

The Motor Accidents Claims Tribunal
Principal District Judge,
Cuddalore.

+2cc to Mr.A.N.Viswanatha Rao, Advocate, S.R.No.67043,67044
+1cc to Mr.S.Arun kumar, Advocate, S.R.No.67171

C.M.A.Nos.890 of 2013
and 2109 of 2017

KJ(CO)
RS(13/10/2017)



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